



## **Fort Myers Beach Town Council**

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

**Agenda**

**Monday, June 16, 2025**

**9:00 AM**

### **ORDER OF BUSINESS**

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

A. Town Council - May 28, 2025

B. Town Council - June 2, 2025

### **IX. CONSENT AGENDA**

- A. Resolution 25-203, CDBG-DR Organizational Change Notification, DR10263  
Parks Facility and Recreation Revitalization

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10263 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE PARKS FACILITY AND RECREATION REVITALIZATION PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

- B. Resolution 25-204, CDBG-DR Organizational Change Notification, DR10262  
North Island Water Tower

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10262 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY**



**COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE NORTH ISLAND WATER TOWER PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

- C. Resolution 25-205, CDBG-DR Organizational Change Notification, DR10157 Recovery and Resiliency Planning Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10157 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**X. ITEMS REMOVED FROM CONSENT AGENDA**

**XI. PUBLIC HEARINGS**

- A. Ordinance 25-10; DCI20250035.1, 1051 Fifth Street, Lighthouse Resort CPD Expanded Boundary  
*This agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-10.*

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 18-17 FOR THE PARCEL LOCATED AT 1051 FIFTH STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00205.0060, TO ADD AND REZONE A PARCEL LOCATED AT 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00203.0150 IN FORT MYERS BEACH FROM DOWNTOWN TO CPD; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

- B. Ordinance 25-11; DCI20250035.2, 1051 Fifth Street & 1060 Third Street (Lighthouse Island Resort)  
*This agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-11 (Lighthouse).*

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING AMENDMENT FOR THE PROPERTY LOCATED AT 1051 FIFTH STREET AND 1060**

THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0060 AND 24-46-23-W3-00203.0150 IN FORT MYERS BEACH, TO AMEND THE EXISTING MASTER CONCEPT PLAN TO ALLOW FOR A) AN INCREASE IN THE NUMBER OF HOTEL UNITS, B) 11 DEVIATIONS: 1) MINIMUM CONNECTION SEPARATION, 2) EXCLUSION OF UNDER BUILDING PARKING FROM FAR, 3) INCREASE IN HEIGHT FOR A MONUMENT SIGN (5TH STREET), 4) INTERNAL SIGN ILLUMINATION, 5) 40 FEET HEIGHT WITH 4 STORIES, 6) REDUCTION IN STREET SETBACKS, 7) MURAL -STYLE SIGN (EAST SIDE), 8) 10 FOOT MONUMENT SIGN (CORNER), 9) MURAL STYLE SIGN (SOUTH), 10) WAYFINDING POLE SIGN, AND 11) 58% REDUCTION IN PARKING REQUIREMENTS; AND C) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Ordinance 25-12; 1154 Estero Blvd. (Salty Crab)

*This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-12 (Salty Crab Redevelopment).*

**ORDINANCE TITLE:**

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 64 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- D. Ordinance 25-13; 1836 Estero Blvd. (Estero Island Beach Club)

*This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-13 (Estero Island Beach Club).*

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING TO REZONE THE PROPERTY LOCATED AT 1836 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010, TO REZONE FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND REQUEST FOUR (4) DEVIATIONS FROM REQUIREMENTS TO PROVIDE; 1) OPERABLE DOORS ALONG ESTERO BLVD, 2) SCREENING MATERIAL ON THE

GROUND FLOOR, 3) INCREASE BUILD-TO LINE SETBACKS, AND 4) INCREASE THE MAXIMUM ALLOWED HEIGHT BY 18- FEET; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

E. Ordinance 25-08, Noticing

*This legislative agenda item is a 2nd First Reading and Public Hearing on proposed Ordinance 25-08.*

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, NOTICES TO REQUIRE APPLICANTS FOR REZONINGS, DEVELOPMENT AGREEMENTS, DEVELOPMENTS OF REGIONAL IMPACT, SPECIAL EXCEPTIONS, ADMINISTRATIVE APPEALS, AND VARIANCES, INCLUSIVE OF VARIANCES OF SINGLE-FAMILY OR TWO FAMILY HOME VARIANCES TO REQUIRE THE APPLICANT TO PROVIDE PROOF OF MAILED AND POSTED PUBLIC NOTICING PRIOR TO LPALOCAL PLANNING AGENCY AND TOWN COUNCIL HEARINGS; AMENDING THE MANNER OF OBTAINING INFORMATION BY CONTACTING TOWN STAFF AND THE USE OF LAYMAN'S LANGUAGE IN REQUIRED NOTICES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.**

**XII. ADMINISTRATIVE AGENDA**

- A. Update on Impact Fees provided by Jason Green of Axis Infrastructure  
**Update on Impact Fees provided by Jason Green of Axis Infrastructure**
- B. Resolution 25-200, 2026 F-ROC Participation  
**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2026 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR THEIR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT, ANY POST DISASTER QUESTIONNAIRES, AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.**
- C. Resolution 25-206, 2nd Amendment to SPA-24-14-EN - Marine Debris - FMCR  
**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SECOND AMENDMENT TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED**

**DECEMBER 2, 2024 WITH FLORIDA MARINE CONTRACTING & RECOVERY, LLC, WHICH WAS PREVIOUSLY RATIFIED BY THE TOWN COUNCIL ON JANUARY 8, 2025, TO FURTHER EXTEND THE TERM OF THE AGREEMENT RETROACTIVELY FROM APRIL 30, 2025 TO MAY 15, 2025 TO ALLOW FOR PAYMENT OF OUTSTANDING INVOICES FOR DEBRIS REMOVAL FROM WATERWAYS IN THE TOWN OF FORT MYERS BEACH CAUSED BY HURRICANES HELENE AND MILTON AND DISPOSAL AT AN AUTHORIZED WASTE MANAGEMENT SITE COMPLETED AFTER EXPIRATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

- D. Resolution 25-209, Award ITB-25-02-EN Estero Island Dune Planting Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-25-02-EN TO EARTHBALANCE CORPORATION AS THE ONLY RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND DUNE PLANTING PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE EARTHBALANCE CORPORATION IN THE AMOUNT OF \$509,859.50 OF WHICH THE TOWN SHALL EXPEND BUDGETED FUNDS IN THE AMOUNT OF \$76,988.78 AS ITS PORTION OF THE TOTAL COST WITH THE REMAINDER TO BE PAID BY A GRANT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

- E. 406 Madison Ct, Kevin and Catherine Turner Quick Claim

**Approve and authorize the Mayor to sign a Quit Claim Deed to Kevin D. and Mary Catherine Turner conveying any interest the Town may or may not have, in property located adjacent to the Turners' property to allow the Turners to complete immediate repairs to a seawall, which is placing their pool at risk of damage.**

- F. Resolution 25-201, Purchase of Moss Marina Station Replacement Pumps

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PURCHASE OF REPLACEMENT PUMPS FOR THE MOSS MARINA PUMP STATION IN A NOT-TO-EXCEED AMOUNT OF \$160,300.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

- G. Resolution 25-202, Purchase of AMI External Antenna System

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO PURCHASE A NEPTUNE ADVANCED METERING INFRASTRUCTURE SYSTEM FROM FERGUSON WATERWORKS, INC., WHO IS A SOLE SOURCE PROVIDER OF THE SYSTEM IN THE STATE OF FLORIDA AS AUTHORIZED IN SECTION 2-480(C) OF THE CODE OF ORDINANCES IN A NOT-TO-EXCEED AMOUNT OF \$480,560.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

H. Resolution 25-207, Earthview Third Amendment

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO INCREASE THE AMOUNT FOR THE PERFORMANCE OF GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$65,000.00; AMENDING CONTRACT TERMS TO INCLUDE A PROVISION CONCERNING FORCE MAJEURE AND COERCION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE THIRD AMENDMENT AND PROVIDING AN EFFECTIVE DATE.**

I. Resolution 25-91, Authorize Purchase of Boat from Scully Aluminum Boats, LLC

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF AN ALUMINUM BOAT FROM SCULLY'S ALUMINUM BOATS, INC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER FOR THIS BOAT FOR A NOT-TO-EXCEED AMOUNT OF \$120,778.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

J. Resolution 25-208, Award ITB-25-04-PR Bay Oaks Recreational Campus Redevelopment Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AWARDDING ITB-25-04-PR TO PERSONS SERVICE CORP AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; APPROVING AN AGREEMENT BETWEEN THE TOWN AND PERSONS SERVICE CORP TO INSTALL FIELD TURF (GRASS), PICKLEBALL COURTS AND WALKING PATH TO FINISH THE BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$450,615.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**XIII. FINAL PUBLIC COMMENT**

**XIV. TOWN MANAGER'S ITEMS**

**XV. TOWN ATTORNEY'S ITEMS**

A. Resolution 25-211, Recall Defense Fees

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, MAKING FINDINGS; APPROVING THE PAYMENT OF REASONABLE ATTORNEY FEES FOR THE DEFENSE OF RECALL PETITIONS AGAINST TWO TOWN COUNCIL MEMBERS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**XVI. COUNCILMEMBERS ITEMS AND REPORTS**

**XVII. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON [YOUTUBE](#).**

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



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

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



## Fort Myers Beach Town Council

Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL 33931  
Wednesday, May 28, 2025

Minutes

9:00 AM

DRAFT

### ORDER OF BUSINESS

#### I. CALL TO ORDER

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

#### II. INVOCATION

Town Clerk Baker.

#### III. PLEDGE OF ALLEGIANCE

#### IV. APPROVAL OF FINAL AGENDA

The parents of the ad hoc committee will have a presentation to inform the public. Council Member King moved to approve the amended final agenda, seconded by Council Member Safford.

The motion carried unanimously.

#### V. PUBLIC COMMENT

Jenny Tardiff Paradiso, resident, started the presentation with Why Are We Here? Beach Elementary Historical & Current Status, The First Beach School, The Second Beach School, The Third and Current School, US National Register of Historic Places, Grade A School and Partnerships. John Kloss continued with a synopsis of the interlocal agreement (ILA) signed between the district and the town a few years ago. The presentation continued with Hurricane Ian, ILA Process, Synopsis of Agreement, Where We Were Day Before Milton, Cost per Student and Reasons for Concerns. Vice Mayor Atterholt asked if anyone in the room had been contacted by the consultant regarding the viability of the beach school. No one was contacted. Mr. Kloss noted that, despite what the Director of Operations stated, business owners and developers were not contacted about children attending the school. Mr. Kloss discussed the weekly update sent to parents regarding misconceptions about FEMA reimbursement.

Patrick Vanasse reviewed the Demographer's Fallacy, Approved and Proposed Projects and Commitments to Support Beach School. Monica Schmucker addressed the ILA, stating the cafeteria would be built by June of this year.

Nothing prevented them from building it. She pointed out that the school board

numbers included other funding, but they did not specify the funding sources when discussing \$8,000.00 per student. She continued with Hallmarks of our Public School System and busing children to other schools. She noted that the School Board unanimously voted to enter into the agreement for the phased rebuild after Ian. She discussed how the town was fulfilling its end of the deal, but the School Board hired a consultant for around \$200,000 to figure out a way to negate the ILA.

Mayor Allers cautioned that the town had not yet seen the consultant's study, so they did not know whether a recommendation to close it was among the five construction options. Mr. Kloss revealed that the consultant was hired in April after the construction options were agreed on and the board would not confirm whether another option to close it was a possibility. Ms. Schmucker added that they trusted the process and that is why it took them over eight months to call a meeting to discuss the agreement they agreed to uphold. Mr. Vanasse asked the town council and the town attorney to try to accelerate things. He noted that Cypress Middle School was torn down and would be rebuilt within one year. He was told kids would not be at the beach school next year.

Public comment:

Jennifer Rusk, resident, shared a childhood experience from when she was five about how important her school was to her when her brother was sentenced to prison. She described sitting next to Charles Manson while visiting her brother when she was 10 or 11. She described her trauma when Charles Manson grabbed her hair and the guards pulled her away. Her school was her safe place from everything going on in her life. She hoped the school district would ensure the school was accessible to their community.

Ellie Bunting, resident, read her comments about the school and thanked the council for their support and voice. She asked that they continue their support. Alexis Cooper discussed how the beach school took care of her daughter and made her feel loved. She did not want to send her kids to school in Lee County because she did not trust that they would treat her children like the beach school teachers. She thanked the Town for its support.

Jacki Liszak, President of the Beach Chamber of Commerce and resident, stated that the business community was committed to supporting the school and would do whatever it takes to make sure the school stays intact. She noted that the beach school was critical to the community and would remain so for generations to come. She implored the school board to honor their commitment and uphold their end of the bargain.

Kathy Young of the Fort Myers Beach Kids Foundation thought that the school board was kicking the can down the road. She asked the council to speak with the board to inform them of the community's feelings.

Fran Myers discussed the history of the beach, the school and how the community consistently came to the aid of low-income individuals and the school itself. She described how the community came together to build the playground. She thanked the council for their help.

Larry Wood, former principal, discussed the school spirit and the community's



support. He offered to help in any way he could.

Deborah Grohl, President of the Beach Kids Foundation and resident, commented that they knew where the beach schools came from. She noted that, as a relator, it was hard to sell houses without a school in the community.

Rosanna Riley, resident, noted that the beach school was essential to the community and the children should not have to ride buses for hours to go to school.

## VI. ADMINISTRATIVE AGENDA

### A. Fort Myers Beach Elementary School

**A discussion regarding the status of repair and the future of the Fort Myers Beach Elementary School, including but not limited to the terms and conditions of the Interlocal Agreement between the Town of Fort Myers Beach and The School Board of Lee County, Florida, regarding the Fort Myers Beach Elementary School.**

Town Attorney Stuparich began the presentation with Resolution 20-45, including shared-use facilities. Director Hauge indicated that the school playground was operational, but the community was unable to access it. The town offered to put in a fence for security, but he never received a response. The playground was part of the agreement and the town fulfilled its part.

Town Attorney Stuparich continued with Resolution 21-23, Resolution 21-35, and Resolution 23-35, discussing the school board's responsibilities on page 7 of the materials, as well as the default provision and Section 7.4 regarding enforcement of the agreement through court proceedings. She stated they needed to obtain a copy of the consultant's report to come up with some direction. She added that an open public records request was pending for the report. An option was to draft a resolution stating that it was the town's policy to promote beach enrollment and to ask businesses and developments to participate in the effort. Another option was to litigate, but Florida law requires mediation to occur before litigation.

Council Member Safford commented that they needed to see the report and could not believe they had not received it after repeatedly asking for it. He felt the whole thing was a shame.

Council Member Woodson asked whether the meeting on June 3 was a workshop. Mr. Kloss replied that there would be a workshop at 1:00 p.m. to discuss the beach school, followed by a regular board meeting that evening. The beach school was not on the regular meeting agenda and he thought the final decision would be made at the end of July. Council Member Woodson stated that people needed to attend the workshop to show their determination. Mr. Kloss indicated that ad hoc members would send them emails requesting an audience. Ms. Schmucker revealed that their agenda allotted 30 minutes for the beach school discussion and there was time for public comment during the workshop. There were 11 items total on the agenda. Mr. Vanasse explained that if more than 30 people want to speak, the board will allow one minute per person. He requested that they be

allowed to cede time to each other for an organized presentation, but they have not received a response. He suggested that the town council send the request rather than the parents.

Council Member King was beyond frustrated and the fact that they spent at least \$200,000.00 on a consultant irritated him. Honoring agreements was a big issue for him.

Vice Mayor Atterholt described the members involved in the ad hoc committee. The inability of Dr. Savage to give a direct answer as to whether the viability of the school was on the table was a direct violation of the ILA. If they want to amend the ILA, they should lead with that, so people know what is happening. He encouraged people to contact the elected school board members and Superintendent so they could hear from the community. He added that the new superintendent ran on the premise that the beach school was critical to the beach. He felt there was a lack of communication and that the board members should tell them if they were unsure of their course of action. Vice Mayor Atterholt was annoyed that the consultant did not reach out directly to anyone impacted, particularly since they had not been informed of the scope. He noted they needed to be careful when reviewing the report because the inputs were flawed and they should not accept the premise.

Mayor Allers noted that he met with the superintendent on Friday and felt she was open to discussion and honest about not having all the details. He commented that the school board members had been supportive. As for a sixth option, she had not yet seen the consultant's report and would spend the weekend reading it. He stated the final recommendation would come from her and the town had fulfilled its part of the ILA. All they want to do is get their kids back into the school. He suggested that the town manager and town attorney work with their lawyers before June 3 to ensure they do not have to reiterate everything they went through in the past. He thought it was a good idea to direct staff to request concrete programs from developers to drive enrollment at the beach school.

Vice Mayor Atterholt moved that the town do everything possible to ensure the preservation and longevity of the beach school and request that the town manager and town attorney ensure the school district adheres to the ILA, seconded by Council Member King.

The motion carried unanimously by roll call vote.

Discussion was held regarding obtaining the report, draft and scope of work before the next council meeting on June 2.

Traci Kohler, former principal, stated that they received an international grant from the Rotary Club and explained why it was a big deal. Some of the funds allowed the school to purchase sunshades over the basketball courts. She described how the funds were used for educational opportunities, equipment and programs for the students. She summarized the difficult choices she had to make when downsizing staff.

**VII. MOMENT OF SILENCE - TO BE HELD ON OAK STREET IN FRONT OF THE FORT MYERS BEACH ELEMENTARY SCHOOL**

**VIII. ADJOURNMENT - AT FORT MYERS BEACH ELEMENTARY SCHOOL**

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

The meeting adjourned at 11:30 AM.



## Fort Myers Beach Town Council

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

Minutes

Monday, June 2, 2025

9:00 AM

DRAFT

### ORDER OF BUSINESS

#### I. CALL TO ORDER

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

#### II. INVOCATION

Town Clerk Baker.

#### III. PLEDGE OF ALLEGIANCE

#### IV. APPROVAL OF FINAL AGENDA

The LPA (Local Planning Agency) requested an opportunity to speak under Local Achievements.

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

The motion carried unanimously.

#### V. PUBLIC COMMENT

No public comment.

#### VI. PRESENTATION

##### A. Honorable Matt Caldwell - Lee County Property Appraiser

Mr. Caldwell noted that early estimates showed a 3% increase. New construction would be true new construction and include properties that were coming back on the roll. There was about \$860 million in the new construction line; however, the taxable result was only about \$167 million due to properties coming back on the roll. He explained why the value of land exceeded the value of some older structures. He expressed his opinion on eliminating property taxes and the practical reality. He thought that, from a revenue perspective, a five-year window would be reasonable, depending on the direction the economy takes over the next couple of years.

#### VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Anita Cereceda, Chair of the LPA, and members paid tribute to Community

Development Planner Sarah Propst. She pulled them out of holes and back from crazy, loopy conversations. She was a rock, especially over the last couple of years. She was going to be greatly missed and Ms. Cereceda hoped she finds happiness in her next adventure. Jim Boan thanked Ms. Propst for getting them back on track when they swerved. He talked about her knowledge of the comp plan and codes. He thanked her for her service and said she would be missed.

John McLean wished her nothing but the best and she had been a depth of knowledge. Jane Plummer said it has been a pleasure working with her over the years and she always presented an excellent package. She will be missed. Jim Dunlap noted that to make better decisions, they needed better information, and she guided them through complicated learning curves. He said she did a great job teaching them and they were going to miss her.

Council Member Safford echoed everyone's words and wished her all the best. Council Member Woodson discussed what she went through to get their pool installed and how she maintained her composure throughout the discussions and every other situation. She will greatly miss her.

Vice Mayor Atterholt thanked her for her service. He recognized the ILA (Interlocal Agreement) between the Town of Fort Myers Beach and the School Board of Lee County. Both parties signed the agreement after Ian. He described the contents and noted they had made great progress. He asked that the school board hear them and respect the ILA. He encouraged the community to watch the emergency meeting that was held on May 28, 2025.

Council Member King thanked Ms. Propst and noted her attitude was infectious. Mayor Allers agreed with the accolades and appreciated how she slowed down the presentations for them.

## **VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**

### **A. Citizens Appointment to the Charter Review Commission**

#### **Appoint members to the 2025/2026 Fort Myers Beach Charter Review Commission**

Five people will be appointed, with two alternates. The five members appointed were James Dunlap, Beverly Milligan, Edward Schoonover, Bryan Thomas and Henry Zuba.

Council Member Woodson moved to appoint the top five, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

Town Clerk Baker indicated that James Dunlap, Ed Schoonover and Bryan Thomas required waivers because they served on other committees.

Mayor Allers moved to grant the waivers, seconded by Council Member King. The motion carried unanimously by roll call vote.

Alternates are Anita Cereceda and Michele Cherney. A tally was taken to determine the first alternate and Anita Cereceda was chosen.

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

The motion carried unanimously by roll call vote.

Mayor Allers moved to grant Anita Cereceda a waiver, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

#### IX. APPROVAL OF MINUTES

A. Town Council - May 19, 2025

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

The motion carried unanimously.

#### X. CONSENT AGENDA

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

The motion carried unanimously.

A. Resolutions 25-190 through 25-198; Extension of Local Emergency - Hurricane Ian

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

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

The motion carried unanimously.

B. Resolutions 25-181 through 25-189; Extension of Local Emergency - Hurricane Idalia

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

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

The motion carried unanimously.

C. Resolutions 25-154 through 25-162; Extension of Local Emergency - Tropical Storm Debby

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

**PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.**

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

The motion carried unanimously.

- D. Resolutions 25-163 through 25-171; Extension of Local Emergency - Hurricane Helene

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.**

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

The motion carried unanimously.

- E. Resolutions 25-172 through 25-180; Extension of Local Emergency - Hurricane Milton

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

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

The motion carried unanimously.

## **XI. ITEMS REMOVED FROM CONSENT AGENDA**

## **XII. PUBLIC HEARINGS**

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly noticed. She swore in those providing testimony.

- A. Ordinance 25-04; Arches Resort CPD

***This quasi-judicial agenda item is a Second Reading and Final Public***

*Hearing for adoption of a rezoning in proposed Ordinance 25-04 (commonly referred to as the Arches Commercial Planned Development), contingent on adoption of a Comprehensive Plan Amendment proposed in Ordinance 25-05.*

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE REZONING OF 4.98 ACRES OF PROPERTY MORE SPECIFICALLY DESCRIBED HEREIN FROM COMMERCIAL MARINA (2 PARCELS), RESIDENTIAL CONSERVATION (5 PARCELS), COMMERCIAL OFFICE (1 PARCEL) AND DOWNTOWN (2 PARCELS) TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, TO ALLOW A MIXED-USE DEVELOPMENT INCLUDING 263 LODGING UNITS, COMMERCIAL/ RETAIL SPACE AND PUBLIC OPEN SPACE, MORE SPECIFICALLY DESCRIBED AS 436, 441, 445, 450 HARBOR COURT; 435 AND 438 BONITA STREET; 935 AND 939 THIRD STREET AND 401 OLD SAN CARLOS BLVD , ALSO IDENTIFIED AS THE FOLLOWING STRAP NUMBERS: 24-46-23-W3-00027.0000; 24-26-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23- W3-0030C.0040, 24-46-23-W3-0030A.0110, 24-46-23-W3-0030A.0030, 24-46-23- W3-0030A.0020, 24-46-23-W3-0030A.0010 FORT MYERS BEACH, INCLUDING DEVIATIONS FOR HEIGHT, SETBACKS, HOTEL UNITS, PARKING, LANDSCAPING AND ACCESS; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Ex parte communications: Council Member Safford has had several conversations with Mr. Vanasse, a site visit with neighbor Leah Greg and emails for and against, Council Member Woodson received emails for and against, had conversations with Mr. Vanasse, several neighbors and a site visit with neighbor Chris Mosteiro, Vice Mayor Atterholt received emails for and against and had conversations with the neighbors on the phone and in person, Council Member King pretty much the same and Mayor Allers received emails for and against, met with Leah Greg had conversations via email with neighbor Chris and a phone conversation with Mr. Freeland.

Megan Strayhorn, attorney, represented the applicant. Patrick Vanasse, Ken Gallander and Elizabeth Fountain were previously certified as experts.

Principal Planner Judith Frankel is the Town's expert. The property owner confirmed receipt of the agenda and background materials.

Principal Planner Frankel provided a summary of changes made since the first reading, as stated on the blue sheet. She noted that staff found the proposed development to be compatible with the uses along Old San Carlos Boulevard in the downtown zoning area; however, it appears incompatible with the residential neighborhoods directly adjacent to the development, due



to the increased noise, the vehicular, and pedestrian traffic. She reviewed the eight deviations and answered questions regarding details of the wall and a parking study. She addressed the gates at the ends of Bonita and Harbor. The master concept plan showed a hammerhead turnaround at the end and the applicant will present a second option. The residents preferred the gates and no pedestrian access, as stated in the letter from the neighbors. Staff recommended denial of the application, but if it is approved, staff recommended a list of conditions.

Ms. Strayhorn indicated that many comments from the first hearing were incorporated into their presentation. The presentation began with the Project Team, Subject Property, Applications, Area Location Map, Background, CPD Rezoning Request, CPD Presentation, Council Requests from 1st Meeting, Alternative Turn Around and Restricted Access Configurations Option A and Option B, Modified Option A, Look into Drainage Issue and How You Can Improve Conditions, Data Collection/Site Visit/Existing Topographic Data/Map, Proposed Improvements to Address Drainage and Flooding Concerns in the Third Street Neighborhood, Look into Phasing and How Construction Impacts can be Mitigated.

Mr. Freeland stated that he preferred to build it all at once and the phasing was anticipating how they would proceed if needed.

The presentation continued with Provide Setback/Barrier at Edge of Sunset Deck, Request Letter from Neighbors, Gate and Restrict Public and Resort Guest Access on Bonita St. and Harbor Court, Keep a Solid Cement Wall Between Residential and Commercial Properties, Parking Garage Noise Mitigation and Neighborhood Drainage.

Public comment:

Chris Mosteiro, resident, represented 60% of the neighbors and referred to the letter from neighbors on page 592 of the packet. They requested six items as a condition of approval, including placing the turnarounds on the applicant's side of the property with no vehicle or pedestrian access, installing the drains on their property and landscaping the area outside the fence towards the neighbors.

Bill Veach, resident, suggested that if the Town gives up the right-of-way for the access road into the property, it should do so in exchange for a right-of-way, move the wall back and connect Matanzas and Bonita to create a circle. He acknowledged the wall was good for many things, but it was terrible for scours along the wall in the event of a storm.

Public comment closed.

Ms. Strayhorn commented that the neighborhood preference regarding the gates was Option A, fully gated access points with no turnarounds. Mr.

Mosteiro confirmed that the neighborhood's preference was no access down Bonita or Harbor to access the resort. He indicated a small turnaround would be okay if it was fully gated to prevent access to the resort.

Council Member Safford thought a turnaround would encourage cars to go down there, like those in his neighborhood.

Mayor Allers proposed a minimal turnaround with ten feet on either side and

the surface could be rock or gravel. He noted people were going to order pizza and this gave the driver a place to turn around without using the residents' driveways.

Council Member Woodson noted that the neighbors she talked to did not want a turnaround. They wanted a locked gate and signage.

Mr. Mosteiro agreed with Mayor Allers' proposal.

Planner Propst clarified that Mayor Allers wanted the turnaround to be on their property but outside the gate.

Ms. Strayhorn brought up the drainage. Mayor Allers preferred that they add the inlet so all the streets would tie in. He said that it would be a true public benefit. Council members agreed. Ms. Strayhorn expressed concerns about moving further and further away from the development of the property and getting further and further away from the nexus. She noted that they had a plan in place to address the neighborhood's concerns. Mayor Allers preferred that the drainage be incorporated into phase one of the project. He noted the wall would be built as the demo happens.

Ms. Fountain indicated that the wall would prevent collection of the rear yard drainage if it was placed between the drain inlets and the neighbors' property. They proposed that the inlets be placed in the neighbors' backyards to catch the water and the resort would have its internal water management system.

Vice Mayor Atterholt thought that completing the wall and doing so early would help mitigate some of the construction and privacy issues; however, he was interested in hearing Mr. Mosteiro's thoughts.

Ms. Strayhorn discussed concerns regarding landscaping, maintenance and property rights infringement. They would have to have landscape and maintenance easements. The wall would be moved to the property line and the drains would be moved into the residents' backyards to increase their effectiveness.

Mayor Allers suggested moving the wall up to the edge of the drains. Ms. Fountain replied that they would discuss the idea during the break.

Principal Planner Frankel commented that the drainage required a certain width for access and the landscaping required a different width for access.

Ms. Strayhorn addressed the setback barrier at the edge of the sunset deck. They committed to setting back the railing 24" from the edge of the structure and adding a low-lying decorative structure and/or landscape.

Mr. Vanasse discussed the bodega, market and outdoor seating. They proposed planting trees and a hedge, so the property owner would not be able to see the rooftop deck area.

After a short recess, Ms. Strayhorn brought up the topic of the drainage wall landscape. They were not proposing an inlet at the corner of Third Street and Harbor Court. The inlets would be on the property line connected to the main underwater storage system. One option is to keep the wall roughly where it is and the drainage would be on their side of the property outside the wall. There would be no landscaping on the outside of the wall. They would still need a drainage easement and would extend slightly into the neighbors' property to access the pipe. Option two is to maintain the wall's location and

the landscape would be situated on the outside of the wall on the Arches property. The drainage would be relocated to the residents' properties or as close to the property line as possible. There would have to be landscape and drainage easements if it was located on their property line.

Council Member Safford thought the first option was the best. Council members agreed.

Ms. Strayhorn stated that they provided a 24-inch setback and would provide some low landscaping or decorative structure to ensure that patrons would not be able to lean over the edge of the sunset deck of B. They would not provide anything for the bodega rooftop deck or visual screening of the sunset deck. She reviewed the public benefits.

Mayor Allers disagreed with her list of public benefits.

Ms. Strayhorn noted that another modified version of the gate was to allow for a car to turn around before reaching the gate, but they preferred Option A. Mayor Allers explained what he was referring to by showing it on the slide.

Council Member Safford preferred no turnaround, but was okay with one a couple of feet inside their property.

The conditions of approval were reviewed and disagreements were highlighted. The applicant requested live music outdoors at the Arches Gateway Restaurant, located in the Bodega building on Old San Carlos. The consensus was to allow live music.

Ms. Strayhorn noted that they would like Condition 14 to be referred to as the water ferry/taxi facility and stop. Remove the word terminal wherever it appears. Vice Mayor Atterholt requested that the Mound House be added as a fourth stop. Principal Planner Frankel revealed that the CPD for the Mound House would have to be modified. Ms. Strayhorn explained why they were only committed to three stops. Town Attorney Stuparich suggested adding a sentence stating that additional stops may be added in the future, including the Mound House. Ms. Strayhorn replied that they had already offered a significant benefit. Mayor Allers asked how the water ferry was practical, as it would cost money and still take an hour to travel on the back bay, plus the stops. He thought it was a revenue generator, not a public benefit. Vice Mayor Atterholt described how people on the south end did not want to sit in traffic for over an hour to travel to the north end, so they opted to go to Bonita Springs or Naples. He noted that people on the south end would enjoy the ferry year-round and added that the ferry was part of the experience. He thought it was great if the Arches made money, too. Mayor Allers thought a true public benefit would be to allow residents to use the ferry for free. Vice Mayor Atterholt discussed the short-term versus long-term feasibility of subsidies.

Mr. Vanasse commented that the applicant went above and beyond what they initially committed to by offering to operate the water ferry. He addressed the possibility of ending the service if it was not financially successful. Vice Mayor Atterholt suggested adding a sentence regarding the possibility of a public-private partnership before the ferry service was discontinued.

Ms. Strayhorn stated they were not in a position to commit to an office for the Town's marine staff at the water ferry facility. She requested that they remove the sentence. If space were available, the Town could pay the market rate for a lease agreement. Consensus was reached to remove the sentence.

Ms. Strayhorn requested to remove the condition that two dock slips would be allocated for the Town's use as needed. Principal Planner Frankel explained that the harbormaster had requested a permanent mooring for the pump-out boat when it was not in use. Mr. Freeland stated that Pink Shell had already committed to housing the Town's pump-out boat. He was committed to offering pump-out services for patrons of the Mooring Field, but was not willing to have the pump-out boat at their facility. Mr. Freeland agreed that they would rent a slip to the Town at market rate in the event of a vacancy, but not the pump-out boat. Consensus was reached to remove the sentence.

Ms. Strayhorn requested that two sentences in Condition 17 be removed regarding the resort owner providing an alternative location for the park and ride if it were relocated and expanding the service for use by the public. She proposed language that said, in the event the park and ride is removed, the resort owner would make a good-faith effort to continue the service; however, they were not in the transportation business, so they would not commit to expanding the service. Principal Planner Frankel stated that the intent was for the property owner to establish an alternative location for their guests and employees in the event the park-and-ride facility was discontinued. Ms.

Strayhorn commented that they would identify (not establish) an alternative location for their guests and employees in the event the park-and-ride facility was discontinued. Principal Planner Frankel suggested the first sentence could read, December through April, shuttle service for hotel guests and employees (year-round). She supported deleting the language to expand the service to the public. Mr. Vanasse agreed to keep an employee service year-round.

Regarding Condition 18, the program does not exist, but they would make a good-faith effort to encourage guests to use alternative methods of transportation.

Condition 19 c. was removed.

Regarding Condition 20 c. Ms. Strayhorn requested to have the paid parking up front and they will do a parking study once they are operational.

Mayor Allers disagreed because they could rent out every space. Council Member Safford agreed. Principal Planner Frankel suggested striking a. and requiring the parking study once the resort was open. Vice Mayor Atterholt was comfortable taking it out because the Arches would know what they needed for their guests. Mr. Vanasse clarified that the idea of overflow parking was to provide parking for the public, especially during the slow months. In season, the priority was for the guests. Mr. Freeland discussed having an empty parking lot while people drove around looking for somewhere to park. He added that if they trusted him to manage it, it would

be an income opportunity for him, but would also benefit the Town. Ms. Strayhorn stated that if the traffic study revealed a deficit, the property owner would reduce the parking. The council agreed.

Regarding 26 b., remove PSI 10-20 and remove the Town's pump-out vessel. Include the word generally to 27 a.

Condition 30 will be deleted and merged with Condition 29 and construction access would be between the boat barns.

Condition 31 would be included as part of the gate condition.

Mr. Gallander displayed a turnaround in front of the gate and will amend the Master Concept Plan. Council members agreed with the revision. Condition 2 will be amended to specify that gates will be installed after the turnaround and will be used only by emergency vehicles, with no pedestrian access.

Ms. Strayhorn reviewed the additional conditions resulting from the discussion.

Vice Mayor Atterholt moved to approve the ordinance incorporating the staff report with the deviations and conditions and it's conditional on the approval of the CP and Deviation four is being adjusted to remove the request to install a fence instead of a wall, seconded by Council Member Woodson.

Mayor Allers explained that he could not support the project as proposed due to commercial intrusion.

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

B. Ordinance 25-05, Comprehensive Plan Amendment - Marina and Mixed Residential to Pedestrian Commercial FLU ARCHES RESORT

***This agenda item is a legislative Second Reading and Final Public Hearing for adoption of proposed Ordinance 25-05, which is a Small Scale Comprehensive Plan Amendment related to the Arches Redevelopment Project.***

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE TOWN OF FORT MYERS BEACH ADOPTED FUTURE LAND USE MAP DATED JANUARY 1, 1999, CONTAINED IN THE TOWN'S COMPREHENSIVE PLAN, FOR PROPERTIES LOCATED AT 450, 445, 441, & 436 HARBOR COURT, 435 & 438 BONITA STREET, FORT MYERS BEACH FLORIDA, ALSO IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000; 24-26-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, FORT MYERS BEACH, AMENDING THE FUTURE LAND USE MAP FOR THESE PARCELS FROM MIXED RESIDENTIAL (4 PARCELS) AND MARINA (2 PARCELS) TO PEDESTRIAN COMMERCIAL; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Principal Planner Frankel

reviewed the background of the request as stated on the blue sheet. The staff recommended denial of the application. However, if the town council finds that the concurrent CPD application demonstrates that the proposed development is "clearly in the public interest, not just in the private interest of a petitioning landowner," approval could be granted.

Ms. Strayhorn addressed the CPA request and noted they received unanimous approval from the LPA. She requested that the LPA meeting and all hearings be incorporated into the public record.

No public comment.

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

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

C. Ordinance 25-12; 1154 Estero Blvd. (Salty Crab)

**This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-12 (Salty Crab Redevelopment). If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for June 16, 2025, at 9:00 AM or at another time identified by Town Council.**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 58 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. No ex parte communications were disclosed.

Fred Drovdlc, planner, Greg Walden, architect and Jimi Pendley, senior project manager, are experts for the applicant.

Vice Mayor Atterholt moved to accept Mr. Walden and Mr. Pendley as experts in their fields, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet. The LPA unanimously recommended approval with conditions. She reviewed the deviations. The staff recommended approval with conditions.

Mr. Drovdlc began his presentation with Request, Site, The Past and The Future. Mr. Walden explained the deliveries would occur in the early hours or

late at night when the bus was not running. Other deliveries would be via van or shuttle services. He was in discussions with Lee County regarding parking in Crescent Park, but there was nothing to report. Mayor Allers suggested that he contact Margaritaville or John Richard for options. The presentation continued with Views of the Building, Detailed Renderings, View from the Beach, Elevation, Abutting Margaritaville, Master Concept Plan, Building Height and Stories, Floor Area Ratio, Deviations, Parking, Sign Area, LDC Compliance, Comprehensive Plan Consistency, Key Points and Conclusion. Council Member Safford was concerned about the large delivery trucks and encouraged him to find solutions to mitigate the impact of the deliveries.

Mayor Allers agreed it was crucial to have a plan in place. Vice Mayor Atterholt suggested discussing the parking issue directly with the distributors. Mr. Drovdlc replied that they would continue to research options. Council Member Woodson asked whether they would install a wave mitigation wall.

Mr. Drovdlc was amenable to the idea and would bring it up with the applicant. Mayor Allers suggested that the five-foot walkway be illuminated. Principal Planner Frankel stated that the walkway was Margaritaville's responsibility.

No public comment.

Mayor Allers moved to move this to a second reading on June 16, 2025, at 9:00 a.m., seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

D. Ordinance 25-13; 1836 Estero Boulevard (Estero Island Beach Club)

**This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-13 (Estero Island Beach Club). If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for June 16, at 9:00 AM or at another time identified by Town Council.**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING TO REZONE THE PROPERTY LOCATED AT 1836 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010, TO REZONE FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND REQUEST FOUR (4) DEVIATIONS FROM REQUIREMENTS TO PROVIDE; 1) OPERABLE DOORS ALONG ESTERO BLVD, 2) SCREENING MATERIAL ON THE GROUND FLOOR, 3) INCREASE BUILD-TO LINE SETBACKS, AND 4) INCREASE THE MAXIMUM ALLOWED HEIGHT BY 18-FEET; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Ex parte communications: All council members received an email from a resident on Miramar. Vice Mayor Atterholt also watched the LPA hearing and Mayor Allers had a conversation

with the applicants after the LPA meeting.

Fred Drovdic, Mike Sheeley and John Shaw were experts for the applicant.

The applicant confirmed receipt of the agenda and backup materials.

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet and the deviations. The staff recommended approval with conditions.

Amy Thibaut, attorney with Roetzel & Andress, represented the applicant. The presentation began with Request, Zoning History, The Past, Architectural Design, Design Revisions, Building Height and Stories, Floor Area Ratio, Site Plan, Conceptual Landscape Plan, Deviations, Public Benefits and Conclusions.

Jim Murley, President of the EIBC Board, provided an overview of the EIBC's background and its owners. He noted they lost 9% of the owners after Ian.

He indicated that he has an RFP ready to go for an architect once the project is approved and he said they were moving aggressively behind the scenes. He revealed that they offered their sand for the sand sculpting event this year.

Council members expressed their support for the project.

No public comment.

Mayor Allers moved to approve the ordinance and move it to a second reading on June 16, 2025, at 9:00 a.m., seconded by Council Member King. The motion carried unanimously by roll call vote.

E. Ordinance 25-03; Bicycle Safety

***This legislative agenda item is a Second Reading and Final Public Hearing for adoption of proposed Ordinance 25-03.***

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III "BEACH BICYCLE AND VEHICLE SAFETY" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; ESTABLISHING ADDITIONAL REGULATIONS FOR THE SAFE OPERATION OF BICYCLES ON SIDEWALKS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reviewed the changes on page 767. Emergency Services and Compliance Director Thomas Yozzo addressed the safety aspect, emphasizing the importance of education and training. Enforcement would be a challenge and he recommended a speed limit of seven miles an hour. Town Attorney Stuparich commented that the speed limit had to be 15 mph due to a state



statute. Enforcing this will be a real challenge and will require more staff. He added that the speed cannot be checked by radar and would be estimated visually. Vice Mayor Atterholt requested that they include a sunset provision, allowing them to revisit the issue in one year. Council Member Woodson clarified that they could enforce riders who were not traveling with the flow of traffic. Director Yozzo commented that they will add signage. Council Member Safford agreed with adding a sunset clause. Director Yozzo stated that information would be added to the town's website. Town Attorney Stuparich noted that they would revisit the ordinance, rather than sunset it. No public comment.

Council Member Woodson moved to approve the ordinance with conditions, seconded by Council Member King.  
The motion carried unanimously by roll call vote.

F. Ordinance 25-08; Noticing

***This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 25-08. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for June 16, 2025, at 9:00 AM or at another time identified by Town Council.***

**ORDINANCE TITLE:**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, NOTICES TO REQUIRE APPLICANTS FOR REZONINGS, DEVELOPMENT AGREEMENTS AND DEVELOPMENTS OF REGIONAL IMPACT TO PROVIDE MAILED AND POSTED PUBLIC NOTICING PRIOR TO LOCAL PLANNING AGENCY AND TOWN COUNCIL PUBLIC HEARINGS; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Principal Planner Frankel reviewed the background of the request as stated on the blue sheet. She will add a requirement that properties across canals have to be noticed. No public comment.

Mayor Allers moved to move the ordinance, including the canal addition, to a second reading on June 16, 2025, at 9:00 a.m., seconded by Council Member King.

The motion carried unanimously by roll call vote.

**XIII. ADMINISTRATIVE AGENDA**

A. RFP-25-02-AD FMB Comprehensive Recovery and Resilience Implementation Plan

**1) Approve the Town Manager's recommendation based on the Selection Advisory Committee's evaluation of the responses received to RFP-25-02-AD, FMB Comprehensive Recovery and Resilience**

Implementation Plan; and

2) authorize the Town Manager to negotiate an agreement with AECOM Technical Services, the top ranked firm conditioned on approval by Lee County; and 3) Waive approval by the Town Council and authorize the Town Manager to approve the final agreement, subject to legal sign-off.

Director Kropacek described the reason for the action.

Council Member King moved to approve the SAC's recommendation, authorize the town manager to negotiate an agreement and authorize the town manager to approve the final agreement, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

B. Florida Municipal Insurance Trust Release and Settlement

**Approval of Final Settlement Agreement Between the Town of Fort Myers Beach and the Florida Municipal Insurance Trust for Hurricane Ian Insurance Proceeds in the Amount of \$737,500.00.**

Town Attorney Stuparich reviewed the background of the agreement.

Mayor Allers moved to approve the settlement agreement, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

C. RFP-25-03-EN Selection Advisory Committee Recommendation Approval  
**Approve the Selection Advisory Committee's recommendation for award of RFP-25-03-EN Fill and Grading Bay Oaks Recreational Campus to Persons Service Corporation.**

Community Services Director Jeff Hauge noted this firm was the only one to respond.

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

The motion carried unanimously.

D. Resolution 25-199, RFP-25-03-EN Agreement Award

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AWARDING RFP-25-03-EN TO PERSONS SERVICES CORP, AS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE THE FILL AND GRADING OF BAY OAKS RECREATIONAL CAMPUS PROJECT AS RECOMENDED BY THE SELECTION ADVISORY COMMITTEE; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND PREPARE AN AGREEMENT FOR THE RECOMMENDED SERVICES IN AN AMOUNT NOT TO EXCEED \$1,689,381.63 SUBJECT TO LEGAL REVIEW; AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Town Attorney Stuparich

reviewed the background of the request.

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

The motion carried unanimously.

#### **XIV. FINAL PUBLIC COMMENT**

No public comment.

#### **XV. TOWN MANAGER'S ITEMS**

Town Manager McKannay recommended that the council schedule a joint meeting with the LPA to discuss the results of the public input regarding the comp plan.

The meeting was tentatively scheduled for June 26, 2025. Planner Propst described the three events and the online survey created for outreach. The primary input was that the residents wanted parks, traffic congestion was a main concern, along with the lack of amenities. Additional topics were the lack of medical facilities, accessibility and traffic safety. The beach was the town's biggest asset and the Mound House was an appreciated amenity. Eddie Ng and Jason Green will discuss the findings and present suggestions on the next steps. Town Manager McKannay noted that the next community forum for the strategic planning was scheduled for June 12, 2025, at the same location.

##### **A. Fort Myers Beach School Update**

Town Manager McKannay indicated he would meet with the Superintendent tomorrow morning to begin discussions regarding the school. Assistant Kohler will also attend the meeting.

#### **XVI. TOWN ATTORNEY'S ITEMS**

No items.

#### **XVII. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member King indicated that the FDOT (Florida Department of Transportation) removed the stairs to the Matanzas Pass pier because they were not safe. The town could purchase the pier, but it would not be cheap.

Vice Mayor Atterholt requested an excused absence from the M&P meeting on Thursday. Council members approved. He asked the town manager to contact the school ad hoc group before the school district workshop at 1:00. He encouraged people to attend the meeting.

Council Member Woodson noted that some council members would attend the workshop to support the school.

Council Member Safford stated that signs were up for the two 15-minute parking spots across from Nervous Nellies. He offered to serve as the liaison for the Charter Review Committee, with Council Member Woodson as his alternate.

#### **XVIII. ADJOURNMENT**

Council Member King moved to adjourn, seconded by Mayor Allers at 6:42 PM.

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10263 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE PARKS FACILITY AND RECREATION REVITALIZATION PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

Notification to Lee County of key employee change is required in accordance with the CDBG-DR Subrecipient Agreement

**What the action accomplishes:**

To stay in compliance with the CDBG-DR requirements

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

On November 20, 2023, the Town and Lee County Board of County Commissioners entered into a CDBG-DR Subrecipient Agreement for Parks Facility and Recreation Revitalization. Under this agreement, if the Town has a key employee change, the Town is required to notify Lee County within 30 days (Exhibit I, CDBG-DR Special Terms and Conditions, under Initial Risk Assessment). Exhibit J - Subrecipient Staff Organization - Andy Hyatt and Joe Onzick have to be removed and Will McKannay to be added as the Town Manager and Financial Director.

**Attachments:**

1. NS 25-203, Parks and Rec Key Officials First Amendment
2. Exhibit A to Resolution 25-203
3. Attachment A to Exhibit A - First Amendment
4. Fully\_Executed\_DR10263\_-\_Town\_of\_Fort\_Myers\_Beach\_Parks\_and\_Rec\_Revitalization

**Financial Impact:**

Direct impact is to be out of compliance with CDBG-DR

6. **Alternative Action**

DO not accept the recommendations and forfeit the agreement

7. **Management Recommendations:**

Accept the recommendation to revise CDBG-DR Exhibit J

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Final Approval - 6/10/2025



## **RESOLUTION NUMBER 25-203**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10263 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE PARKS FACILITY AND RECREATION REVITALIZATION PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

**WHEREAS**, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

**WHEREAS**, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager, and Joe Onzick, as Financial Director, to be replaced with William McKannay; and

**WHEREAS**, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

**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 First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

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 by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

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

ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT  
LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
CDBG-DR SUBRECIPIENT AGREEMENT**

**THIS FIRST AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreement, dated November 20, 2023 (“Agreement”) DR10263 – Parks Facility and Recreation Revitalization.

**WITNESSETH:**

**WHEREAS**, on November 20, 2023, the Town and Lee County entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that named the Town’s key personnel involved in the project; and

**WHEREAS**, Exhibit J also required the Town to notify Lee County within 30 days in the event of a change in key personnel; and

**WHEREAS**, recently William McKannay was appointed to serve as the Town Manager and will also be assuming the role of Financial Director replacing Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director; and

**WHEREAS**, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Florida Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, including municipalities; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Florida Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and



**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701, Florida Statutes related to social government and corporate activism are also added by virtue of this Amendment

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

**1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

**2. Public Records Compliance.** Provider agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Provider does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Provider or keep and maintain public records required by the public agency to perform the service. If the Provider transfers all public records to the public agency upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Florida Statute, **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS**

**AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2731 OAK STREET  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
FMBPUBLICRECORDS@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Florida Statutes.** Any indemnification or agreement to defend or hold harmless by the Town specified in the Agreement shall not be construed as a waiver of the Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by the Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** The Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Provider shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Provider is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Provider will not be awarded a public contract for at least one (1) year after the date on which

the Agreement was terminated. Provider will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Provider affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Provider is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Provider requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Provider is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Provider hereby certifies that Provider is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Provider further hereby certifies that Provider is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Provider understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Provider to civil penalties, attorney's fees, and/or costs. Provider further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Provider (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

**8. Disclosure Requirements for "Foreign Countries of Concern."** Provider shall comply with the disclosure requirements set forth in section 286.101 (3) (a), Florida Statute, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest,

the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statue: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statue], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**9. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the State of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive the right to file any action, suit or proceeding in Federal Court, or remove any action, suit or proceeding to Federal Court.

**10. Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

**11. Public Entities Crime or Convicted Vendor List.** Provider agrees and assumes a continuous duty to disclose to the Town if the Provider or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**12. Data Management; Notice of Breach.** Provider shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**13. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Provider based on Provider's social, political or ideological interest. Provider agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**14. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**15. No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**16. Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**17. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows: None

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Florida Statue, Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

**Provider:**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** Lee County, Florida

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

\_\_\_\_\_  
**Vose Law Firm, Town Attorney**

## **EXHIBIT A TO FIRST AMENDMENT**

### **EXHIBIT J**

#### **SUBRECIPIENT STAFF ORGANIZATION**

##### **Parks & Recreation Revitalization**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XIX. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

***{Lee County to REVIEW Subrecipient information below to create a profile for entrance into the County's grant management system, and for which the Subrecipient can update and modify when changes are made.}***

#### **Section 1: Subrecipient Contract Administrator**

##### **1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XIX. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XIX. NOTICES of the Agreement.

##### **2. Contact Information**

Name: ~~Andrew Hyatt~~, William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

## **Section 2: Project Manager**

### **3. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

### **4. Contact Information**

Name: Frankie Kropacek  
Title: Operations & Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [fkropacek@fmbgov.com](mailto:fkropacek@fmbgov.com)

## **Section 3: Section 3, Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*



## **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)

## **Section 4: Section 504 Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*

### **2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2371 Oak Street Fort Myers Beach FL, 33931  
Telephone: 239-765-0202  
Email: [amy@fmbgov.com](mailto:amy@fmbgov.com)

## **Section 5: Fair Housing Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as

applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

## **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: ~~Joe Onziak~~, William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

**Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? NO

**CDBG-DR SUBRECIPIENT AGREEMENT***The following information is provided pursuant to 2 CFR 200.332(a)(1)*

|                                                                                   |                                                                                           |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <b>Federal Award Identification Number (FAIN)/<br/>HUD CDBG-DR Grant No.:</b>     | B-23-UN-12-0002                                                                           |
| <b>Assistance Listing Number (formerly CFDA #):</b>                               | 14.218 Community Development Block<br>Grants/Entitlement Grants                           |
| <b>Federal Register Notice &amp; Public Law:</b>                                  | FR-6393-N-01: PL-117-328                                                                  |
| <b>Federal Award (HUD Grant Agreement) Date:</b>                                  | 11/20/2023                                                                                |
| <b>Agreement No.:</b>                                                             | DR10263                                                                                   |
| <b>Responsible Entity (RE):</b>                                                   | Lee County                                                                                |
| <b>Lead and Responsible Department:</b>                                           | Office of Strategic Resources and Government Affairs                                      |
| <b>CDBG-DR Funding Source/Program:</b>                                            | US Department of Housing and Urban Development                                            |
| <b>Subrecipient Name:</b>                                                         | Town of Fort Myers Beach                                                                  |
| <b>Subrecipient ID (Unique Entity Identifier via<br/>SAM.gov):</b>                | J87EFSEEQ884                                                                              |
| <b>Subrecipient Period of Performance (Start Date):</b>                           | 1/1/2025                                                                                  |
| <b>Subrecipient Period of Performance (End Date):</b>                             | 12/30/2028                                                                                |
| <b>Total Amount Obligated via Agreement:</b>                                      | \$8,336,753.00                                                                            |
| <b>Project/Activity ID(s):</b>                                                    | DR10263                                                                                   |
| <b>Federal Award Program/Project/Activity<br/>Description:</b>                    | CDBG-DR/Public Facilities/Town of Fort Myers<br>Beach/Parks and Recreation Revitalization |
| <b>Does the Federal award include an Indirect Cost<br/>Rate for Subrecipient?</b> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                       |
|                                                                                   | <input type="checkbox"/> Federally Negotiated Rate %                                      |
| <b>If Yes, is the Indirect Cost Rate a:</b>                                       | <input type="checkbox"/> De Minimis Rate 15%                                              |

**Official County Contact for Award:** Jeannie Sutton, Director, Strategic Resources and Government Affairs;  
2115 Second St., Fort Myers, FL 33901; Phone: (239) 822-8438; Email: [JSutton@leegov.com](mailto:JSutton@leegov.com)

**SUBRECIPIENT AGREEMENT BETWEEN**  
**THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AND**  
**Town of Fort Myers Beach**

This **AGREEMENT** between Lee County, a political subdivision and charter county of the State of Florida, hereinafter referred to as "**COUNTY**," and Town of Fort Myers Beach, a local government/municipality registered under the laws of Florida Statute, Chapters 165 and 166, hereinafter referred to as "**SUBRECIPIENT**" will become effective upon the date ("Effective Date") signed by the Board of County Commissioners (BOCC).

**SECTION I:**            **RECITALS**

**WHEREAS**, pursuant to Public Law (P.L.) 117-328, the "Department of Housing and Urban Development Appropriations Act, 2023" (hereinafter referred to as the "Appropriation Act"), and the "Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice," 88 Federal Register (FR) 32046 (May 18, 2023); (hereinafter referred to as the "Federal Register Guidance"), the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the "Action Plan") for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as "Grantee."

**WHEREAS**, the **COUNTY** believes it is in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to **SUBRECIPIENTS** for the benefit of Lee County residents. CDBG-DR funding made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee's Federal award, for which the use of the subaward funds must conform to the **COUNTY'S** intent as stated in the applicable Notice of Funding Availability (NOFA) Application, and attachments, and/or exhibits, and all other terms and conditions as specified.

**WHEREAS**, the **COUNTY** has legal authority to disburse funds as a subaward under the Federal award and to enter into this Agreement with the **SUBRECIPIENT**, who by signing this Agreement, represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the Action Plan has been developed to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, therefore the **COUNTY** and the **SUBRECIPIENT** agree as follows:

**SECTION II:**            **SCOPE OF WORK AND ACTIVITIES**

The **COUNTY** provides the **SUBRECIPIENT** the award under this Agreement to perform project activities under the **COUNTY'S** CDBG-DR Public Facilities Infrastructure Program. Any proposal, application, or exhibit associated with this CDBG-DR funding award are binding and incorporated herein as a part of this **AGREEMENT**.

The **SUBRECIPIENT** shall submit to the **COUNTY** the required information and documentation to complete *Exhibits A (Scope of Work and Activities – Program/Project Activity Overview) & B (Scope of Work and Activities – Project Activity Scope of Work Description)*. If there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and content requirements of the Exhibit, the **COUNTY'S** has sole and absolute discretion; the **COUNTY'S** decisions shall prevail.

The **SUBRECIPIENT** must provide a statement of work, in accordance with 24 CFR 570.503 detailing the work to be performed, a schedule for completing the work, and a budget. The statement of work as prescribed by the **COUNTY** under *Exhibits A and B* must provide sufficient data and detail to provide a sound basis for the **COUNTY** to monitor performance.

The **SUBRECIPIENT** agrees to abide by all applicable state and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY'S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

**SUBSECTION II.A. – MID REQUIREMENT:** The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

**SUBSECTION II.B. – ELIGIBLE ACTIVITIES:** CDBG-DR funds are provided for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 United States Code (U.S.C.) 5301 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of related risk. The **SUBRECIPIENT** must utilize CDBG-DR funds, as prescribed under 24 CFR 570 Subpart C – Eligible Activities, and for alternative requirements and waivers as prescribed within the Federal Register Guidance. Furthermore, the **SUBRECIPIENT** shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the **COUNTY'S** CDBG-DR Public Facilities Infrastructure Program.

**SUBSECTION II.C. – NATIONAL OBJECTIVE:** The **SUBRECIPIENT** must meet the criteria for one of the CDBG-DR program's national objectives. For this scope of work, the **SUBRECIPIENT** must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan:

- ☒ Activities designed to meet community development needs having a particular urgency (“Urgent Needs”)

**SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”:** The **COUNTY** is responsible for informing the **SUBRECIPIENT** of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the **COUNTY**, the **SUBRECIPIENT** is responsible for documenting proof of the designation. For recovery activities, the **SUBRECIPIENT** must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the **SUBRECIPIENT** must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the **COUNTY'S** mitigation needs assessment in the MID areas under its Action Plan; (3) is a CDBG-DR eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the

**COUNTY** may require the **SUBRECIPIENT** to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The **COUNTY** will spell out specific requirements for the **SUBRECIPIENT**, its project, and the project's eligible activity under *Exhibit A – Scope of Work and Activities – Program/Project Activity Overview* and *Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description*.

### **SECTION III:**            **TERM OF AGREEMENT**

This Agreement shall begin on 1/1/2025 (“*the Effective Date*”) and end on 12/30/2028, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement shall have the same force and effect as a written signature for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides written justification that is satisfactory to the **COUNTY**, in its sole discretion, and the **COUNTY’S** authorized organizational representative approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

### **SECTION IV:**            **AGREEMENT MODIFICATIONS AND AMENDMENTS**

**SUBRECIPIENT** must submit a written request, via the County’s approved method for submitting such request, for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). The **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA), the BoCC, or their designee may approve amendments to the Agreement, in accordance with the **COUNTY’S** *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*. As noted within the Manual, the **COUNTY** reserves the right to review the request from the **SUBRECIPIENT** and determine whether an amendment is required or whether County Manager or BOCC approval is needed.

The **COUNTY** also affirms that it may unilaterally modify or amend any Manuals referenced throughout this Agreement without prior notification or agreement by the **SUBRECIPIENT**. Additionally, the **COUNTY** affirms that while it will seek agreement with the **SUBRECIPIENT** on proposed amendments to any Exhibits which are referenced throughout this Agreement, the **COUNTY** may unilaterally modify or amend any such Exhibits **COUNTY**, in its sole discretion, deems necessary to comply with federal policies or regulations.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved

activity or beneficiaries must first receive HUD approval before consideration by the **COUNTY** to amend the Agreement.

**SECTION V:                    COMPENSATION AND ALLOWABLE PAYMENTS**

**SUBSECTION V.A. – AGREEMENT PAYMENT:** The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$8,336,753. The **COUNTY’S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

The **SUBRECIPIENT** will provide supporting documentation of eligible expenses as stated within this SUBSECTION and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the **COUNTY’S** annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY’S** CDBG-DR Public Facilities Infrastructure Program. The **SUBRECIPIENT** shall expend the allocation as follows:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$7,919,916.00                     |
| Activity Delivery Funds               | \$416,837.00                       |
| TOTAL                                 | \$8,336,753.00                     |

Furthermore, “not to exceed” line items and activity budgets under this Agreement shall be identified within the approved budget under the *Project Budget and Expense (Sources and Uses) Worksheet*.

After the **COUNTY** has approved funding and the Office of Strategic Resources and Government Affairs (SRGA) has issued an Agreement related to the funded project, the **SUBRECIPIENT** should sign and return the Agreement within 30 days for execution. In addition, the **SUBRECIPIENT** should begin to draw down funds as agreed upon within the project milestones set out under the *Project Schedule and Milestones* reporting deliverable unless additional time is authorized by the **COUNTY**. Failure to return the signed Agreement or begin spending funds within the agreed upon time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** attests that necessary written administrative procedures, processes, and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes, and fiscal controls must, at a minimum, comply with applicable state and Federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement. The **SUBRECIPIENT** agrees to remedy any deficiencies in its written administrative procedures, processes, and fiscal controls identified by the **COUNTY** or duly authorized CDBG-DR authorities.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the Payment Request Form(s) as outlined under SUBSECTION VI.A. REPORTING AND AGREEMENT



DELIVERABLES. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are ineligible for funding with CDBG-DR funds.

If funds are not available to fully execute the project associated with this Agreement because of actions by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or the provision of SECTION XIII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

**SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS):** The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which are incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to and/or require repayment from the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation to meet regulatory and statutory requirements, including cross-cutting requirements. Funds expended for activities that do not meet a HUD national objective will be required to be repaid by the **SUBRECIPIENT** to the **COUNTY**. If, as a result of monitoring or audit, the **COUNTY** determines that submitted costs are not documented, a payment may be deferred. If costs are found to be unallowable and payment has been made, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is established by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to disallowed cost, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for disallowed costs or fines resulting from acts of noncompliance.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the

Federal Government, in each of its sole discretion, to be an ineligible expenditure or a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the **COUNTY** under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XIX. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **COUNTY'S** provision of training, technical assistance, quality assurance and quality control reviews are in no way intended to alleviate the **SUBRECIPIENT** of the responsibility to administer activities in accordance with all federal, state, and local requirements, including the requirements outlined within this Agreement. The **SUBRECIPIENT** acknowledges full responsibility to return funds to the **COUNTY** in the event that HUD or other auditing agency determines that activities or costs are disallowed.

The **SUBRECIPIENT** will report all suspected or verified fraud to the **COUNTY**, regardless of whether the suspected or verified fraud is associated with disallowed cost or other perceived harm to the **SUBRECIPIENT** or the **COUNTY**.

**Mandatory Disclosure of Violations:** In accordance with the revised 2 CFR 200.113 and the requirements set forth in FAR 73 FR 67064, the **SUBRECIPIENT** must promptly disclose, in writing, to the **COUNTY**, the federal awarding agency, and the Office of Inspector General, any credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations, including violations under the False Claims Act. This obligation extends to the **SUBRECIPIENT** and any subgrantees or contractors associated with the federal award. Failure to disclose such violations may result in remedies for non-compliance, including suspension or termination of the award, as outlined in 2 CFR 200.338 and 2 CFR 200.339.

## **SECTION VI:**      **REPORTS AND EXHIBITS**

**SUBSECTION VI.A – REPORTING AND AGREEMENT DELIVERABLES:** The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in the **COUNTY'S** approved system, including monthly performance reports and documentation outlined in all applicable exhibits to enable the Grantee to submit the required reporting to HUD within the Disaster Recovery Grant Reporting (DRGR) system.

The **SUBRECIPIENT'S** monthly reports, include administrative activity, financial activity, and program activity, must include sufficiently detailed summaries of the current status, progress, and completed work. The **SUBRECIPIENT** is responsible for all reporting of work of all contractors, subcontractors, and other entities under contract or agreement related to this Agreement.

At a minimum the following information will be required to be submitted in the system of record by the **SUBRECIPIENT**. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld in accordance with SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) until the reports are completed. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision, reasons for withholding payment, and the remedy for corrective action the **SUBRECIPIENT** must follow. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT'S** reporting deliverables include, but are not limited to, the following information:

1. **Project Schedule and Milestones:** A table or description of the work task, project start and end dates, other significant milestones (e.g., 50% complete), and timelines for the **SUBRECIPIENT** to submit outputs or deliverables to the **COUNTY**.
2. **Project Budget and Expense (Sources and Uses) Worksheet:** The **SUBRECIPIENT** must provide budget narratives and tables to describe all funding sources and the potential uses of those funding sources for the purposes of completing the project. This narrative will include, but may not be limited to, (a) a description and justification of the proposed costs, (b) a description of project implementation support with **SUBRECIPIENT** or vendor staff, (c) sources of leveraged funds committed by the **SUBRECIPIENT** to the project, and (d) timelines for the projected expenditure of CDBG-DR funds.
3. **Payment Request Form:** The means by which the **COUNTY** and the **SUBRECIPIENT** document project and activity expenses and requests for payment. The **SUBRECIPIENT** shall utilize this form when submitting or requesting any costs for payment and the form must be accompanied by legible supporting documentation to indicate the reasonableness, allowability, and appropriate procurement of the expense(s).

As noted under SECTION III. TERM OF AGREEMENT and SECTION V. COMPENSATION AND ALLOWABLE PAYMENTS, all payments are reimbursements for eligible expenses or services defined as uncompensated expenses rendered during the Agreement term and paid prior to the final payment request due date. Copies of supporting documentation are required as part of the Payment Request for review of grant compliance and before payment will be authorized by the **COUNTY** to the **SUBRECIPIENT**. Reimbursement for eligible expenses will be made after review and authorization of a correct and complete Payment Request Form and required back up documentation. In accordance with the Federal Register Guidance, the **COUNTY** must be payor of last resort, meaning that if services are eligible to be billed to any other entity or funding source, including but not limited to, Medicaid, third party insurance or any other entity or funding source, the **COUNTY** will not pay for that service.

Appropriate back-up/supporting documentation may include cancelled checks, vendor invoices, authorized purchase orders, attendance/service logs, other funder invoices, expenditure spreadsheets or other original documentation, as well as a copy of the **SUBRECIPIENT'S** check issued with authorized signature. For construction contracts, inspection reports from qualified officials should be submitted with the appropriate monthly payment request.

The **SUBRECIPIENT** must submit the *Payment Request Form* with an authorized signature. Cancelled checks, paystubs, payroll reports, bank statements, and/or other documentation from vendors that expenses have been paid or services provided may be verified.

As applicable, processing of payment requests is also subject to the requirements and conditions as set forth within the **COUNTY'S Hurricane Ian CDBG-DR Subrecipient Manual**.

4. **Monthly Activity Report:** The **SUBRECIPIENT** must identify information for this report that ties actual, real-time project and expenditure status to the approved activity budget, scope of work, and projected outcomes. Narratives on budget activity, project progress or delays, and performance measures are included within this report.
5. **Demographics and Beneficiary Report:** The **SUBRECIPIENT** must report on data and include documentation, such as maps detailing service areas, number of individual persons benefitting from the project, and other demographic information on households, where applicable, to indicate the public benefit of the project and activity.
6. **Project Amendment Request:** As referenced under SECTION IV. AGREEMENT MODIFICATIONS

AND AMENDMENTS, the **SUBRECIPIENT** must notify the County and provide information on any project or activity changes within a project amendment request for the **COUNTY** to determine whether the request rises to the level of an amendment to the Agreement.

7. **Single Audit Certification Form:** The **SUBRECIPIENT**, if a nonprofit or governmental organization, must complete a form to certify whether it has expended \$750,000 in federal and/or state funding within the **SUBRECIPIENT'S** given Fiscal Year.
8. **Davis-Bacon and Related Acts (DBRA) Labor Standards Reports (as applicable):** When an activity triggers DBRA requirements, the **SUBRECIPIENT** must report and submit information on assigned labor compliance staff, labor compliance review processes and outcomes, bid and contract requirements documentation, work classification and minimum prevailing wage rates, written clearance of labor compliance issue resolutions, file maintenance plans, and payroll review plans.
9. **Section 3 Reports (as applicable):** When an activity triggers Section 3 requirements, the **SUBRECIPIENT** is required to submit data and information on Targeted Section 3 worker labor hours, Section 3 worker labor hours, total worker labor hours, and other qualitative efforts which the **SUBRECIPIENT** and their vendors took in an attempt to reach or achieve Section 3 goals.
10. **Closeout Report:** The **SUBRECIPIENT** must report project completion data and provide documentation of closeout processes in relation to this project and activity(ies).

The **SUBRECIPIENT'S** Agreement deliverables (as identified within "Exhibits"), which the **SUBRECIPIENT** must follow, include, but are not limited to, the following information:

11. **Exhibit A: Scope of Work and Activities – Program/Project Activity Overview:** Brief description on the identified and agreed-upon CDBG-DR Program eligible activity, National Objective to be achieved for the activity and measures, as applicable, the number of individuals benefitting as a result of the project and its activities, and the appropriate CDBG-DR storm tie-back or resilience need being met, in accordance with SECTION II. SCOPE OF WORK AND ACTIVITIES.
12. **Exhibit B: Scope of Work and Activities – Project Activity Scope of Work Description:** Detailed scope of work defining the plan, design, and approach for the activity.
13. **Exhibit C: Financial/Grant Management System Budget Worksheet:** The high level, official budget for the project as approved under SECTION V.A. AGREEMENT PAYMENT. Any adjustments to this budget will require an amendment in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS.
14. **Exhibit D: Indirect Cost Rate Allocation Plan (as applicable):** Pursuant to 2 CFR 200.414, the **SUBRECIPIENT** is entitled to apply the 15% de minimis indirect cost rate without requiring further approval from the **COUNTY**. Alternatively, if the **SUBRECIPIENT** has a federally negotiated indirect cost rate, they may elect to use that rate, which shall be accepted by the **COUNTY** without additional negotiation or approval. The terms of this Agreement shall reflect the applicable indirect cost rate as established under this Exhibit.
15. **Exhibit E: Projected Performance Measures and Outcomes Form:** The **COUNTY** will utilize the **SUBRECIPIENT'S** detailed scope of work to establish and project out specific performance metrics which the **SUBRECIPIENT** is required to meet to as a condition of project completion and closeout. The **COUNTY** will select the performance measure based on the eligible activity and proposed scope of work approved within the Notice of Funding Availability (NOFA) Application for the **Public Facilities Infrastructure Program**.

16. **Exhibit F: Application:** The **SUBRECIPIENT'S** approved application is attached to this Agreement for identification and understanding of **SUBRECIPIENT'S** responses to critical project components.
17. **Exhibit G: Certificate(s) of Insurance:** In accordance with SECTION X.B. INSURANCE REQUIREMENTS, the **SUBRECIPIENT** must supply insurance coverage for the implementation of the project. This Exhibit will contain those required insurance coverages of the **SUBRECIPIENT**.
18. **Exhibit H: Certification of CDBG-DR Compliance Provisions:** This Exhibit outlines the compliance provisions which the **SUBRECIPIENT** must follow as a requirement of the federal CDBG-DR funding award. The **SUBRECIPIENT** must certify adherence with these conditions.
19. **Exhibit I: CDBG-DR Special Terms and Conditions:** The **COUNTY** may identify specific conditions, including but not limited to, training, technical assistance, capacity building, and policy development, which the **SUBRECIPIENT** must complete as a condition of receiving the CDBG-DR funding award.
20. **Exhibit J: Subrecipient Staff Organization:** In addition to annual certifications of continued operations, the **SUBRECIPIENT** is required to provide evidence of staff who will be responsible for conducting certain actions during project implementation. This Exhibit contains the contact information of those individual staff members.
21. **Exhibit K: CDBG-DR Program Subrogation Agreement:** As noted under SUBSECTION XIII.E. DUPLICATION OF BENEFITS and the Federal Register Guidance, the **SUBRECIPIENT**, as a recipient of federal assistance, must sign a Subrogation Agreement before the **COUNTY** can disburse CDBG-DR assistance to the **SUBRECIPIENT**.

An electronic signature or a scanned copy of the report with signature is acceptable for all reports or exhibits included above for which signatures are required. The **COUNTY** will instruct the **SUBRECIPIENT** on the approved System of Record under which the **SUBRECIPIENT** is expected to provide this data and information.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notates in the *Subrecipient Agreement Document Checklist*, the required forms and reports the **SUBRECIPIENT** must submit. These reports and forms include, but are not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, closeout reports, and periodic certifications as described above.

The **SUBRECIPIENT** should submit all reports and forms electronically in a computer-readable format using the approved System of Record submission method specified by the **COUNTY**. When required, reports or exhibits must be certified by signature. An electronic signature is acceptable for all reports, forms, and attachments within the *Subrecipient Agreement Checklist*.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

**SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS:** The **COUNTY** or its agents may also require the **SUBRECIPIENT** to submit additional non-project related reports, documentation, and information which are beneficial to determine the **SUBRECIPIENT'S** capacity, compliance, and performance related to this this Federal award compliance. The **COUNTY** may request external reports, including but not limited to, prior and current fiscal year audits, other agency monitoring reports or reviews under other funding sources, organizational

documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, documentation, and information requested by the County or its agents.

## **SECTION VII: AUDITS, MONITORING, AND RECORDS**

**SUBSECTION VII.A. – AUDITS AND INSPECTIONS:** In accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508, the **SUBRECIPIENT** will allow the **COUNTY**, Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the **SUBRECIPIENT'S** non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant (CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

**SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS:** Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** must conduct a single or program-specific audit if it expends \$1,000,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

In accordance with 2 CFR 200.514, a complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs

detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit reports electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any associated corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant expressing an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

**SUBSECTION VII.C. – SUBRECIPIENT RISK ASSESSMENTS AND MONITORING:** In accordance with 2 CFR 200.332, the **COUNTY**, as HUD's Grantee and a pass-through entity, must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. To enable those periodic assessments, the **SUBRECIPIENT** must provide information and documentation as required to the **COUNTY**. The **COUNTY'S** risk assessments results will be used to support the **COUNTY'S** oversight strategies and the level and frequency of monitoring, technical assistance, training to the **SUBRECIPIENT**.

The **SUBRECIPIENT** agrees to permit the **COUNTY** and persons duly authorized by the **COUNTY**, HUD, and other Federal, state, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** including interviews of any clients and employees of the **SUBRECIPIENT** to assess satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY** and persons duly authorized, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring will include: (1) reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate how activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies documented by the **COUNTY** within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted deficiencies as defined by the **COUNTY**. The **SUBRECIPIENT'S** failure to correct or provide the **COUNTY** with accepted justification for the deficiencies within the time specified by the **COUNTY** may result in withholding of payments or being

deemed in breach or default of this Agreement and may result in the termination of this Agreement.

In response to **SUBRECIPIENT** deficiencies or other instances of capacity concerns prior to this Agreement, the **COUNTY** may also impose additional conditions on the use of the CDBG-DR funds, as noted under Exhibit I – CDBG-DR Special Terms and Conditions. This Exhibit ensures future compliance through trainings, technical assistance, and capacity building in an effort to correct or avoid early noncompliance.

**SUBSECTION VII.D. – RECORDKEEPING REQUIREMENTS:** The **SUBRECIPIENT** must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance's Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the **SUBRECIPIENT** and the **COUNTY** for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with the longer of the records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334 and State of Florida GS1-SL, except that the **SUBRECIPIENT** must:

1. Retain records for individual CDBG-DR activities for 5 years after the Agreement has ended, as prescribed in State of Florida GS1-SL.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied and for 5 years following that satisfaction.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income, and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under Exhibit H – Certification of CDBG-DR Compliance Provisions.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors, and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XIII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the **COUNTY**



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

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

## **SECTION VIII:           CONTRACTOR STATUS**

**SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR:** It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **COUNTY'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and the **COUNTY**, and the **COUNTY** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including, but not limited to, unpaid minimum wages and/or overtime premiums.

**SUBSECTION VIII.B. – SUBCONTRACTS:** Primary roles and responsibilities of the **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the **SUBRECIPIENT** must have a written contract. The **SUBRECIPIENT** must provide written notice to the **COUNTY** of all subcontractors, as well as provide copies of all contracts entered into with subcontractors, upon the **COUNTY'S** request. Procurement and/or bidding of non-primary roles and responsibilities must be awarded on a fair and non-collusive basis and must be in compliance with all applicable Lee County, State of Florida, and Federal procurement standards at 2 CFR 200.318-327. The **SUBRECIPIENT** shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the **SUBRECIPIENT** shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Agreement, *Exhibit H – Certification of CDBG-DR Compliance Provisions*, and *Exhibit F – Application*, as applicable, and must

be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

**SUBSECTION VIII.C. – CONTRACTS AND FEDERAL PROCUREMENT STANDARDS:** If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women's business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable state and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;
7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to Exhibit H – Certification of CDBG-DR Compliance Provisions)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

## **SECTION IX: CONFLICTS OF INTEREST**

The **SUBRECIPIENT** agrees 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 activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict-of-interest policy that complies with the process for promptly identifying and addressing such conflicts.

Any potential conflict of interest shall be reported using the **COUNTY'S** disclosure form.

**SECTION X:**            **RISK MANAGEMENT**

**SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY:** To the fullest extent permitted by applicable law, **SUBRECIPIENT** shall protect, defend, indemnify, save and hold the **COUNTY**, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the **SUBRECIPIENT** resulting from the **SUBRECIPIENT'S** work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the **SUBRECIPIENT'S** performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the **COUNTY**, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, the **SUBRECIPIENT** hereby agrees to indemnify the **COUNTY** for all reasonable expenses and attorney's fees incurred by or imposed upon the **COUNTY** in connection therewith for any loss, damage, injury, liability, or other casualty. The **SUBRECIPIENT** additionally agrees that the **COUNTY** may employ an attorney of the **COUNTY'S** own selection to appear and defend any such action, on behalf of the **COUNTY**, at the expense of the **SUBRECIPIENT**. The **SUBRECIPIENT** further agrees to pay all reasonable expenses and attorney's fees incurred by the **COUNTY** in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the **SUBRECIPIENT** and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

**SUBSECTION X.B. – INSURANCE REQUIREMENTS****INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance **naming Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (**Exhibit G – Certificate(s) of Insurance**). Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before the expiration date.

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:  
     \$100,000 per accident  
     \$500,000 disease limit  
     \$100,000 disease limit per employee
  2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:  
     \$500,000 bodily injury per person (BI)  
     \$1,000,000 bodily injury per occurrence (BI)  
     \$500,000 property damage (PD) or  
     \$1,000,000 combined single limit (CSL) of BI and PD
- The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.
3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:  
     \$100,000 bodily injury per person (BI)  
     \$300,000 bodily injury per occurrence (BI)  
     \$100,000 property damage (PD) or  
     \$300,000 combined single limit (CSL) of BI and PD
  4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
  5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

#### **INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS**

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

**SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION:** The **COUNTY** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

#### **SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION**

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2

CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

**SUBSECTION XI.A. – SUSPENSION:** The **COUNTY** reserves the right to suspend, withhold, withdraw, or recapture funding for failure to comply with the requirements of this Agreement. If the **SUBRECIPIENT** fails to submit required documents by the due date, the **COUNTY** can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

**SUBSECTION XI.B. – EVENTS OF DEFAULT:** If any of the following events occur (“Events of Default”), the **COUNTY** may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in SUBSECTION XI.C. REMEDIES or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**, is or becomes false or misleading in any respect, or if the **SUBRECIPIENT** fails to keep or perform any of the obligations, terms, or covenants in this Agreement with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;
2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY'S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties' employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar causes wholly beyond both Parties' control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delays or disruptions in the **SUBRECIPIENT'S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably

foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, at its sole discretion, will determine if the delay is excusable under this Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

**SUBSECTION XI.C. – REMEDIES:** If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days, the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XIX. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment; Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for any failed/incomplete activities, ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
4. Exercise any corrective or remedial actions, including but not limited to:
  - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
  - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - c. Advise the **SUBRECIPIENT** to suspend, discontinue, or refrain from incurring costs for any activities in question.
5. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend, or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

**SUBSECTION XI.D. – TERMINATION BY COUNTY:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above ("for convenience"), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the

people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

If the financing for this project is contingent upon funding sources other than Lee County as identified in the application for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

**SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** may, to the extent authorized by law, withhold payments to the **SUBRECIPIENT** for the purpose of set-off until the exact amount of damages due to the **COUNTY** from the **SUBRECIPIENT** is determined.

In accordance with 24 CFR 570.503, upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

## **SECTION XII:**      **USE AND REVERSION OF ASSETS, REAL PROPERTY**

The **SUBRECIPIENT** must ensure that any equipment or fixed assets purchased in whole or in part with CDBG-DR funds be adequately safeguarded and assure such assets are used solely for authorized purposes. The purchase, use, management and disposition of equipment and other capital assets must comply with 2 CFR 200.313, 2 CFR 200.439, the applicable Federal Register Guidance, and 24 CFR 570. See SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION regarding the revision of any CDBG-DR funds or assets upon termination or expiration of this agreement. Per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income, and shall be returned to the **COUNTY** within 30 days of receipt of the proceeds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$25,000 must (1) be used to meet a national objective until five years after expiration or termination of this Agreement (24 CFR 570.505), unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

**SECTION XIII:            ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

**SUBSECTION XIII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS:** The **COUNTY** will not intentionally award Agreements to any **SUBRECIPIENT** who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

**SUBSECTION XIII.B. - E-VERIFY REQUIREMENTS:** The **SUBRECIPIENT** must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall



enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

**SUBSECTION XIII.C. – NATIONAL OBJECTIVE:** All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under SUBSECTION II.C. NATIONAL OBJECTIVE. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

**SUBSECTION XIII.D. – USE OF FUNDS AND ORDER OF ASSISTANCE:** CDBG–DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, before awarding CDBG-DR assistance for the cost of carrying out the same activity.

The **SUBRECIPIENT** shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under *Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description*. *Exhibit H – Certification of CDBG-DR Compliance Provisions* further outlines Duplication of Benefits certifications which the **SUBRECIPIENT** must adhere to. Failure to do so can result in a return of funds as further outlined within this Agreement under SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SUBSECTION XIII.E. DUPLICATION OF BENEFITS.

**SUBSECTION XIII.E. – DUPLICATION OF BENEFITS:** The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under SUBSECTION XIII.D. USE OF FUNDS AND ORDER OF ASSISTANCE. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (see *Exhibit K – CDBG-DR Program Subrogation Agreement*).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S application**. This notification must include a statement explaining how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall

not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

**SUBSECTION XIII.F. – CIVIL RIGHTS REQUIREMENTS:** The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the **SUBRECIPIENT** assures and certifies the following:

1. That they will comply with all applicable Federal, state and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of Federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project outreach, project, or activity materials including communique in the form of digital (website) media and paper materials.
  - b. Section 109 - Title I of the Housing & Community Development Act of 1974
  - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
  - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
  - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 (“ADA”) (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which gives civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT’S** Single-Point-of-Contact.
3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)

- Guidelines for promoting Fair Housing for individuals with Limited English Proficiency (LEP)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures can be found on the Fair Housing and Equal Opportunities HUD website.

**SUBSECTION XIII.G. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE:** In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict-of-interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse (FWA) training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such complaints to the **COUNTY**.

**SUBSECTION XIII.H. – INELIGIBLE ACTIVITIES:** The **SUBRECIPIENT** assures that it will not conduct or expend CDBG-DR funds on any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

**SUBSECTION XIII.I. – PROGRAM INCOME:** The **SUBRECIPIENT** shall report to the **COUNTY** all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the **SUBRECIPIENT'S** periodic reporting outlined under SECTION VI. REPORTS AND EXHIBITS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

The **SUBRECIPIENT** must return to the **COUNTY**, prior to closeout, any program income generated by the project and its activities. The **COUNTY** certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists, or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

**SUBSECTION XIII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS:** The **COUNTY**, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the **COUNTY**, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan

also details how the **COUNTY** will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

**SUBSECTION XIII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII):** As previously referenced under SUBSECTION VII.D. RECORDKEEPING REQUIREMENTS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.*

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the SUBRECIPIENT must implement reasonable measures to safeguard Personally Identifiable Information (PII) and other sensitive data. These measures should form part of the SUBRECIPIENT's internal control framework to ensure compliance with federal regulations. The SUBRECIPIENT is responsible for maintaining appropriate safeguards to prevent unauthorized access, use, or disclosure of such information, consistent with cybersecurity best practices and the applicable federal, state, and local laws governing data protection.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a "covered entity," as the law defines that term. Any "personal health information" (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this project and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently "de-identified" to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Methods to accomplish the highest levels of public service coupled with PHI confidentiality will be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

**SUBSECTION XIII.L. – NECESSARY AND REASONABLE REQUIREMENTS:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

**SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK:** In accordance with 2 CFR 200.1

and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements").

Any and all patent rights accruing under, or in connection with, the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under, or in connection with, the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the **COUNTY**. If any books, manuals, films, or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to **COUNTY**. Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

**SUBSECTION XIII.N. – FEDERAL TERMS AND CONDITIONS:** For Federal CDBG-DR funded programs, the **SUBRECIPIENT** has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The **COUNTY** outlines full CDBG-DR Compliance Provisions for the **SUBRECIPIENT** under Exhibit H – Certification of CDBG-DR Compliance Provisions and details program management standards within the respective program's manual.

**SUBSECTION XIII.O. – STATE AND LOCAL GOVERNMENT REQUIREMENTS:** The **SUBRECIPIENT** agrees to the following statements as it relates to state and/or local government requirements:

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent,

legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).

3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
4. The **SUBRECIPIENT** will comply with and implement this Agreement in a manner satisfactory to Lee County and HUD and consistent with all applicable laws, regulations, and policies and procedures that may be required as a condition of Lee County providing the grant funds, including but not limited to, all applicable program administration and compliance requirements set forth by this Agreement, and in accordance with the CDBG-DR NOFA Application, CDBG-DR Action Plan, and any other documentation previously provided by the **SUBRECIPIENT**, attached as Exhibit F – Application, and made a part hereof.
5. Lee County's provision of grant funds under this Agreement is specifically conditioned on the **SUBRECIPIENT'S** compliance with this provision and all terms and conditions of this Agreement, the most recently published version of Lee County's *Hurricane Ian CDBG-DR Subrecipient Manual and Internal Grant Management Manual*, and the CDBG-DR *Public Facilities Infrastructure Program Policies and Procedures Manual*, which can be accessed on <https://cdbgdrr.leegov.com>, and any amendments thereto, related Federal Register Guidance (including Guidance, which is provided under future Federal Register Notices), and the requirements of the authorities cited above, as the same may be amended from time to time.
6. The **SUBRECIPIENT** will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
7. The **SUBRECIPIENT** will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.
8. If needed, **SUBRECIPIENT** may be called upon to assist the **COUNTY** during a natural disaster or emergency. This may include, but is not limited to, the use of the **SUBRECIPIENT'S** facility to assist with Emergency Food Stamp preregistration if the facility is operations and use of staff to assist with case management and post-disaster shelter assessments. **SUBRECIPIENT** will be responsible to notify United Way 211 via phone, email, or through submission of online survey form, immediately after a disaster declaration if the location is accessible and operational and of any **SUBRECIPIENT** staff who are available to assist with recovery efforts.

#### **SECTION XIV: OTHER PROVISIONS AND CONDITIONS**

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.

If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY**.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-DR funds.

#### **SECTION XV:**      **CITIZEN COMPLAINTS**

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt the **COUNTY'S** written citizen complaint policy or provide their own policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time for the response is required.

#### **SECTION XVI:**      **LEGAL AUTHORIZATION**

The **SUBRECIPIENT** certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The **SUBRECIPIENT** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation, or any other legal or financial condition that would in any way prohibit, restrain, or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

**SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE**

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process, requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.
5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

**SECTION XVIII: AGREEMENT CLOSEOUT**

The **SUBRECIPIENT** must complete a closeout checklist and final closeout reports to ensure complete and final documentation of all finance and program activities. The closeout checklist and reports must be submitted to the **COUNTY** within 90 days after the end date of this agreement.

The closeout checklist must include documentation and certification that:

1. All CDBG-DR funds have been expended within the exception of any closeout liabilities or contingent liabilities (24 CFR 570.509(a)(1));
2. All work financed with CDBG-DR funds has been completed, is eligible, and meets a national objective, including activities financed through escrow accounts, loan guarantees, or similar mechanisms; performance and expenditure reports have been submitted and account for program income and administrative expenditures (24 CFR 570.509(a)(2-5)); and
3. All other responsibilities under this Agreement have been met or the **COUNTY** has determined that there is no further benefit in keeping the Agreement open to secure performance (24 CFR 570.509(a)(6)).

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);



2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);
4. Final *Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

Based on the **SUBRECIPIENT'S** final reports and other relevant information, the **COUNTY** may execute a closeout agreement that specifies closeout costs or contingent liabilities that are subject to payment with CDBG-DR funds after the closeout agreement is signed; continuing responsibilities after closeout; or other provisions appropriate to special circumstances.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a **SUBRECIPIENT** does not affect:

1. The **COUNTY's** right to disallow costs and/or recover funds on the basis of a later audit or other review.
2. The **SUBRECIPIENT's** obligation to return funds due to the **COUNTY** from subsequent refunds, corrections, or other transactions.
3. The **COUNTY** and **SUBRECIPIENT'S** obligation to comply with records retention as specified in 2 CFR 200, Subpart D—Post Federal Award Requirements, Records Retention and Access, including 2 CFR 200.334-338, as modified by 24 CFR 570.502(a)(7)(ii).
4. The **SUBRECIPIENT's** responsibilities for property management and disposition:
  - o For real property in 24 CFR 570.503(b)(7).
  - o For other property, as applicable in 2 CFR 200, Subpart D, Post Federal Award Requirements, Property Standards, including:
    - 2 CFR 200.310 (Insurance coverage).
    - 2 CFR 200.312 (Federally owned and exempt property).
    - 2 CFR 200.313 and 24 CFR 570.502(a)(6) (Equipment).
    - 2 CFR 200.314 (Supplies).
    - 2 CFR 200.315 (Intangible property).
    - 2 CFR 200.316 (Property trust relationship).
    - Audit requirements in 2 CFR 200, Subpart F.

**SECTION XIX:           NOTICES**

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

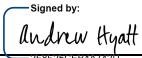
**SUBRECIPIENT**

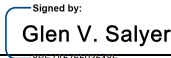
Name: Andy Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2525 Estero Boulevard, Fort Myers  
Beach, FL 33931  
Telephone: 239-313-0895  
Email: AndyHyatt@fmbgov.com

**COUNTY**

Name: Jeannie Sutton  
Title: Director  
Agency: Office of Strategic Resources and  
Government Affairs  
Address: 1500 Monroe St., Fort Myers, FL 33901  
Telephone: (239) 822-8438  
Email: JSutton@leegov.com

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Andy Hyatt  
Name (printed/typed)  
  
Signature  
Town Manager  
Title

Glen V. Salyer  
Name (printed/typed)  
  
Signature  
Assistant County Manager  
Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.

**SECTION XX:           ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.

**IN WITNESS THEREOF**, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, Reports, and Forms as indicated on the *Subrecipient Agreement Document Checklist* to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT: TOWN OF FORT MYERS BEACH**

BY: 

Signed by:  
*Andrew Hyatt*  
2F8F29CCEBA742D...

Signature

Andrew Hyatt

Name (print)

1/13/2025 | 10:43 AM EST

Date

ATTEST:  
CLERK OF CIRCUIT COURT

BY: 

Signed by:  
*Latasha Seth*  
34140A3DDF374A2...

DSDeputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: 

DocuSigned by:  
*Kevin Ruane*  
22FDD5F15C7E43A...

Chair



APPROVED AS TO FORM FOR THE  
RELiance OF LEE COUNTY ONLY

DocuSigned by:  
*Amanda L. Swindle*  
EC0B5A5584DD473...

County Attorney's Office

**EXHIBIT A**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROGRAM/PROJECT ACTIVITY OVERVIEW**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for program and project eligibility with core HUD CDBG-DR requirements. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record.

**Program/Project Activity Overview**

**Project Name:** Parks & Recreation Revitalization

**CDBG-DR Program eligible activity:** Rehabilitation/reconstruction of public facilities

**The National Objective to be achieved for each activity as a result of this Project:** Activities designed to meet community development needs having a particular urgency ("Urgent Needs").

*Per 24 CFR 570.208(c), to comply with the national objective of meeting community development needs having a particular urgency, and activity must be designed to alleviate existing conditions which the grantee certifies:*

1. Pose a serious and immediate threat to the health or welfare of the community;
2. Are of recent origin or recently became urgent;
3. The grantee/subgrantee is unable to finance the activity on its own; and,
4. Other resources of funding are not available to carry out the activity.

*In accordance with FR-6393-N-01, this activity is using the Urgent Need national objective which is allowed for a period of 36 months after the applicability date of the Lee County's Allocation Announcement Notice (May 18, 2023).*

**The method of measuring the National Objective, if LMI:** Not Applicable – activity will not meet a LMI national objective

**The number of individuals benefiting as a result of this Project:**

- Total beneficiaries: 6,670
- Total low/mod beneficiaries: 2,055

**CDBG-DR storm tie-back and/or Mitigation resilience measure:** The Town of Fort Myers Beach was devastated by the unprecedented destruction of Hurricane Ian, which left many unmet needs and exposed areas of the community to future storms. The Parks & Recreation Revitalization Program aims to revitalize the community by replacing and updating multiple public facilities and community

parks that were severely damaged by the hurricane. These repair and enhancement efforts align with the broader community goals of sustainability, resilience, and community well-being. The first component is the Bay Oaks Community Pool Project, a critical community hub beloved by both residents and tourists. Hurricane Ian's surge and debris heavily damaged the entire facility, including the pool, hard deck, public restrooms, and staff offices. All mechanical systems were wiped out. This project proposes constructing a new facility to house public restrooms and staff offices, fully replacing the hard deck and slide structure, restoring the pool basins, and improving surrounding drainage, lighting, and landscaping. This comprehensive project will ensure an efficient, durable, and resilient community asset for many years to come. Efficient and timely completion of the pool project is essential not only for restoring services but also for demonstrating effective disaster recovery management, minimizing downtime, and allowing the community to benefit from the renewed resources as soon as possible. The disastrous impacts of Hurricane Ian, including a storm surge of over 15 feet, resulted in the complete loss of the previous community hub, creating an immediate need to restore this essential recreational facility. Restoring the Bay Oaks Community Pool aligns with community goals by providing a safe, inclusive, and engaging space that supports health, wellness, and social interaction. The second component, the Old San Carlos & Time Square Lighting Project, aims to revitalize the downtown core by replacing and updating the entire street lighting system, which was severely damaged by Hurricane Ian. This area, anchored by two vital community gathering spaces —Bayside on the north side and Time Square on the gulf side—is a critical business district and community hub. Hurricane Ian's surge and debris obliterated nearly all 46 streetlights and light poles, leaving the area dangerously dark. This project proposes installing two new panel/switch boxes, all new wiring and conduit, and poles with turtle-compliant lighting fixtures. This comprehensive upgrade will ensure efficient, durable, and safe lighting for the business district, addressing the immediate need for public safety and supporting the economic recovery of local businesses. The significance of this project is paramount to the town's prosperity in both the short and long term, transforming the area into a functional, energy-efficient, safe, and welcoming environment. Revitalizing the downtown lighting aligns with community goals by enhancing public safety, supporting local businesses, and creating a vibrant, attractive area for residents and visitors. Additionally, this lighting project will serve as the first step in the town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, further enhancing connectivity and the overall aesthetic appeal of the downtown area. The final component, the Newton Park Beach Facility Project, aims to revitalize a historic landmark in Fort Myers Beach by replacing and updating the "Seven Seas" cottage, which was completely destroyed by Hurricane Ian. This cottage, with nearly 100 years of history, served as an education center for the community. The project proposes constructing a new elevated and resilient education-focused facility to replace the previous building, ensuring ADA compliance and public restrooms for the beachfront park, along with reconstructing the attached parking lot. Designed with future severe weather events in mind, the facility will feature a reinforced foundation and roof, high-impact glass, and sealants offering enhanced resistance to water and wind. Landscaping will include dune restoration with native grasses and shrubs to naturally mitigate erosion and flooding. These features ensure that the facility will endure as a safe, educational, and recreational resource through harsh conditions. The new Newton Park Beach Facility will align with community goals by preserving the town's history, promoting environmental education, and providing a resilient and accessible public space. The Parks & Recreation

Revitalization Program will utilize forward-looking strategies and proven best practices to mitigate future issues the completed projects may face. The town will use LED lighting to reduce energy consumption. Additionally, lighting near the beach will be turtle-compliant to ensure no disruption to natural habitats. These measures align with HUD's green building standards, offering direct economic benefits through reduced energy bills and contributing to the broader community goal of sustainable development. This program will provide a foundation for residential satisfaction, allowing the area to continue recovering from the catastrophic impacts of Hurricane Ian while applying environmentally friendly strategies and resilient building standards to reduce future storm impacts. The Parks & Recreation Revitalization Program is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach, aligning with community goals to create a safe, sustainable, and vibrant environment.

**EXHIBIT B**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Project Activity Scope of Work Description ("Work")**

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both

durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.



The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility

Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and

restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

**Design and Approach:** The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight

and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in

municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

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### **Major Project Milestones**

| <b>Milestone</b>                         | <b>Due Date</b> |
|------------------------------------------|-----------------|
| Design and Permitting Complete           | 12/31/2026      |
| Construction Begins                      | 04/30/2027      |
| 50% Construction                         | 01/30/2028      |
| Closeout and Final Reimbursement Request | 12/30/2028      |

**EXHIBIT C**  
**FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County’s financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Financial and Grant Management System Budget Worksheet**

As noted within the Agreement, the Subrecipient’s allocation of CDBG-DR funding for this project is broken down in the following manner:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$7,919,916.00                     |
| Activity Delivery Funds               | \$416,837.00                       |
| Total                                 | \$8,336,753.00                     |

**EXHIBIT D**  
**INDIRECT COST RATE ALLOCATION PLAN**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Indirect Cost Rate Allocation Plan**

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: **Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.**

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.



**EXHIBIT E****PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and, if applicable, the Subrecipient's approved application in response to the \_ NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

**Projected Performance Measures and Outcomes**

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

| Eligible Activity Type                                        | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
| Rehabilitation/ reconstruction of public facilities           | # of buildings (non-residential)                                                                                   |                 |
|                                                               | # of Linear feet of green public improvement                                                                       |                 |
|                                                               | # of Non-business Organizations benefitting                                                                        |                 |
|                                                               | # of public facilities                                                                                             | 3               |
|                                                               | # of Linear feet of Public Improvement                                                                             |                 |
|                                                               | # of Acres wetlands                                                                                                |                 |
|                                                               | # of Linear miles of Public Improvement                                                                            |                 |
|                                                               | # of cable feet of public utility                                                                                  |                 |
|                                                               | # of Properties                                                                                                    |                 |
|                                                               | # of Elevated Structures                                                                                           |                 |
|                                                               | # of Businesses                                                                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects | # acres of newly added or improved green space                                                                     |                 |
|                                                               | # acres of wetlands created                                                                                        |                 |
|                                                               | # cubic feet of stormwater storage added                                                                           |                 |
|                                                               | % decrease in affluent discharged                                                                                  |                 |
|                                                               | % decrease in area inundated by flooding                                                                           |                 |
|                                                               | % decrease in disruption hours to residents and businesses from impacts of storm events                            |                 |
|                                                               | % decrease in NFIP CRS score                                                                                       |                 |

| Eligible Activity Type                                                    | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                                                                           | % decrease in road closures in target area during a flood event                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects<br>(cont'd) | % decrease water surface elevation level during a flood with a qualifying event                                    |                 |
|                                                                           | \$ estimated flood loss avoidance                                                                                  |                 |
|                                                                           | \$ Funds allocated for water management/flood mitigation improvements                                              |                 |
|                                                                           | \$ Funds allocated for water-quality improvements                                                                  |                 |
|                                                                           | % increase in acres of cropland protected from flooding                                                            |                 |
|                                                                           | % increase in groundwater infiltration                                                                             |                 |
|                                                                           | % increase in number of acres converted to open space                                                              |                 |
|                                                                           | % increase in pumping capacity                                                                                     |                 |
|                                                                           | # linear feet of streams restored                                                                                  |                 |
|                                                                           | # occupied structures in floodplain                                                                                |                 |
|                                                                           | # of acres green infrastructure created                                                                            |                 |
|                                                                           | # of acres green space created                                                                                     |                 |
|                                                                           | # of acres green space preserved                                                                                   |                 |
|                                                                           | # of acres no longer vulnerable to flood events                                                                    |                 |
|                                                                           | # of acres of native vegetation planted                                                                            |                 |
|                                                                           | # of acres with improved multiple hazard risk mapping                                                              |                 |

| Eligible Activity Type                                                    | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                                                                           | # of brownfield acres converted to wetland                                                                         |                 |
|                                                                           | # of buildings (non-residential)                                                                                   |                 |
|                                                                           | # of containment systems constructed                                                                               |                 |
|                                                                           | # of Elevated Structures                                                                                           |                 |
|                                                                           | # of fewer outages of critical facilities and utilities                                                            |                 |
|                                                                           | # of green infrastructure projects constructed                                                                     |                 |
|                                                                           | # of greenspace users                                                                                              |                 |
|                                                                           | # of Linear feet of Public Improvement                                                                             |                 |
|                                                                           | # of Linear Feet of Sewer Lines                                                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects<br>(cont'd) | # of linear feet of trails constructed                                                                             |                 |
|                                                                           | # of Linear Feet of Water Lines                                                                                    |                 |
|                                                                           | # of Linear miles of Public Improvement                                                                            |                 |
|                                                                           | # of Non-business Organizations benefitting                                                                        |                 |
|                                                                           | # of non-invasive species trees planted on project sites                                                           |                 |
|                                                                           | # of properties protected from future flooding                                                                     |                 |
|                                                                           | # of properties with access above 100-yr flood level                                                               |                 |
|                                                                           | # of public facilities<br># of pump stations repaired/replaced                                                     |                 |

| Eligible Activity Type | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                        | # of reduced hours streets are flooded                                                                             |                 |
|                        | # of residents protected from future flooding                                                                      |                 |
|                        | # of Section 3 Labor Hours                                                                                         | 7,600           |
|                        | # of small water retention devices/systems installed                                                               |                 |
|                        | # of storm water projects implemented                                                                              |                 |
|                        | # of Targeted Section 3 Labor Hours                                                                                | 380             |
|                        | # of Total Labor Hours                                                                                             | 30,400          |
|                        | # of vacant lots repurposed                                                                                        |                 |
|                        | # of water control structures repaired/replaced                                                                    |                 |
|                        | % reduction in emergency maintenance costs                                                                         |                 |
|                        | % reduction in energy costs                                                                                        |                 |
|                        | % reduction in loss of service                                                                                     |                 |
|                        | % reduction of sanitary sewer overflows                                                                            |                 |
|                        | % reduction of watershed nitrate loading                                                                           |                 |
|                        | % reduction of water surface elevation level                                                                       |                 |
|                        | # of structures harden against future flood events                                                                 |                 |
|                        | # of Persons                                                                                                       |                 |

**EXHIBIT F****APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Application**

*Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:*

1. *Subrecipient Agreement*
2. *Public Facilities Infrastructure Program NOFA.*
3. *Public Facilities Infrastructure Program Guidelines*
4. *Notice to Proceed*
5. *Subrecipient's application in response to the Notice of Funding Availability*



Lee County  
*Southwest Florida*

# Public Facilities Infrastructure Program

**Organization Information**

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2731 Oak Street Fort Myers Beach, FL 33931
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

**Authorized Organization Representative**

- ▶ Name: Andrew Hyatt
- ▶ Title: Town Manager

**Contact Person**

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)
- ▶ Telephone: (239) 266-4673

**Partner Organization**

- ▶ Will your organization be partnering with any other organizations? No





## Project Information

► Name: Parks & Recreation Revitalization

## Public Facility Description

The Town of Fort Myers Beach seeks CDBG-DR funding to restore and enhance its parks and recreation facilities, all of which were severely impacted by Hurricane Ian. The three key components of this consolidated project are the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility, and the Bay Oaks Pool Complex. Together, these projects aim to address blighted conditions in the Town, revitalize the Town's public spaces, improve public safety, and enhance the quality of life for residents and visitors

## Project Type

- |                                                                                                             |                                                                            |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| <input type="checkbox"/> Aquisition                                                                         | <input type="checkbox"/> Safe Rooms                                        |
| <input checked="" type="checkbox"/> New Construction                                                        | <input checked="" type="checkbox"/> Handicapped Accessibility Improvements |
| <input checked="" type="checkbox"/> Building Hardening                                                      | <input checked="" type="checkbox"/> Energy Efficiency Improvements         |
| <input type="checkbox"/> Backup Generator: Must be a permanent fix to the structure. No portable generators |                                                                            |

► Other: Reconstruction and rehabilitation of parks and recreation public facilities



## Target Service Location

### Target Service Location

- |                                                        |                                                    |
|--------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> City of Cape Coral            | <input type="checkbox"/> Town of Fort Myers Beach  |
| <input checked="" type="checkbox"/> City of Fort Myers | <input type="checkbox"/> Village of Estero         |
| <input type="checkbox"/> City of Bonita Springs        | <input type="checkbox"/> Unincorporated Lee County |
| <input type="checkbox"/> City of Sanibel               | <input type="checkbox"/> All of Lee County         |



## National Objective

► National Objective: Urgent Need

### Provide a description how the proposed project will meet the selected National Objective

As a direct result of Hurricane Ian, the designated activity area meets the definition of a blighted area under 163.340, F.S. The project area includes a substantial number of deteriorated or deteriorating structures leading to economic distress, including both unsafe conditions and deterioration of the project site(s) and improvements.

Additionally, as a direct result of the impacts of Hurricane Ian, public improvements throughout the area are in a general state of deterioration and more than 25% of properties throughout the area exhibit physical deterioration of buildings/improvements due to damage from Hurricane Ian.

The attached Memorandum provides additional detail regarding these findings.

## National Objective Descriptions

| National Objective                   | Description                                                                                                                                                                                                                                                                                             |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| L/M Income Area Benefit              | Census block groups that align with the service area maps                                                                                                                                                                                                                                               |
| L/M Income Limited Clientele         | The infrastructure improvements benefit a specific persons who are presumed by HUD to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers)                          |
| L/M Income Job Creation or Retention | The project proposes activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons. Must include income certifications or describe method on how LMI job creation will be documented |
| Urgent Need                          | Does the narrative description on the application under Urgent Need provide specific examples of needs that have urgency, including how the existing conditions pose a serious and immediate threat to the health and welfare of the community?                                                         |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Slums and Blight</p> | <p>Does the designated activity area meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law? Additionally, the area must meet one of the two conditions:</p> <ul style="list-style-type: none"> <li>• Public improvements throughout the area are in a general state of deterioration; or</li> <li>• At least 25 percent of the properties throughout the area exhibit one or more of the following:                             <ul style="list-style-type: none"> <li>• Physical deterioration of buildings/improvements;</li> <li>• Abandonment of properties;</li> <li>• Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;</li> <li>• Significant declines in property values or abnormally low property values relative to other areas in the community; or</li> <li>• Known or suspected environmental contamination</li> </ul> </li> </ul> |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## The scope of the project

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of

accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

**3. Newton Park Beach Facility Project:** This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

### The projected outcome(s) of the project

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing

safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

## The unmet or mitigation need that is being addressed by the project and how it aligns with community goals

The Town of Fort Myers Beach was devastated by the unprecedented destruction of Hurricane Ian, which left many unmet needs and exposed areas of the community to future storms. The Parks & Recreation Revitalization Program aims to revitalize the community by replacing and updating multiple public facilities and community parks that were severely damaged by the hurricane. These repair and enhancement efforts align with the broader community goals of sustainability, resilience, and community well-being.

The first component is the Bay Oaks Community Pool Project, a critical community hub beloved by both residents and tourists. Hurricane Ian's surge and debris heavily damaged the entire facility, including the pool, hard deck, public restrooms, and staff offices. All mechanical systems were wiped out. This project proposes constructing a new facility to house public restrooms and staff offices, fully replacing the hard deck and slide structure, restoring the pool basins, and improving surrounding drainage, lighting, and landscaping. This comprehensive project will ensure an efficient, durable, and resilient community asset for many years to come. Efficient and timely completion of the pool project is essential not only for restoring services but also for demonstrating effective disaster recovery management, minimizing downtime, and allowing the community to benefit from the renewed resources as soon as possible. The disastrous impacts of Hurricane Ian, including a storm surge of over 15 feet, resulted in the complete loss of the previous community hub, creating an immediate need to restore this essential recreational facility. Restoring the Bay Oaks Community Pool aligns with community goals by providing a safe, inclusive, and engaging space that supports health, wellness, and social interaction.

The second component, the Old San Carlos & Time Square Lighting Project, aims to revitalize the downtown core by replacing and updating the entire street lighting system, which was severely damaged by Hurricane Ian. This area, anchored by two vital community gathering spaces —Bayside on the north side and Time Square on the gulf side—is a critical business district and community hub. Hurricane Ian's surge and debris obliterated nearly all 46 streetlights and light poles, leaving the area dangerously dark. This project proposes installing two new panel/switch boxes, all new wiring and conduit, and poles with turtle-compliant lighting fixtures. This comprehensive upgrade will ensure efficient, durable, and safe lighting for the business district, addressing the immediate need for public safety and supporting the economic recovery of local businesses. The significance of this project is paramount to the town's prosperity in both the short and long term, transforming the area into a functional, energy-efficient, safe, and welcoming environment. Revitalizing the downtown lighting aligns with community goals by enhancing public safety, supporting local businesses, and creating a vibrant, attractive area for residents and visitors. Additionally, this lighting project will serve as the first step in the town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, further enhancing connectivity and the overall aesthetic appeal of the downtown area.



The final component, the Newton Park Beach Facility Project, aims to revitalize a historic landmark in Fort Myers Beach by replacing and updating the "Seven Seas" cottage, which was completely destroyed by Hurricane Ian. This cottage, with nearly 100 years of history, served as an education center for the community. The project proposes constructing a new elevated and resilient education-focused facility to replace the previous building, ensuring ADA compliance and public restrooms for the beachfront park, along with reconstructing the attached parking lot. Designed with future severe weather events in mind, the facility will feature a reinforced foundation and roof, high-impact glass, and sealants offering enhanced resistance to water and wind. Landscaping will include dune restoration with native grasses and shrubs to naturally mitigate erosion and flooding. These features ensure that the facility will endure as a safe, educational, and recreational resource through harsh conditions. The new Newton Park Beach Facility will align with community goals by preserving the town's history, promoting environmental education, and providing a resilient and accessible public space.

The Parks & Recreation Revitalization Program will utilize forward-looking strategies and proven best practices to mitigate future issues the completed projects may face. The town will use LED lighting to reduce energy consumption. Additionally, lighting near the beach will be turtle-compliant to ensure no disruption to natural habitats. These measures align with HUD's green building standards, offering direct economic benefits through reduced energy bills and contributing to the broader community goal of sustainable development. This program will provide a foundation for residential satisfaction, allowing the area to continue recovering from the catastrophic impacts of Hurricane Ian while applying environmentally friendly strategies and resilient building standards to reduce future storm impacts. The Parks & Recreation Revitalization Program is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach, aligning with community goals to create a safe, sustainable, and vibrant environment.



## Project Design and Approach: Applicant/Subrecipient

### **Description of your agency's experience completing projects of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the project and oversee all compliance requirements.**

The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in



## Project Design and Approach: Applicant/Subrecipient

high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### The applicant's plan of executing the Subgrantee Agreement

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### The applicant's plan for Oversight and Monitoring of Subgrantee

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.



## Project Design and Approach: Applicant/Subrecipient

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates, LLC has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.



**The partner's experience undertaking projects of similar complexity and providing public services**

N/A

**The partner's plan for Maintenance and Operations**

N/A

**Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management**

N/A



## Capacity to perform financial management and oversight

The Town of Fort Myers Beach will manage financial aspects of project implementation in accordance with established financial management policies and procedures. Financial management will be overseen by the Town's Financial Director, Mr. Joe Onzick. Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick oversees fund accounting and financial compliance for the project.

To supplement the Town staff's expertise and capacity for financial management and oversight, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and management of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout.

## Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

The Town of Fort Myers Beach staff members listed below will perform respective grant management functions for the project:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a town or city manager. Andy has an associate degree in general business from Cleveland State Community College in Cleveland, Tennessee. From the University of Tennessee at Chattanooga, he has a bachelor's degree in political science and a master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county, and state government administration ranging from contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying geology and geophysics. Mr. Kropacek will be the Town's





## Applicant Capacity and Experience: Applicant/Subrecipient

primary day-to-day contact for all project activities and will directly oversee and coordinate project implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the project. To supplement the Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL, overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to support HUD compliance efforts, proper reporting, and adherence to the proposed project schedule. Among other grant management functions, Tidal Basin will support procurement efforts in accordance with 2 CFR 200, Davis Bacon Labor Standards Compliance reporting and oversight, HUD Section 3 reporting and oversight, and confirmation that all costs can be tied to the project's eligible activity and national objective.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, DBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### Internal auditing capability

The Town of Fort Myers Beach will perform internal monitoring and financial compliance oversight in accordance with established financial management policies and procedures. Internal monitoring will be overseen by the Town's Financial Director, Mr. Joe Onzick.



## Applicant Capacity and Experience: Applicant/Subrecipient

Mr. Onzick previously served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College.

To supplement the Town's staff capacity related to internal monitoring and financial compliance, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation.

With Mr. Onzick's oversight and supervision of both Town staff and contractual support, the Town has demonstrated capacity to perform internal financial monitoring and experience for compliance with HUD and Lee County requirements.

### Administrative staffing

The Town of Fort Myers Beach staff will be available to support the necessary day-to-day administrative functions required for successful project implementation. Administrative staff will be overseen by Mr. Andrew Hyatt and Mr. Frank Kropacek. To supplement the Town staff's administrative capacity, Fort Myers Beach will utilize the services of Tidal Basin Group. Tidal Basin Group will be further supported by Gouras & Associates, LLC, for CDBG-DR specific administrative staffing needs.

### Monitoring and control of timely expenditure of funds

The Town of Fort Myers Beach understands that monitoring and control of timely expenditures of funds is paramount to a successful project. These elements will be





## Applicant Capacity and Experience: Applicant/Subrecipient

overseen by the Town's Financial Director, Mr. Joe Onzick, in accordance with established financial management policies and procedures. The Town of Fort Myers Beach staff, along with its partners in Tidal Basin Group and Gouras & Associates, LLC, have the capacity and experience to monitor the funding and expenditures of CDBG-DR funds from project award through closeout.

Prior to expenditure of funds, procurement efforts will be conducted in accordance with 2 CFR 200 procurement standards to ensure that project activities are allowable, reasonable, and cost-effective. Additionally, the Town will adhere to cost and/or price analysis requirements, as applicable, to support the proper usage of project funds.

**Describe how the subrecipient will implement Construction, Davis Bacon, and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

The Town will utilize the expertise of Tidal Basin Group and their partner, Gouras & Associates, LLC, (the Town's contractual support) to ensure the proper implementation of the construction related federal requirements of the Davis Bacon and its related acts. Construction solicitation documents and related contract documents will include Form HUD-4010, the appropriate Department of Labor Wage Decision(s), and the requirements of Executive Order 14026, which must be accepted by the contractor prior to contract execution to ensure that prevailing wage rates are met or exceeded. Labor standards requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. Required payroll reporting will be submitted by contractors on a weekly basis and reviewed by Town staff and contractual support to ensure compliance with prevailing wage requirements. Town staff and contractual support will be available to all construction contractors to resolve any issues that may arise throughout construction activities, such as payment and documentation of wage restitution, new job classification requests, and payment and documentation of liquidated damages. Throughout construction, on-site employee interviews will also be conducted and documented via HUD Form-11 to confirm that weekly payroll reports are accurate and consistent with the types of work performed by on-site laborers.

**Confirm that the subrecipient will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled**

The Town confirms that it will not take any choice limiting actions, including, but not limited to, physical work or construction activities, until environmental clearance is issued and Authority to Use Grant Funds is obtained. The Town understands that the result of



## Applicant Capacity and Experience: Applicant/Subrecipient

committing a choice limiting action could result in the termination of the award and that, in the event of excessive environmental issues, the award of CDBG-DR funds may be cancelled.

**Explain the applicant/subrecipient's plan to provide OR ensure the subgrantee provides opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be, especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75**

The Town of Fort Myers Beach understands that the implementation of Section 3 requirements and striving to meet the quantitative and qualitative goals laid out by the regulations are of paramount importance to the effective recovery of the community. Solicitation documents and related contract documents for Section 3-covered contracts will include HUD-required Section 3 Contract Clauses and require contractors to submit Section 3 reporting throughout the life of the contract. Section 3 documentation, including a Section 3 plan and employee and business certifications, will be required for bid submission and Section 3 terms and conditions must be accepted by the contractor prior to contract execution. The construction contract will also require the prime contractor to incorporate Section 3 terms and conditions into all subcontracts. Section 3 requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. All contractor and subcontractor employees working on the covered contract (existing employees and new hires) will be required to submit an Employee Self-Certification for Section 3 Qualification form. Required Section 3 reporting will be submitted by covered contractors and subcontractors on a weekly, monthly, and quarterly basis and reviewed by Town staff and contractual support to ensure that quantitative and qualitative efforts are effectively implemented. Contractors will be required to complete qualitative efforts along with the Town by utilizing the list provided by HUD in 24 CFR part 75.

**Describe how the subrecipient will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities**

The Town of Fort Myers Beach will utilize the State of Florida's minority, women, and veteran owned business directory (<https://vendor.myfloridamarketplace.com/search/vendor>) to solicit minority, women, and veteran owned businesses for participation in each contract procured as a result of this project. All solicitation documents for services to be performed through this project will encourage participation of minority, women, and veteran owned businesses and all contracts and subcontracts issued will require compliance with 2 CFR 200.321, such that subcontracting opportunities must be made available, as a priority, to minority, women, or veteran owned businesses when possible. The Town will document all outreach efforts to demonstrate that affirmative steps were taken to ensure good faith effort outreach to minority, women, and veteran-owned



## Applicant Capacity and Experience: Applicant/Subrecipient

businesses.

### Subrecipients must provide their procurement policy documents for analysis

The Town of Fort Myers Beach will provide all procurement policy documentation to Lee County for analysis.

### Subrecipient's ability to Complete Subgrantee Capacity Assessment

N/A

### Subrecipient's ability to Complete Subgrantee Risk Assessment

N/A

### Subrecipient's Ability to Execute a Subgrantee Agreement

N/A

### Please describe Subrecipient's Plans for Subgrantee Oversight and Monitoring

N/A



**Subgrantee’s Capacity to perform financial management and oversight**

N/A

**Subgrantee’s Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant**

N/A

**Subgrantee’s Internal auditing capability**

N/A

**Subgrantee’s Administrative staffing**

N/A

**Subgrantee’s Monitoring and control of timely expenditure of funds**

N/A

**Describe how the subgrantee will implement Construction, Davis Bacon and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

N/A



## Applicant Capacity and Experience: Subgrantee

Confirm that the subgrantee will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled

N/A

Explain the subgrantee's plan to provide opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be , especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75

N/A

Describe how the subgrantee will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities

N/A

Subgrantee's must comply with 2 CFR Part 200 requirements for procurement

N/A

**Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities**

**1. Execution of a Subrecipient Agreement: Award + 1 month.**

The Town, upon receiving notification of award, will submit required policies and other documentation to Lee County for review and comment. After thorough review, the Subrecipient Agreement will be presented to the Town Council for approval. Once executed the Subrecipient Agreement will be submitted to Lee County for final execution.

**Final Deliverable:** An executed Subrecipient Agreement for the Parks and Recreation Revitalization project.

**Prerequisite Dependencies or Actions:** Receipt of a Subrecipient Agreement from Lee County.

**2. Completion of Engineering Procurement: Award + 4 months.**

The Town of Fort Myers Beach will solicit Statements of Qualifications from Florida Certified Engineering firms to complete the design and permitting activities necessary for project completion. Procurement activities will be conducted in accordance with 2 CFR 200 Procurement Standards (2 CFR 200.317-327) and Florida Statute 287.055. In compliance with these requirements, the Town will ensure that professional services are competitively solicited and a price for the contract is negotiated prior to contract execution. This process will be documented, along with the Town's determination for use of an RFQ, rather than Invitation to Bid (ITB) or a Request for Proposals (RFP).

**Final Deliverable:** An executed contract for professional engineering services.

**Prerequisite Dependencies or Actions:** Execution of a Subrecipient Agreement, Lee County review of procurement documentation, Lee County authorization to execute a contract for Engineering Services.

**3. Completion of Project Design and Permitting: Award + 22 Months.**

The Florida Certified Engineer selected for this project will complete all project design and permitting activities. Throughout project design, the project engineer will work closely with Town Staff responsible for project oversight. The project engineer will provide comprehensive services for the Parks and Recreation Revitalization project in Fort Myers Beach, while utilizing existing plans and project documentation to ensure efficient and cost-effective delivery of services. These services include conducting developing conceptual and detailed designs for the revitalization projects, with a particular focus on resiliency against natural disasters and climate-related hazards. For projects with existing plans, specifications, or contract documents, the project engineer will review those documents to ensure accuracy and completeness, while evaluating the requirements for resilient construction methods. The engineer will ensure regulatory compliance and assist with permitting, while managing the project from inception to completion, including construction supervision and coordination with contractors. The engineer will provide additional services, as needed, such as surveys, geotechnical assessments, wetlands delineations, etc. The engineer will also work closely with the Town and Tidal Basin to ensure that all final contract documents address the federal provisions required by

Appendix II to 2 CFR Part 200, mitigation activities required by the final ERR, and applicable terms and conditions of the CDBG-DR Subrecipient Agreement, such as Section 3, Davis-Bacon, utilization of MBE/WBE contractors and subcontractors, registration with SAM.gov, confirmation of debarment and suspension status for all contractors and subcontractors, etc.

Final Deliverable: Permit documents for project construction; plans, specifications, and contract documents for solicitation of construction bids.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services.

#### 4. Completion of the Environmental Review Record (ERR): Award + 22 Months.

Concurrently with project design and permitting efforts, the Town will work with Tidal Basin and Gouras & Associates to compile the HUD-required environmental review record. Activities for compilation of the ERR may include, but are not limited to: compilation of project information for distribution to interested federal, state, local, and tribal stakeholders; coordination of stakeholder feedback related to project information; compilation of an 8-Step Process (if required); completion of HUD-issued environmental worksheets to assess possible areas of impact; analysis of publicly available environmental resources such as EPA's NEPAAssist Tool, USFWS's iPac Tool, the National Wetlands Inventory, and others, to assess potential environmental impacts; publication of required public notices for floodplain and/or wetlands impacts (when applicable), Findings of No Significant Impact (FONSIs), and Notices of Intent to Request Release of Funds (RROFs). Should interested stakeholders request or require additional studies or reports of a technical nature (e.g., wetlands delineations, ESA's, Cultural Resources Surveys, etc.), the Town will task the project engineer with completion of said studies or reports and will coordinate ensure that interested stakeholders are able to review requested documentation.

Upon certification of the ERR, the Town will publish required public notices, consider comments received, and submit the final ERR package, including HUD Form 7015.15, to Lee County for review and issuance of Authority to Use Grant Funds (AUGF). The Town will ensure that no choice-limiting actions are taken prior to issuance of AUGF.

Final Deliverable: A certified Environmental Review Record and receipt of AUGF from Lee County

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; execution of a project-specific Task Order with Tidal Basin, which will include compilation of the ERR.

#### 5. Completion of Construction Procurement: Award + 26 Months.

The Town of Fort Myers Beach will competitively solicit bids for each component of the Parks and Recreation revitalization project in accordance with 2 CFR 200.320(b)(1) and applicable Florida Statutes. Based on guidance from the project engineer, the Town may choose to separately solicit bids for each component of the project or combine solicitation documents to capture economies of scale. The engineer will compile Opinions of Probable Construction Costs for each bid package prior to acceptance of bids. After bids are accepted, the engineer will review all bids received to ensure that bid prices are reasonable and that the low bidder is qualified to complete the scope of work. The Town will take the affirmative steps listed at 2 CFR 200.321(b) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when



possible. The project engineer will coordinate all pre-bid and pre-construction conferences, in conjunction with the Town and Tidal Basin, during which critical federal compliance requirements will be reviewed in detail (e.g., Davis-Bacon Act Requirements, Section 3 Requirements, MBE/WBE outreach requirements, prohibition on participation of debarred or suspended entities, etc.).

Final Deliverable: One or more executed construction contract(s) for Parks and Recreation Revitalization projects.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF.

#### 6. Completion of Construction Activities: Award + 45 months.

The construction contractor(s) procured by the Town of Fort Myers Beach will construct each component of the project in accordance with the plans, specifications, and contract documents issued by the project engineer and the Town of Fort Myers Beach. The project engineer will closely oversee construction activities to ensure quality of work, and the Town, with support from Tidal Basin, will oversee and document compliance with applicable labor standards and Section 3 requirements. Throughout this phase, the general contractor will submit weekly Certified Payroll Reports to ensure that workers are paid in accordance applicable wage rates. The general contractor will also submit documentation of Section 3 compliance on a weekly, monthly and quarterly basis to ensure adherence to quantitative benchmarks and qualitative efforts.

Final Deliverable: Completion of Parks and Recreation Revitalization project construction activities; Delivery of as-builts for each component of the project.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities.

#### 7. Project Closeout: Award + 48 Months.

Upon completion of construction activities, the Town and Tidal Basin will work with Lee County to submit all documentation required for closeout of the Subrecipient Agreement.

Final Deliverable: Lee County acceptance of final closeout documentation.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities; Completion of Construction Activities.

### Monthly spending plans and proposed draw down schedules



The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 48-month period of performance for completion of the Parks and Recreation Revitalization project. Estimated project spending and drawdowns total \$9,961,000.00.

Month 1 – Month 4: \$10,375.00 per Month (Through completion of engineering procurement).

Month 5 – Month 22: \$38,784.72 per Month (Through completion of design, permitting, and completion of the environmental review record).

Month 23 – Month 26: \$18,231.25 per Month (Through construction procurement).

Month 27 – Month 45: \$479,859.21 per Month (Through construction completion).

Month 46 – Month 48: \$10,375.00 per Month (Through completion of project closeout).

### Proposed reporting for outcomes achieved

The Town will hold regularly scheduled status meetings with the consultant team as well as the hired engineer and construction contractor(s) to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Section VI: Reports of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Section VI: Reports.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the Parks and Recreation Revitalization project is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the project timeline on track, adaptable, and transparent to all stakeholders involved. Regularly scheduled status meetings with the Town, the Town's consultant team, and the project engineer are a critical component of the Town's approach to project activities. These meetings serve multiple purposes, including providing a forum for continuous progress monitoring and enabling the Town and the teams to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the project outcomes remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Section VI: Reports of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The

variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the consultants and engineering teams are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the project continues to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a completed project on schedule that will benefit the Town for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the project is conducted with the highest levels of efficiency, transparency, and accountability.

### **Subrecipients plan to ensure the project is timely, draws are completed on time, and reports are complete and accurate**

The Town of Fort Myers Beach will ensure that the project is completed in a timely manner by establishing detailed project timelines, including milestones and deliverables for each phase of project activities. Regular update meetings will be held with project professionals and construction contractors to monitor progress in accomplishing milestones and deliverables, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges. Regular reporting will be compiled based on feedback from the project engineer and reviewed by Town staff to ensure accuracy and consistency with known project milestones and deliverables statuses. Actual drawdown of project funds will be based on contract amounts and the payment terms and conditions contained therein; as such, the drawdown schedule established in this project application may be modified once contractual obligations are known. Throughout the life of the project, Town staff will review invoices submitted by project professionals and construction contractors to ensure that the invoices are accurate based on both the payment provisions of contract documents and completed project milestones and deliverables, thereby ensuring that funding draws are consistent with work performed.

## Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its Parks & Recreation Revitalization Program prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed project activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

For the Newton Park Beach Facility, the Town utilized preliminary engineering estimates for construction of the Seven Seas Cottage. This estimate included engineering fees of approximately 9% of construction costs. For construction of ADA compliant restaurants, native plantings, and beach-friendly parking areas, the Town estimated construction costs based on experience with other revitalization projects of similar size and scope. A 9% fee for engineering services was budgeted, consistent with the engineering fees included in the preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

For the Old San Carlos & Time Square Lighting Project construction activities, Town staff utilized estimates from local contractors as a basis for preliminary costs of replacement of all wiring, poles, and fixtures. Engineering fees were estimated at 9% consistent with the engineering fees included in preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)).

For the Bay Oaks Community Pool Project, Town staff utilized estimates provided by a regional contractor that is qualified to implement a project of this size and scope as a basis for preliminary construction costs. The Town budgeted basic engineering and design services at approximately 11% of construction costs, consistent with FEMA Cost Curve A for a \$4.25 million construction budget ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

The Town budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Programs limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. Activities may include project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings,

strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization project.

**Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the project is completed on time and within budget**

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of construction activities, engineering design and permitting, and ADCs. Should the firm fixed price, lump sum method of contracting not be appropriate for any category of required services, the Town may use a time-and-materials type contract that includes a ceiling price; however this method of contracting will only be used after a determination that no other contract type is suitable, consistent with 2 CFR 200.318(j). Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary. The Town will hold regularly scheduled status meetings with the consultant teams, the project engineer, and the construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

**Describe the actions that will be taken to implement the project after construction completion. Describe how the finished project will be maintained and updated**

Upon completion of each component of the Parks and Recreation Revitalization project, the Town of Fort Myers Beach will implement a detailed operations and maintenance (O&M;) plan to ensure the long-term functionality of that component. The estimated annual cost for O&M; includes routine inspections, preventive maintenance, repairs, and upgrades to address wear and tear. These tasks will be performed by trained Town staff, ensuring familiarity with the project improvements and prompt attention to any issues. The costs will be covered through a combination of municipal budget allocations and potential grants or subsidies (when available) aimed at supporting resilience of public facilities. This proactive approach to funding O&M; will help safeguard the investment in

the public facilities.

**Describe how the project is innovative, based on national best practices, and designed in accordance with an existing evidence-based program**

During proposal scoring, consideration will be given to the selection of an engineering firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to projects in post-disaster coastal communities. Incorporation of this as a selection metric in the RFQ and ITB will ensure that the selected engineering firm and construction contractor is experienced, forward-thinking, and innovative as well as being capable of providing actionable designs that can be of function and utility in both short- and long-term Town development.

The commitment to innovation, eco-friendly design, and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to the Parks & Recreation Revitalization Program, particularly in the context of post-disaster and coastal community resilience. This commitment is operationalized through the selection process for an engineering firm, ensuring that the chosen firm brings knowledge, experience, and creativity to the project.

Understanding the vulnerability of Fort Myers Beach to extreme weather events, the projects will be reconstructed to better withstand future storms and environmental stressors. This involves not only the selection of robust building materials, but also the integration of advanced drainage systems to manage stormwater effectively and prevent flooding—a critical improvement over the previous infrastructure.

Furthermore, each project designed and implemented through the Parks & Recreation Revitalization Program will prioritize sustainability as a core principle. The new facilities, parks, and lighting grids will use materials and technologies that minimize environmental impact while enhancing operational efficiency. Examples of these types of materials and technologies include LED lighting, low-impact construction practices and traffic management, water management, and well-trained staff to reduce maintenance costs and upkeep.

**Subrecipients plan to oversee cost effectiveness and internal controls of the subgrantee**

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

## **A description of how the subgrantee will coordinate with other planning, community development, and/or recovery or resilience projects and initiatives that are underway**

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other planning, community development, and/or recovery or resilience projects and initiatives that are underway.

As such, The Town of Fort Myers Beach will coordinate Parks and Recreation Revitalization project activities with existing planning, community development, and resilience initiatives to maximize efficiency and ensure comprehensive community benefits. Collaboration with ongoing public facility and resilience projects will be a priority. By aligning components of the parks and recreation revitalization project with these initiatives, the Town can leverage shared resources and expertise.

The Town will engage with local planning and development departments to integrate the parks and recreation revitalization project into the broader community development strategy. This integration will ensure that the project supports and enhances other ongoing and planned improvements in the area, such as housing developments, transportation upgrades, and public space enhancements.

By coordinating with other projects and initiatives, the Town of Fort Myers Beach aims to create cohesive and resilient public facilities that not only meet immediate needs, but also prepare the Town's public facilities for future challenges. This collaborative approach will enhance the effectiveness and sustainability of parks and recreation improvements and contribute to the overall resilience and development of the town.

Furthermore, the Town of Fort Myers Beach was awarded for a Comprehensive and Long-Term Recovery Plan through the Lee County Recovery and Resiliency Planning Program. As the projects included in the Town's parks and recreation revitalization project are important to the elimination of blight and the recovery and future growth of the island, this project will be foundational to future parks and recreation planning recommendations identified in that plan.

## **Describe how the subgrantee will coordinate with other partners carrying out related activities and/or projects**

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other partners carrying out related activities and/or projects.

The Town of Fort Myers Beach will coordinate with various partners to enhance the impact of the Parks and Recreation Revitalization project to the Town of Fort Myers Beach. As needed, the Town may conduct meetings or workshops with neighboring municipalities and interested local stakeholder organizations to share information regarding this project and promote alignment with other parks and recreation initiatives. Interdepartmental coordination within the Town's government will ensure cohesive planning. Collaboration with utility providers and contractors will optimize service

integration and reduce construction conflicts. This collaborative approach will ensure the project's success and contribute to the community's long-term resilience and development.



### **A description of the area of the need that will be addressed**

The Parks and Recreation Revitalization Project aims to address critical needs in Fort Myers Beach following the unprecedented destruction caused by Hurricane Ian. This project will address blight caused by the hurricane and significantly improve infrastructure and safety by replacing and updating the entire street lighting system in the downtown area, particularly Old San Carlos and Time Square, which were left dangerously dark after the hurricane. This enhancement will improve public safety, reduce crime, and create a more inviting environment for residents and visitors; this is also the first step toward the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south. The project will also reconstruct essential facilities such as the Bay Oaks Community Pool and Newton Park Beach Facility, restoring vital recreational and educational resources crucial for community wellness. These facilities will offer safe spaces for physical activity, social interaction, and educational programs.

Environmental resilience is another key focus. New structures will be built above base flood elevations with reinforced foundations, roofs, and high-impact glass to ensure they withstand future storms and environmental challenges. The project will incorporate sustainable practices, including energy-efficient systems like LED lighting and solar panels, and eco-friendly materials for construction and landscaping. Turtle-compliant lighting will be installed near the beach to protect local wildlife. The project also prioritizes historical and cultural preservation by rebuilding the historical "Seven Seas" cottage at Newton Park, transforming it into an elevated and resilient education center that honors the area's history and provides a space for learning about local heritage and environmental conservation.

The project will enhance community well-being by addressing blight caused by the hurricane, restoring the Bay Oaks Community Pool and other parks, providing essential recreational spaces that contribute to physical and mental health. These spaces will foster community bonding and offer places for residents and visitors to gather, play, and relax. Ensuring all new buildings and facilities are ADA-compliant will make the parks and recreational areas accessible to all community members, including those with disabilities.

Economic recovery is more likely when blighted areas are made safe, useful and accessible, and this recovery is a crucial aspect of the project. Revitalizing downtown lighting and improving public spaces will attract more visitors, supporting local businesses and contributing to the economic recovery of Fort Myers Beach. Enhancing the aesthetic appeal and safety of the area will help restore the town's vibrant tourism sector. The construction and ongoing maintenance of these facilities will create job opportunities, further aiding in the town's economic revitalization.

By addressing these critical needs, the Parks and Recreation Revitalization Project will play a pivotal role in the comprehensive recovery of Fort Myers Beach, ensuring it becomes a safer, more resilient, and vibrant community.

### **A description of the intended impact the plan will have on the community and area of high need**





The Parks and Recreation Revitalization Project is expected to have a profound impact on the community of Fort Myers Beach, particularly in areas of high need. By addressing blight caused by Hurricane Ian through restoring and enhancing key public facilities and parks, the project will significantly improve the quality of life for residents and visitors. The reconstruction of the Bay Oaks Community Pool and the Newton Park Beach Facility will provide essential recreational and educational resources, promoting physical health, mental well-being, and community engagement. The updated and expanded facilities will also serve as safe, inclusive spaces for people of all ages and abilities, fostering a sense of unity and belonging. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, enhancing connectivity and the overall aesthetic appeal of the downtown area.

Moreover, the installation of a modern, energy-efficient lighting system in the downtown area will enhance public safety, reduce crime, and support local businesses by making the area more attractive and accessible. This improvement will boost the local economy by drawing more visitors and encouraging tourism. The project's emphasis on sustainability and resilience, including the use of eco-friendly materials and construction practices, will not only protect the environment but also ensure that the community is better prepared for future storms and environmental challenges.

By addressing these high-need areas, the Parks and Recreation Revitalization Project will help Fort Myers Beach recover from the devastating impacts of Hurricane Ian, rebuild its infrastructure, and strengthen its social and economic fabric. The project aims to create a vibrant, resilient, and sustainable community where residents can thrive and visitors are welcomed, thereby restoring the town's charm and vitality.

## **A description of the intended beneficiaries of the project, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the project**

The intended beneficiaries of the Parks and Recreation Revitalization Project in Fort Myers Beach encompass a diverse cross-section of the community, including residents, visitors, and particularly vulnerable populations as defined by HUD. Geographically, this includes all of Census Tracts 601 and 602. All residents of those Tracts are considered intended beneficiaries, including HUD-defined vulnerable populations within those areas. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%.

While this project will benefit all residents of the island, this project will significantly benefit the elderly and disabled by ensuring that all new facilities, such as the Bay Oaks Community Pool and Newton Park Beach Facility, are fully ADA-compliant, providing accessible and safe spaces for recreation and social engagement. Additionally, the project will support the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

Once this project is implemented, families with children will benefit from enhanced recreational opportunities and educational programs that promote physical activity and



learning. Local businesses will also see a positive impact as improved infrastructure and increased tourism will drive economic recovery and growth. The project is designed to foster inclusivity and support for all community members, including low- and moderate-income families, by creating public spaces that are welcoming and accessible to everyone.

By prioritizing the needs of vulnerable populations throughout the Town, the project aims to enhance the quality of life for all residents, ensuring a more resilient, vibrant, and inclusive community.

A project area map and corresponding beneficiary data from the HUD Low and Moderate Income Summary Data (LMISD) dataset and mapping tool is attached.

**The applicable census tracts and block groups that are projected to benefit from the project. Census data can be found here: [Low- and Moderate-Income Area Data](#)**

|   | Census Tract      | Block Group |
|---|-------------------|-------------|
| 1 | 0601.02           | 1,2,3,4,5   |
| 2 | 0602.01           | 1,2,3       |
| 3 | 0602.02 / 0602.03 | 1,2 / 1,2   |

## The types of entities benefitting from the plan

- ☒ Residents
 ☒ Businesses
- ☒ Local Government
 ☐ Other:

- If “Residents” is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the project

|                                |      |
|--------------------------------|------|
| Total Number of Beneficiaries: | 6670 |
| Total LMI Beneficiaries:       | 2055 |

**The target populations from the table below who will benefit from the project**

- ☒ Populations presumed by HUD to be LMI persons:
  - Abused children
  - Elderly persons (62 and older)
  - Battered spouses
  - Homeless persons
  - Severely disabled adults (as defined by the Census)
  - Illiterate adults
  - Persons living with AIDS
  - Migrant farm workers
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
  - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
    - Geography
    - Markets
    - Prevalent housing stock and tenure
    - History
    - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
  - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

**A description of the method used to identify the intended beneficiaries of the project if it were implemented**

The Town's Parks & Recreation Revitalization Program will benefit all current and future residents and business owners (the intended beneficiaries) in the Town of Fort Myers Beach.

According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. As such, the Parks and Recreation Revitalization Project will thoughtfully consider the needs of the elderly and disabled populations in Fort Myers Beach through several key improvements designed to enhance accessibility, safety, and overall quality of life. All new facilities, including the Bay Oaks Community Pool and the Newton Park Beach Facility, will be fully ADA-compliant, ensuring that these spaces are accessible to individuals with mobility impairments. This includes the installation of ramps, wide pathways, and accessible restrooms to facilitate easy movement throughout the parks.

Additionally, the project will incorporate features that support needs of elderly residents, such as shaded seating areas and rest zones that provide comfortable spots to relax and socialize. Improved lighting systems in the downtown area and parks will enhance visibility and safety, reducing the risk of accidents for those with limited vision or mobility and enhancing connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

By prioritizing the needs of the elderly and disabled, the Parks and Recreation Revitalization Project aims to create inclusive, welcoming environments that support the health, well-being, and active participation of all community members in Fort Myers Beach.

**A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement**

The Town of Fort Myers Beach notified the public of its intention to apply for infrastructure funds through the Lee County – CDBG Critical Infrastructure program. Notice was published in a newspaper of local circulation in block/display ad format on Friday, May 17, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person. Interested parties were invited to make public comments at the Town Meeting held on Monday, May 20, 2024; written comments were accepted through Thursday, May 23, 2024.

No comments were received.

## A description and justification of the proposed costs

The total project budget for rehabilitation of the North Island Water Tower Complex is estimated at \$10,673,000.00. Additional information regarding detailed budget line items is provided below:

Construction Activities: \$9,165,000 Total. The Parks and Recreation Revitalization Project in Fort Myers Beach will involve comprehensive construction activities aimed at restoring and enhancing key public facilities and parks. Additional detail regarding each project is provided below:

Bay Oaks Community Pool Project (\$4,675,000). Construction activities will include demolition of damaged structures, including the hard deck, slide, and mechanical systems, construction of a new facility to house public restrooms and staff offices, full replacement of the hard deck and slide structure, and restoration of the pool basins. Infrastructure upgrades will include new drainage systems, lighting, and landscaping to improve functionality and aesthetics. All new structures will be ADA-compliant, with ramps, accessible restrooms, and pathways to ensure inclusivity.

Old San Carlos & Time Square Lighting Project (\$495,000). Construction activities will include clearing of old, damaged streetlights and poles, installation of new panel/switch boxes, installation of new wiring and conduit, and installation of 46 new streetlights and poles with turtle-compliant lighting fixtures. These improvements will enhance public safety by ensuring the entire downtown area is well-lit and inviting for both residents and visitors, and will mark an important first step in the Town's plan to create a "park corridor" that connects Bayside and Time Square.

Newton Park Beach Facility (\$3,995,000). Construction activities will include removal of any remaining storm-damaged structures, construction of a new elevated, resilient educational and environmental center, and construction of ADA-compliant restroom facilities. Project designs will consider resiliency measures such as reinforced foundations, roofs, high-impact glass, and water-resistant sealants. Environmental restoration efforts will include planting of native grasses and shrubs to mitigate erosion and flooding. A beach-friendly parking lot will also be constructed using eco-friendly materials, with spaces for buses and bicycles to promote greener transportation options. The new facility and surrounding areas will be fully ADA-compliant, with ramps, accessible restrooms, and wide pathways.

Engineering Fees: \$668,500 Total. Engineering funds will be utilized for costs associated with basic engineering and design services normally performed by an engineering firm on construction projects. Such services include preliminary engineering analysis, preliminary design, final design, and construction-phase professional services.

Permitting / Studies: \$50,000.00 Total. Funds specific to permitting and studies will be utilized for costs related to permitting activities and other studies that may be necessary throughout the life of the project. Permitting includes all activities necessary for issuance of a required permit, such as initial assessment of permits required, development of permit applications, submission of permit applications, and coordination with permitting agencies from application submission to issuance of a permit. Other studies include any other studies that may be needed to secure permitting, complete the Environmental Review Record, or ensure that engineering and design of project components; this may include geotechnical reports, topographical surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.

Construction-Phase Engineering & Inspection (CEI): \$256,500 Total. Funds for CEI services will be utilized for costs related to basic construction management activities. These may include activities such as daily or weekly site inspections and monitoring of construction methods to meet specified standards; site supervision to ensure safety and efficiency on the construction site, adhering to regulations and best practices; compliance monitoring to verify adherence to local, state, and federal regulations, ensuring all necessary permits are obtained and maintained; and compilation of detailed CEI Reports to track construction progress, including daily logs and inspection reports.

Activity Delivery Costs: \$533,000 Total. ADC funds will be utilized for project specific direct costs that are integral to the delivery of the project, including management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of one or more construction contractors and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization Project and will be integral to the delivery of the final project.

### **A description of whether the project will be implemented with applicant staff, vendor support and/or other**

The project will be implemented by a team comprised of Town staff and vendor support. Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, including Mr. Andrew Hyatt, Mr. Frank Kropacek, and Mr. Joe Onzick. To supplement staff expertise and capacity, the Town has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. Tidal Basin Group is further supported by Gouras & Associates, LLC, whose team members collectively have more than 70 years of combined experience working with state and federal funding, including CDBG-DR funding, and projects of all scopes and sizes.

The Town will competitively procure the services of an engineering firm licensed in the state of Florida to complete all design, permitting, other studies, and construction-phase engineering and inspection.

The Town will competitively procure one or more properly licensed construction contractors to implement all construction activities based upon the plans, specifications, and contract documents developed by the project engineer.

**A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable**

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services and one or more contractual agreements for construction services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

**Contract A - Contractual Activity Delivery Services:**

The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to supplement Town staff in project-specific activity delivery services. An existing contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for project-specific activity delivery services. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance. Timeframe associated with Contract A: Award + 1 month through project closeout.

Dependencies associated with Contract A: Issuance of an award for planning funds.

**Contract B - Engineering, Permitting, and CEI Services (including other studies):**

The Town of Fort Myers Beach will competitively procure a Florida-licensed professional engineering firm to complete all project engineering and design, secure all necessary permitting, perform all construction-phase oversight, and complete other studies that may be required throughout the life of the project. Upon project award, the Town will develop procurement documents and solicit Statements of Qualifications from firms qualified to perform these services. The Town anticipates that funding under this contract will be expended as follows:

- Engineering and Design Services: 75% of Basic Engineering Fee expended consistently throughout project design; 5% of Basic Engineering Fee expended throughout construction bidding; 20% of Basic Engineering Fee expended throughout construction phase activities.
- Permitting and Other Studies: 100% of Permitting/Other Study Fees expended during the project design phase.
- Construction-Phase Engineering and Inspection: 100% of CEI Fees expended consistently throughout the construction phase.

Timeframe associated with Contract B: Award + 4 months to Award + 45 months.

Dependencies associated with Contract B: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract. To address and control for dependencies, the Town will ensure that an RFQ for solicitation of engineering services developed promptly upon award of project funding.



**Contract C - Construction Activities:**

The Town of Fort Myers Beach will competitively procure one or more qualified and licensed construction companies to construct the project based on the plans, specifications, and contract documents prepared by the project engineer. A determination of the number and nature of construction contracts will be made during preliminary engineering and due diligence. At this time, the Town has scheduled consistent expenditure of funding throughout the project's construction phase; however, this may require modification if engineering due diligence determines that multiple construction contracts should be procured for independent implementation of each component.

Timeframe associated with Contract C: Award + 27 months to Award + 45 months.

Dependencies associated with Contract C: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract; Completion of project design and permitting; Completion of Construction Procurement(s); Execution of one or more Construction Contract(s). To address and control for dependencies, the Town will regularly coordinate with the project engineer to ensure that pre-construction activities are progressing on-budget and on-schedule.





## Budget Form

| Description                     | CDBG-DR Funds Requested | Leveraged Funds | Project Cost   |
|---------------------------------|-------------------------|-----------------|----------------|
| Activity Delivery Costs         |                         |                 |                |
| Environmental Review Costs      | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| File Management                 | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Inspections                     | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Program Administration          | \$533,000.00            | \$0.00          | \$533,000.00   |
| Source of External Funds        | N/A                     |                 |                |
| Construction                    |                         |                 |                |
| Bonding/Insurance               | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Construction Management         | \$256,500.00            | \$0.00          | \$256,500.00   |
| Source of External Funds        | N/A                     |                 |                |
| Debris Removal                  | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Demolition                      | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Fixtures/Equipment              | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| General Contractor              | \$9,165,000.00          | \$0.00          | \$9,165,000.00 |
| Source of External Funds        | N/A                     |                 |                |
| Landscaping                     | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Maintenance of Traffic          | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Mobilization                    | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Site Preparation                | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Planning/Design                 |                         |                 |                |
| Development of Bidding Document | \$68,500.00             | \$0.00          | \$68,500.00    |
| Source of External Funds        | N/A                     |                 |                |



## Budget Form

|                          |              |        |              |
|--------------------------|--------------|--------|--------------|
| Drawings/Blueprints      | \$600,000.00 | \$0.00 | \$600,000.00 |
| Source of External Funds | N/A          |        |              |
| Land Acquisition         | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Permitting               | \$50,000.00  | \$0.00 | \$50,000.00  |
| Source of External Funds | N/A          |        |              |
| Site Plan                | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Surveys                  | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Testing                  | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |

### Funding Summary

| CDBG-DR Funds Requested | Leveraged Funds | Project Cost    |
|-------------------------|-----------------|-----------------|
| \$10,673,000.00         | \$0             | \$10,673,000.00 |

## Duplication of Benefits

| Source of Funds                                               | Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Status of Funds |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| FEMA Building Resilient Infrastructure and Communities (BRIC) | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| FEMA Hazard Mitigation Grant Program (HMGP)                   | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| FEMA Public Assistance (PA)                                   | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Identified      |
| Purpose of Funds:                                             | <p>The Town is currently working with FEMA to secure funding that would contribute to the implementation of this project; however, at this time, funding has not been committed. No other leveraged funding sources are currently committed to the organization for this project. Should leveraged funds be committed to this project, the Town of Fort Myers Beach will promptly notify Lee County and adjust CDBG-DR funding awarded to ensure that no Duplication of Benefits exists.</p> |                 |
| Local (Municipal) Funds                                       | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Other CDBG-DR Funds (from Florida COM)                        | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Other State Funds                                             | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Resilient Florida                                             | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| US Army Corps of Engineers (USACE)                            | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| US Department of Transportation                               | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Total                                                         | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |

**Describe how the proposed project integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to, reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines**

The proposed Parks and Recreation Revitalization Project integrates several mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, thereby enhancing the resilience and safety of the Town of Fort Myers Beach. Key measures include constructing all new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations with features such as reinforced foundations and roofs, high-impact glass, and water-resistant sealants. These features are designed to withstand future storms and flooding, significantly reducing risks to people and property. The installation of modern, energy-efficient lighting systems, including turtle-compliant fixtures, will ensure the downtown area remains well-lit and safe, even during adverse weather conditions, minimizing public service interruptions and enhancing safety for the most vulnerable community members.

The project also includes environmental restoration efforts, such as planting of native grasses and shrubs at Newton Park Beach, which will naturally mitigate erosion and flooding, thereby protecting the coastline and adjacent properties. The use of eco-friendly materials and sustainable construction practices will further reduce the environmental footprint and enhances the long-term resilience of the facilities. By incorporating these mitigation measures, the project aims to protect community lifelines, ensuring that essential public services and recreational spaces remain functional and accessible during and after natural disasters. These strategies collectively contribute to the town's ability to withstand and recover from climate-related risks, safeguarding the well-being of all residents, particularly those most vulnerable to such hazards.

**Identify the risks or hazards being reduced and the impacts that those hazards have on people and property**

The Parks and Recreation Revitalization Project addresses and mitigates several key risks and hazards that significantly impact the Town of Fort Myers Beach. Chief among these are flooding, storm surges, and extreme weather events, which have historically caused extensive damage to infrastructure, public facilities, and private properties. By constructing new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations and incorporating reinforced foundations, roofs, high-impact glass, and water-resistant sealants, the project reduces the risk of structural damage from future flooding and hurricanes. These measures protect people and property by ensuring that facilities can withstand severe weather conditions, thereby minimizing the likelihood of catastrophic loss and displacement.

Additionally, the project addresses the hazard of inadequate lighting in the downtown area, which can lead to increased crime and accidents, especially during severe weather when visibility is compromised. By installing modern, energy-efficient lighting systems, including turtle-compliant fixtures, the project enhances public safety and reduces the risk

of accidents and criminal activity, particularly benefiting vulnerable populations such as the elderly and disabled.

Environmental hazards such as erosion and flooding are also mitigated through the project's planting of native grasses and shrubs at Newton Park Beach. These natural barriers help protect the coastline and adjacent properties from erosion and flood damage. By addressing these risks, the project not only protects physical structures and property but also ensures the continuity of essential public services and recreational spaces, thereby safeguarding the overall well-being and resilience of the community.

**Describe the value of the proposed project to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the project will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data**

The Parks and Recreation Revitalization Project offers immense value to the Fort Myers Beach community by restoring and enhancing critical public facilities and parks, thereby improving the overall quality of life for residents and visitors. In the short term, the project will provide immediate benefits by reviving key recreational spaces like the Bay Oaks Community Pool and Newton Park Beach Facility, offering safe and accessible venues for physical activity, social interaction, and educational programs. This revitalization will foster community cohesion and promote physical and mental well-being. For instance, the ADA-compliant features and modern amenities will ensure that all community members, including the elderly and disabled, can fully utilize these spaces, enhancing inclusivity and participation. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, creating a continuous, accessible, and enjoyable environment for all community members.

Quantitatively, the project is expected to increase local tourism and support economic recovery by making Fort Myers Beach more attractive to visitors. The improved lighting in the downtown area will enhance safety, potentially reducing crime rates and accidents, which can be measured through local law enforcement and public health data.

In the long term, the project will significantly enhance community resilience by incorporating robust construction standards and sustainable practices that mitigate the risks of future natural disasters. Buildings constructed above base flood elevations with reinforced materials will withstand extreme weather events, reducing the likelihood of costly repairs and displacement. The environmental restoration efforts, including dune restoration and native plantings, will provide natural barriers against erosion and flooding, protecting both property and natural habitats.

During extreme events, these resilient infrastructure improvements will ensure resilient public facilities have minimized disruptions and facilitate quicker recovery. Qualitatively, this resilience can be seen in the community's ability to maintain normalcy and safety during adverse conditions, fostering a sense of security and stability among residents. Overall, the project's blend of immediate benefits and long-term resilience strategies will create a safer, more vibrant, and sustainable community in the Town of Fort Myers Beach.



Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 05/24/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 173.165.214.193

**EXHIBIT G****CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Public Facilities Infrastructure Program* NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

**Certificate(s) of Insurance**

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place:

**(1) Workers' Compensation Coverage**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(2) Commercial General Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(3) Business Auto Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(4) Directors & Officers Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout

the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(5) Fidelity Bonding

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.



**EXHIBIT H (SIGNATURE REQUIRED)****CERTIFICATIONS**  
**CDBG-DR COMPLIANCE PROVISIONS**  
*Housing and Infrastructure*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the Agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the Subrecipient certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

**1. NATIONAL OBJECTIVES**

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

## **2. DUPLICATION OF BENEFITS**

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

- a. CDBG-DR Funds as Match (Infrastructure):** When applicable and approved by the County, Subrecipients may use grant funds to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or U.S. Army Corps of Engineers (USACE). By law, only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Furthermore, Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or which funds are also made available by, FEMA or USACE.

For all match activities, Subrecipients must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

## **3. EQUAL EMPLOYMENT OPPORTUNITY**

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. Title VI of the Civil Rights Act of 1964:** This act provides that no person shall

be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a

qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

#### 4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

## **5. ENVIRONMENTAL PROTECTION AND ACTS**

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, if a subrecipient is a state agency or an agency of a political subdivision of a state, it and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## 6. **CONSTRUCTION STANDARDS**

While the following Construction Standards requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the *CDBG-DR Construction Standards Procedure* for Housing Programs and applicable program guidelines.

- a. **Green and Resilient Building Standards in Housing:** All new construction or rehabilitation of residential structures must meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC–700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification

from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD

- b. Rehabilitation of Nonsubstantially Damaged Residential Buildings (Housing):** Per Federal Register Notice 88 FR 32046, for rehabilitation other than the rehabilitation of substantially damaged residential buildings described in 6.a. above, the Subrecipient must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

- c. Broadband Infrastructure in Housing:** Per Federal Register Notice 88 FR 32046, any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four units must include installation of broadband infrastructure.

**d. Elevation Standards (Housing and Infrastructure):**

- i. ***Housing***: All new construction or rehabilitation of residential structures and located in the one percent annual chance (or 100-year) floodplain must be elevated at least two feet above the base flood elevation.
  - ii. ***Mixed-use and Non Residential***: Non-residential structures and infrastructure must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
  - iii. ***Critical Actions***: Structures and services defined at 24 CFR 55.2(b)(3) and within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2-3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
- e. Planning and Design (Infrastructure):** All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the Subrecipient is required to provide resilience performance metrics as identified by the County.

- f. Flood Control Structures (Infrastructure and Non-Residential Structures):**

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining approval from the County, HUD, and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Additional requirements and approval steps are outlined under Federal Register Notice guidance at 88 FR 32046.

## **7. AFFORDABILITY PERIOD REQUIREMENTS (HOUSING)**

While the following minimum affordability period requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the applicable program guidelines regarding affordability period requirements.

- a. **New Construction and Rehabilitation of Affordable Rental Housing:** To meet the LMI housing national objective, a Subrecipient who implements rental housing activities that will result in the new construction or rehabilitation of five or more units, assisted with CDBG-DR funds, must rent to LMI households at affordable rents as described within the *Lee County Action Plan for CDBG-DR Funds*. Furthermore, the minimum timeframes, enforceability, and other related requirements acceptable for compliance can be found under the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the of 24 CFR 92.252(e). The County has adopted these requirements and spells out affordability restriction enforcement and minimum affordability periods within the respective program guidelines, which Subrecipients are required to follow, where applicable.
- b. **New Construction of Homes Built for LMI Households:** For Subrecipients who implement activities where there is a construction of new single-family units (four units or less) for homeownership that will meet the LMI housing national objective criteria, the County has set affordability restrictions, which follow minimum affordability period and enforcements mechanisms of the HOME requirements set at 24 CFR 92.254(a)(4). Subrecipients whose activities are applicable to these requirements must follow the County's respective program guidelines regarding affordability restrictions, resale or recapture requirements, affordability period requirements, and all other requirements prescribed under the applicable guidelines regarding affordability.

## **8. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, VETERAN OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, veteran owned businesses, and labor



surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses, veteran owned businesses, and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's and veteran's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, veteran owned, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, veteran owned businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

#### **9. POLITICAL ACTIVITY**

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

#### **10. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT**

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## **11. DEBARMENT AND SUSPENSION**

A contract award ([2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

By executing this Agreement or contract, the Subrecipient or Contractor verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs and will not enter into contracts with any entity that has been suspended or debarred from federal contract work.

## **12. CONFLICT OF INTEREST**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

### **13. DOMESTIC PREFERENCES FOR PROCUREMENTS**

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

### **14. DAVIS-BACON AND RELATED LABOR STANDARD ACTS**

- a. **Davis Bacon Act:** Subrecipient or Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 31413148) and 29 CFR Subtitle A, Parts 1, 3 and 5, as applicable, to construction, alteration, and repair contracts over \$2,000.00.
- b. **AntiKickback Act of 1986:** Subrecipient or Contractor shall ensure that all contracts comply with the AntiKickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.
- c. **Contract Work Hours and Safety Standards Act of 1962:** Subrecipient or Contractor shall ensure all contracts comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. § 3702) which requires that workers

receive overtime compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- d. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this agreement or contract. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract").
- e. Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

### **15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

The work to be performed under this contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3), and implementing regulation at [24 CFR, Part 75](#). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The responsibilities outlined in 24 CFR Part 75.19 include:

- a. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- b. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

#### **Section 3 Clause**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- c. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- d. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

**16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (42 U.S.C. 4601 et seq.) – “URA”**

The Subrecipient understands that activities and projects it undertakes with CDBG–DR funds may be subject to the URA at 49 CFR Part 24, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in Federal Register Notices 88 FR 3198 and 88 FR 32046. In such Notices, HUD waived or provided alternative requirements for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

Subrecipients are required to adopt the County’s Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to undertaking any activity assisted with CDBG-DR funding which involves relocation. The written policy must be available to the public, describe the relocation assistance that the Subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

In the event of displacement because of a federally funded award, Subrecipients must comply with the URA, for any household, regardless of income, which is involuntarily and permanently displaced, and to comply with Section 104(d). The County also provides notice to Subrecipients that any demolition or disposition of public housing is

subject to Section 18 of United States Housing Act of 1937, as amended, and 24 CFR Part 970.

**17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

**18. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS**

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
- 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

**c. Contractors shall:**

- 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

**19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

**20. PATENTS**

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or



his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

## **21. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

## **22. DRUG-FREE WORKPLACE ACT OF 1988**

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

### **23. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)**

Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
  2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract
- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
  - b. If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

### **24. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION**

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

## **25. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

## **26. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

## **27. ACCESS TO RECORDS – MAINTENANCE OF RECORDS**

Lee County, the Department of Housing and Urban Development, the Comptroller

Version 2.0, 10/01/2024

General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County’s final closeout of the grant.

**28. INSPECTION**

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

BY: 

Signed by:

Andrew Hyatt

2F6F25CEB4A742D...

Signature

Andrew Hyatt

Name (print)

1/13/2025 | 10:43 AM EST

Date

**EXHIBIT I****CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

**1. INITIAL RISK ASSESSMENT**

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

**2. RISK ASSESSMENT**

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

**3. SPECIAL CONDITIONS**

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

**A. ENVIRONMENTAL REVIEW SPECIAL CONDITION**

The environmental review for this project is currently classified as “Exempt” under 24 CFR §58.34. However, upon the completion of 30% design, the Subrecipient must initiate the process for an Environmental Assessment (EA) pursuant to 24 CFR Part 58.

The Subrecipient shall adhere to the following requirements upon reaching 30% design completion:

1. **Notification to the County:** The Subrecipient must notify their Grant Manager and Lee County in writing via email or a VistaTRAK note that the project has reached 30% design completion.
2. **Submission of Designs:** The Subrecipient must upload the 30% design documents to VistaTRAK for County review.
3. **Restriction on Activities:** The Subrecipient must not execute any construction contracts, commit funds, or undertake any choice-limiting actions as defined in 24 CFR §58.22, until an Authority to Use Grant Funds (AUGF) has been issued by HUD.
4. **Coordination with Lee County:** The Subrecipient must coordinate closely with Lee County to ensure compliance with all applicable federal, state, and local environmental review requirements.

Failure to comply with these conditions may result in noncompliance findings and the withholding of reimbursement for project expenses until compliance is achieved and documented.

**EXHIBIT J**  
**SUBRECIPIENT STAFF ORGANIZATION**  
**Parks & Recreation Revitalization**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

**Section 1: Subrecipient Contract Administrator**

**1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

**2. Contact Information**

Name: Andrew Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: andyhyatt@fmbgov.com

**Section 2: Project Manager**

**1. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

## **2. Contact Information**

Name: Frank Kropacek  
Title: Operations and Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: fkropacek@fmbgov.com

## **Section 3: Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 4: Section 504 Coordinator**



**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: amy@fmbgov.com

**Section 5: Fair Housing Coordinator****1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: Joe Onzick  
Title: Finance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: JOnzick@fmbgov.com

## **Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? If so how many, and list names.

n/a

**EXHIBIT K****CDBG-DR PROGRAM SUBROGATION AGREEMENT**

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between Town of Fort Myers Beach (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's application for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

Town of Fort Myers Beach  
DR10263  
Exhibit K  
Page 3

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

**Warning:** Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

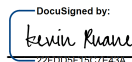
**TOWN OF FORT MYERS BEACH**

**LEE COUNTY**

By: Andrew Hyatt

By: Kevin Ruane

Signature:  Signed by: Andrew Hyatt  
2F8F28CEBAA742D...

Signature:  DocuSigned by: Kevin Ruane  
22FD09F15C7E43A...

Title: Town Manager

Title: Chair

Date: 1/13/2025 | 10:43 AM EST

Date: 1/21/2025 | 9:02 AM EST

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10262 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE NORTH ISLAND WATER TOWER PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

Notification to Lee County of key employee change is required in accordance with the CDBG-DR Subrecipient Agreement

**What the action accomplishes:**

To stay in compliance with the CDBG-DR requirements

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

On November 20, 2023, the Town and Lee County Board of County Commissioners entered into a CDBG-DR Subrecipient Agreement for the North Water Tower. Under this agreement, if the Town has a key employee change, the Town is required to notify Lee County within 30 days (Exhibit I, CDBG-DR Special Terms and Conditions, under Initial Risk Assessment). Exhibit J - Subrecipient Staff Organization - Andy Hyatt and Joe Onzick have to be removed and Will McKannay to be added as the Town Manager and Financial Director.

**Attachments:**

1. NS 25-204 , Water Tower Key Officials First Amendment
2. Exhibit A to Resolution 25-204 DR10262
3. Attachment A to First Amendment to Agreement
4. Fully\_Executed\_DR10262\_-\_Town\_of\_Fort\_Myers\_Beach\_North\_Island\_Water\_Tower

**Financial Impact:**

Direct impact is to be out of compliance with CDBG-DR

6. **Alternative Action**

Do not accept the recommendations and forfeit the agreement

7. **Management Recommendations:**

Accept the recommendation to revise CDBG-DR Exhibit J

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Final Approval - 6/10/2025



## **RESOLUTION NUMBER 25-204**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10262 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE NORTH ISLAND WATER TOWER PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

**WHEREAS**, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

**WHEREAS**, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager, and Joe Onzick, as Financial Director, with William McKannay; and

**WHEREAS**, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

**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 First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

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 by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

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

ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT  
LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
CDBG-DR SUBRECIPIENT AGREEMENT**

**THIS FIRST AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10262 – Critical Infrastructure North Island Water Tower.

**WITNESSETH:**

**WHEREAS**, on November 20, 2023, the Town and Lee County entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that named the Town’s key personnel involved in the project; and

**WHEREAS**, Exhibit J also required the Town to notify Lee County within 30 days in the event of a change in key personnel; and

**WHEREAS**, recently William McKannay was appointed to serve as the Town Manager and will also be assuming the role of Financial Director replacing Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director; and

**WHEREAS**, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Florida Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, including municipalities; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Florida Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701, Florida Statutes related to social government and corporate activism are also added by virtue of this Amendment

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

**1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

**2. Public Records Compliance.** Provider agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Provider does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Provider or keep and maintain public records required by the public agency to perform the service. If the Provider transfers all public records to the public agency upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Florida Statute, **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS**

## **AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2731 OAK STREET  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
FMBPUBLICRECORDS@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Florida Statutes.** Any indemnification or agreement to defend or hold harmless by the Town specified in the Agreement shall not be construed as a waiver of the Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by the Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** The Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Provider shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Provider is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Provider will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Provider will also be liable for any additional costs to the Town

as a result of the termination of this Agreement in accordance with this paragraph. Provider affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Provider is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Provider requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Provider is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Provider hereby certifies that Provider is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Provider further hereby certifies that Provider is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Provider understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Provider to civil penalties, attorney's fees, and/or costs. Provider further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Provider (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

**8. Disclosure Requirements for "Foreign Countries of Concern."** Provider shall comply with the disclosure requirements set forth in section 286.101 (3) (a), Florida Statute, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the

source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statue: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statue], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

**9. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the State of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive the right to file any action, suit or proceeding in Federal Court, or remove any action, suit or proceeding to Federal Court.

**10. Attorneys’ Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

**11. Public Entities Crime or Convicted Vendor List.** Provider agrees and assumes a continuous duty to disclose to the Town if the Provider or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**12. Data Management; Notice of Breach.** Provider shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**13. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Provider based on Provider’s social, political or ideological interest. Provider agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

**14. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**15. No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**16. Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**17. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows: None

**IN WITNESS WHEREOF,** the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Florida Statue, Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

**Provider:**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** Lee County, Florida

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

\_\_\_\_\_  
**Vose Law Firm, Town Attorney**



## EXHIBIT J

### **SUBRECIPIENT STAFF ORGANIZATION**

#### **North Island Water Tower**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XIX. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

***{Lee County to REVIEW Subrecipient information below to create a profile for entrance into the County's grant management system, and for which the Subrecipient can update and modify when changes are made.}***

#### **Section 1: Subrecipient Contract Administrator**

##### **1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XIX. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XIX. NOTICES of the Agreement.

##### **2. Contact Information**

Name: William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

## **Section 2: Project Manager**

### **3. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

### **4. Contact Information**

Name: Frankie Kropacek  
Title: Operations & Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [fkropacek@fmbgov.com](mailto:fkropacek@fmbgov.com)

## **Section 3: Section 3, Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*

## **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 4: Section 504 Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*

### **2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2371 Oak Street Fort Myers Beach FL, 33931  
Telephone: 239-765-0202  
Email: amy@fmbgov.com

## **Section 5: Fair Housing Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as

applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

## **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

**Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? NO

**CDBG-DR SUBRECIPIENT AGREEMENT***The following information is provided pursuant to 2 CFR 200.332(a)(1)*

|                                                                                   |                                                                                                      |
|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <b>Federal Award Identification Number (FAIN)/<br/>HUD CDBG-DR Grant No.:</b>     | B-23-UN-12-0002                                                                                      |
| <b>Assistance Listing Number (formerly CFDA #):</b>                               | 14.218 Community Development Block<br>Grants/Entitlement Grants                                      |
| <b>Federal Register Notice &amp; Public Law:</b>                                  | FR-6393-N-01: PL-117-328                                                                             |
| <b>Federal Award (HUD Grant Agreement) Date:</b>                                  | 11/20/2023                                                                                           |
| <b>Agreement No.:</b>                                                             | DR10262                                                                                              |
| <b>Responsible Entity (RE):</b>                                                   | Lee County                                                                                           |
| <b>Lead and Responsible Department:</b>                                           | Office of Strategic Resources and Government Affairs                                                 |
| <b>CDBG-DR Funding Source/Program:</b>                                            | US Department of Housing and Urban Development                                                       |
| <b>Subrecipient Name:</b>                                                         | Town of Fort Myers Beach                                                                             |
| <b>Subrecipient ID (Unique Entity Identifier via<br/>SAM.gov):</b>                | UKJXK48PKKH2                                                                                         |
| <b>Subrecipient Period of Performance (Start Date):</b>                           | 1/1/2025                                                                                             |
| <b>Subrecipient Period of Performance (End Date):</b>                             | 12/30/2028                                                                                           |
| <b>Total Amount Obligated via Agreement:</b>                                      | \$4,681,844.90                                                                                       |
| <b>Project/Activity ID(s):</b>                                                    | DR10262                                                                                              |
| <b>Federal Award Program/Project/Activity<br/>Description:</b>                    | CDBG-DR/Critical Infrastructure/Town of Fort Myers<br>Beach/North Island Water Tower                 |
| <b>Does the Federal award include an Indirect Cost<br/>Rate for Subrecipient?</b> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                                  |
| <b>If Yes, is the Indirect Cost Rate a:</b>                                       | <input type="checkbox"/> Federally Negotiated Rate %<br><input type="checkbox"/> De Minimis Rate 15% |

**Official County Contact for Award:** Jeannie Sutton, Director, Strategic Resources and Government Affairs;  
2115 Second St., Fort Myers, FL 33901; Phone: (239) 822-8438; Email: [JSutton@leegov.com](mailto:JSutton@leegov.com)

**SUBRECIPIENT AGREEMENT BETWEEN**  
**THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AND**  
**Town of Fort Myers Beach**

This **AGREEMENT** between Lee County, a political subdivision and charter county of the State of Florida, hereinafter referred to as “**COUNTY**,” and Town of Fort Myers Beach, a local government/municipality registered under the laws of Florida Statute, Chapters 165 and 166, hereinafter referred to as “**SUBRECIPIENT**” will become effective upon the date (“Effective Date”) signed by the Board of County Commissioners (BOCC).

**SECTION I:**            **RECITALS**

**WHEREAS**, pursuant to Public Law (P.L.) 117-328, the “Department of Housing and Urban Development Appropriations Act, 2023” (hereinafter referred to as the “Appropriation Act”), and the “Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice,” 88 Federal Register (FR) 32046 (May 18, 2023); (hereinafter referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the “Action Plan”) for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as “Grantee.”

**WHEREAS**, the **COUNTY** believes it is in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to **SUBRECIPIENTS** for the benefit of Lee County residents. CDBG-DR funding made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee’s Federal award, for which the use of the subaward funds must conform to the **COUNTY’S** intent as stated in the applicable Notice of Funding Availability (NOFA) Application, and attachments, and/or exhibits, and all other terms and conditions as specified.

**WHEREAS**, the **COUNTY** has legal authority to disburse funds as a subaward under the Federal award and to enter into this Agreement with the **SUBRECIPIENT**, who by signing this Agreement, represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the Action Plan has been developed to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, therefore the **COUNTY** and the **SUBRECIPIENT** agree as follows:

**SECTION II:**            **SCOPE OF WORK AND ACTIVITIES**

The **COUNTY** provides the **SUBRECIPIENT** the award under this Agreement to perform project activities under the **COUNTY’S** CDBG-DR Critical Infrastructure Program. Any proposal, application, or exhibit associated with this CDBG-DR funding award are binding and incorporated herein as a part of this **AGREEMENT**.

The **SUBRECIPIENT** shall submit to the **COUNTY** the required information and documentation to complete *Exhibits A (Scope of Work and Activities – Program/Project Activity Overview) & B (Scope of Work and Activities – Project Activity Scope of Work Description)*. If there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and content requirements of the Exhibit, the **COUNTY'S** has sole and absolute discretion; the **COUNTY'S** decisions shall prevail.

The **SUBRECIPIENT** must provide a statement of work, in accordance with 24 CFR 570.503 detailing the work to be performed, a schedule for completing the work, and a budget. The statement of work as prescribed by the **COUNTY** under *Exhibits A and B* must provide sufficient data and detail to provide a sound basis for the **COUNTY** to monitor performance.

The **SUBRECIPIENT** agrees to abide by all applicable state and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY'S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

**SUBSECTION II.A. – MID REQUIREMENT:** The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

**SUBSECTION II.B. – ELIGIBLE ACTIVITIES:** CDBG–DR funds are provided for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 United States Code (U.S.C.) 5301 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of related risk. The **SUBRECIPIENT** must utilize CDBG-DR funds, as prescribed under 24 CFR 570 Subpart C – Eligible Activities, and for alternative requirements and waivers as prescribed within the Federal Register Guidance. Furthermore, the **SUBRECIPIENT** shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the **COUNTY'S** CDBG-DR Critical Infrastructure Program.

**SUBSECTION II.C. – NATIONAL OBJECTIVE:** The **SUBRECIPIENT** must meet the criteria for one of the CDBG-DR program's national objectives. For this scope of work, the **SUBRECIPIENT** must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan:

- ☒ Activities designed to meet community development needs having a particular urgency (“Urgent Needs”)

**SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”:** The **COUNTY** is responsible for informing the **SUBRECIPIENT** of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the **COUNTY**, the **SUBRECIPIENT** is responsible for documenting proof of the designation. For recovery activities, the **SUBRECIPIENT** must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the **SUBRECIPIENT** must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the **COUNTY'S** mitigation needs assessment in the MID areas under its Action Plan; (3) is a CDBG-DR eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the



**COUNTY** may require the **SUBRECIPIENT** to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The **COUNTY** will spell out specific requirements for the **SUBRECIPIENT**, its project, and the project’s eligible activity under Exhibit A – Scope of Work and Activities – Program/Project Activity Overview and Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description.

### **SECTION III:**            **TERM OF AGREEMENT**

This Agreement shall begin on 1/1/2025 (“*the Effective Date*”) and end on 12/30/2028, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement shall have the same force and effect as a written signature for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides written justification that is satisfactory to the **COUNTY**, in its sole discretion, and the **COUNTY’S** authorized organizational representative approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

### **SECTION IV:**            **AGREEMENT MODIFICATIONS AND AMENDMENTS**

**SUBRECIPIENT** must submit a written request, via the County’s approved method for submitting such request, for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). The **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA), the BoCC, or their designee may approve amendments to the Agreement, in accordance with the **COUNTY’S** *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*. As noted within the Manual, the **COUNTY** reserves the right to review the request from the **SUBRECIPIENT** and determine whether an amendment is required or whether County Manager or BOCC approval is needed.

The **COUNTY** also affirms that it may unilaterally modify or amend any Manuals referenced throughout this Agreement without prior notification or agreement by the **SUBRECIPIENT**. Additionally, the **COUNTY** affirms that while it will seek agreement with the **SUBRECIPIENT** on proposed amendments to any Exhibits which are referenced throughout this Agreement, the **COUNTY** may unilaterally modify or amend any such Exhibits **COUNTY**, in its sole discretion, deems necessary to comply with federal policies or regulations.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved

activity or beneficiaries must first receive HUD approval before consideration by the **COUNTY** to amend the Agreement.

**SECTION V:**                    **COMPENSATION AND ALLOWABLE PAYMENTS**

**SUBSECTION V.A. – AGREEMENT PAYMENT:** The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$ 4,681,844.90. The **COUNTY’S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

The **SUBRECIPIENT** will provide supporting documentation of eligible expenses as stated within this SUBSECTION and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the **COUNTY’S** annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY’S** CDBG-DR Critical Infrastructure Program. The **SUBRECIPIENT** shall expend the allocation as follows:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$4,447,752.66                     |
| Activity Delivery Funds               | \$234,092.24                       |
| TOTAL                                 | \$4,681,844.90                     |

Furthermore, “not to exceed” line items and activity budgets under this Agreement shall be identified within the approved budget under the *Project Budget and Expense (Sources and Uses) Worksheet*.

After the **COUNTY** has approved funding and the Office of Strategic Resources and Government Affairs (SRGA) has issued an Agreement related to the funded project, the **SUBRECIPIENT** should sign and return the Agreement within 30 days for execution. In addition, the **SUBRECIPIENT** should begin to draw down funds as agreed upon within the project milestones set out under the *Project Schedule and Milestones* reporting deliverable unless additional time is authorized by the **COUNTY**. Failure to return the signed Agreement or begin spending funds within the agreed upon time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** attests that necessary written administrative procedures, processes, and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes, and fiscal controls must, at a minimum, comply with applicable state and Federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement. The **SUBRECIPIENT** agrees to remedy any deficiencies in its written administrative procedures, processes, and fiscal controls identified by the **COUNTY** or duly authorized CDBG-DR authorities.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the Payment Request Form(s) as outlined under SUBSECTION VI.A. REPORTING AND AGREEMENT

DELIVERABLES. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are ineligible for funding with CDBG-DR funds.

If funds are not available to fully execute the project associated with this Agreement because of actions by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or the provision of SECTION XIII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

**SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS):** The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which are incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to and/or require repayment from the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation to meet regulatory and statutory requirements, including cross-cutting requirements. Funds expended for activities that do not meet a HUD national objective will be required to be repaid by the **SUBRECIPIENT** to the **COUNTY**. If, as a result of monitoring or audit, the **COUNTY** determines that submitted costs are not documented, a payment may be deferred. If costs are found to be unallowable and payment has been made, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is established by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to disallowed cost, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for disallowed costs or fines resulting from acts of noncompliance.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the

Federal Government, in each of its sole discretion, to be an ineligible expenditure or a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the **COUNTY** under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XIX. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **COUNTY'S** provision of training, technical assistance, quality assurance and quality control reviews are in no way intended to alleviate the **SUBRECIPIENT** of the responsibility to administer activities in accordance with all federal, state, and local requirements, including the requirements outlined within this Agreement. The **SUBRECIPIENT** acknowledges full responsibility to return funds to the **COUNTY** in the event that HUD or other auditing agency determines that activities or costs are disallowed.

The **SUBRECIPIENT** will report all suspected or verified fraud to the **COUNTY**, regardless of whether the suspected or verified fraud is associated with disallowed cost or other perceived harm to the **SUBRECIPIENT** or the **COUNTY**.

Mandatory Disclosure of Violations: In accordance with the revised 2 CFR 200.113 and the requirements set forth in FAR 73 FR 67064, the **SUBRECIPIENT** must promptly disclose, in writing, to the **COUNTY**, the federal awarding agency, and the Office of Inspector General, any credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations, including violations under the False Claims Act. This obligation extends to the **SUBRECIPIENT** and any subgrantees or contractors associated with the federal award. Failure to disclose such violations may result in remedies for non-compliance, including suspension or termination of the award, as outlined in 2 CFR 200.338 and 2 CFR 200.339.

## **SECTION VI:**      **REPORTS AND EXHIBITS**

**SUBSECTION VI.A – REPORTING AND AGREEMENT DELIVERABLES:** The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in the **COUNTY'S** approved system, including monthly performance reports and documentation outlined in all applicable exhibits to enable the Grantee to submit the required reporting to HUD within the Disaster Recovery Grant Reporting (DRGR) system.

The **SUBRECIPIENT'S** monthly reports, include administrative activity, financial activity, and program activity, must include sufficiently detailed summaries of the current status, progress, and completed work. The **SUBRECIPIENT** is responsible for all reporting of work of all contractors, subcontractors, and other entities under contract or agreement related to this Agreement.

At a minimum the following information will be required to be submitted in the system of record by the **SUBRECIPIENT**. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld in accordance with SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) until the reports are completed. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision, reasons for withholding payment, and the remedy for corrective action the **SUBRECIPIENT** must follow. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT'S** reporting deliverables include, but are not limited to, the following information:

1. **Project Schedule and Milestones:** A table or description of the work task, project start and end dates, other significant milestones (e.g., 50% complete), and timelines for the **SUBRECIPIENT** to submit outputs or deliverables to the **COUNTY**.
2. **Project Budget and Expense (Sources and Uses) Worksheet:** The **SUBRECIPIENT** must provide budget narratives and tables to describe all funding sources and the potential uses of those funding sources for the purposes of completing the project. This narrative will include, but may not be limited to, (a) a description and justification of the proposed costs, (b) a description of project implementation support with **SUBRECIPIENT** or vendor staff, (c) sources of leveraged funds committed by the **SUBRECIPIENT** to the project, and (d) timelines for the projected expenditure of CDBG-DR funds.
3. **Payment Request Form:** The means by which the **COUNTY** and the **SUBRECIPIENT** document project and activity expenses and requests for payment. The **SUBRECIPIENT** shall utilize this form when submitting or requesting any costs for payment and the form must be accompanied by legible supporting documentation to indicate the reasonableness, allowability, and appropriate procurement of the expense(s).

As noted under SECTION III. TERM OF AGREEMENT and SECTION V. COMPENSATION AND ALLOWABLE PAYMENTS, all payments are reimbursements for eligible expenses or services defined as uncompensated expenses rendered during the Agreement term and paid prior to the final payment request due date. Copies of supporting documentation are required as part of the Payment Request for review of grant compliance and before payment will be authorized by the **COUNTY** to the **SUBRECIPIENT**. Reimbursement for eligible expenses will be made after review and authorization of a correct and complete Payment Request Form and required back up documentation. In accordance with the Federal Register Guidance, the **COUNTY** must be payor of last resort, meaning that if services are eligible to be billed to any other entity or funding source, including but not limited to, Medicaid, third party insurance or any other entity or funding source, the **COUNTY** will not pay for that service.

Appropriate back-up/supporting documentation may include cancelled checks, vendor invoices, authorized purchase orders, attendance/service logs, other funder invoices, expenditure spreadsheets or other original documentation, as well as a copy of the **SUBRECIPIENT'S** check issued with authorized signature. For construction contracts, inspection reports from qualified officials should be submitted with the appropriate monthly payment request.

The **SUBRECIPIENT** must submit the *Payment Request Form* with an authorized signature. Cancelled checks, paystubs, payroll reports, bank statements, and/or other documentation from vendors that expenses have been paid or services provided may be verified.

As applicable, processing of payment requests is also subject to the requirements and conditions as set forth within the **COUNTY'S Hurricane Ian CDBG-DR Subrecipient Manual**.

4. **Monthly Activity Report:** The **SUBRECIPIENT** must identify information for this report that ties actual, real-time project and expenditure status to the approved activity budget, scope of work, and projected outcomes. Narratives on budget activity, project progress or delays, and performance measures are included within this report.
5. **Demographics and Beneficiary Report:** The **SUBRECIPIENT** must report on data and include documentation, such as maps detailing service areas, number of individual persons benefitting from the project, and other demographic information on households, where applicable, to indicate the public benefit of the project and activity.
6. **Project Amendment Request:** As referenced under SECTION IV. AGREEMENT MODIFICATIONS

AND AMENDMENTS, the **SUBRECIPIENT** must notify the County and provide information on any project or activity changes within a project amendment request for the **COUNTY** to determine whether the request rises to the level of an amendment to the Agreement.

7. **Single Audit Certification Form:** The **SUBRECIPIENT**, if a nonprofit or governmental organization, must complete a form to certify whether it has expended \$750,000 in federal and/or state funding within the **SUBRECIPIENT'S** given Fiscal Year.
8. **Davis-Bacon and Related Acts (DBRA) Labor Standards Reports (as applicable):** When an activity triggers DBRA requirements, the **SUBRECIPIENT** must report and submit information on assigned labor compliance staff, labor compliance review processes and outcomes, bid and contract requirements documentation, work classification and minimum prevailing wage rates, written clearance of labor compliance issue resolutions, file maintenance plans, and payroll review plans.
9. **Section 3 Reports (as applicable):** When an activity triggers Section 3 requirements, the **SUBRECIPIENT** is required to submit data and information on Targeted Section 3 worker labor hours, Section 3 worker labor hours, total worker labor hours, and other qualitative efforts which the **SUBRECIPIENT** and their vendors took in an attempt to reach or achieve Section 3 goals.
10. **Closeout Report:** The **SUBRECIPIENT** must report project completion data and provide documentation of closeout processes in relation to this project and activity(ies).

The **SUBRECIPIENT'S Agreement deliverables (as identified within "Exhibits")**, which the **SUBRECIPIENT** must follow, include, but are not limited to, the following information:

11. **Exhibit A: Scope of Work and Activities – Program/Project Activity Overview:** Brief description on the identified and agreed-upon CDBG-DR Program eligible activity, National Objective to be achieved for the activity and measures, as applicable, the number of individuals benefitting as a result of the project and its activities, and the appropriate CDBG-DR storm tie-back or resilience need being met, in accordance with SECTION II. SCOPE OF WORK AND ACTIVITIES.
12. **Exhibit B: Scope of Work and Activities – Project Activity Scope of Work Description:** Detailed scope of work defining the plan, design, and approach for the activity.
13. **Exhibit C: Financial/Grant Management System Budget Worksheet:** The high level, official budget for the project as approved under SECTION V.A. AGREEMENT PAYMENT. Any adjustments to this budget will require an amendment in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS.
14. **Exhibit D: Indirect Cost Rate Allocation Plan (as applicable):** Pursuant to 2 CFR 200.414, the **SUBRECIPIENT** is entitled to apply the 15% de minimis indirect cost rate without requiring further approval from the **COUNTY**. Alternatively, if the **SUBRECIPIENT** has a federally negotiated indirect cost rate, they may elect to use that rate, which shall be accepted by the **COUNTY** without additional negotiation or approval. The terms of this Agreement shall reflect the applicable indirect cost rate as established under this Exhibit.
15. **Exhibit E: Projected Performance Measures and Outcomes Form:** The **COUNTY** will utilize the **SUBRECIPIENT'S** detailed scope of work to establish and project out specific performance metrics which the **SUBRECIPIENT** is required to meet to as a condition of project completion and closeout. The **COUNTY** will select the performance measure based on the eligible activity and proposed scope of work approved within the Notice of Funding Availability (NOFA) Application for the **Critical Infrastructure Program**.

16. **Exhibit F: Application:** The **SUBRECIPIENT'S** approved application is attached to this Agreement for identification and understanding of **SUBRECIPIENT'S** responses to critical project components.
17. **Exhibit G: Certificate(s) of Insurance:** In accordance with SECTION X.B. INSURANCE REQUIREMENTS, the **SUBRECIPIENT** must supply insurance coverage for the implementation of the project. This Exhibit will contain those required insurance coverages of the **SUBRECIPIENT**.
18. **Exhibit H: Certification of CDBG-DR Compliance Provisions:** This Exhibit outlines the compliance provisions which the **SUBRECIPIENT** must follow as a requirement of the federal CDBG-DR funding award. The **SUBRECIPIENT** must certify adherence with these conditions.
19. **Exhibit I: CDBG-DR Special Terms and Conditions:** The **COUNTY** may identify specific conditions, including but not limited to, training, technical assistance, capacity building, and policy development, which the **SUBRECIPIENT** must complete as a condition of receiving the CDBG-DR funding award.
20. **Exhibit J: Subrecipient Staff Organization:** In addition to annual certifications of continued operations, the **SUBRECIPIENT** is required to provide evidence of staff who will be responsible for conducting certain actions during project implementation. This Exhibit contains the contact information of those individual staff members.
21. **Exhibit K: CDBG-DR Program Subrogation Agreement:** As noted under SUBSECTION XIII.E. DUPLICATION OF BENEFITS and the Federal Register Guidance, the **SUBRECIPIENT**, as a recipient of federal assistance, must sign a Subrogation Agreement before the **COUNTY** can disburse CDBG-DR assistance to the **SUBRECIPIENT**.

An electronic signature or a scanned copy of the report with signature is acceptable for all reports or exhibits included above for which signatures are required. The **COUNTY** will instruct the **SUBRECIPIENT** on the approved System of Record under which the **SUBRECIPIENT** is expected to provide this data and information.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notates in the *Subrecipient Agreement Document Checklist*, the required forms and reports the **SUBRECIPIENT** must submit. These reports and forms include, but are not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, closeout reports, and periodic certifications as described above.

The **SUBRECIPIENT** should submit all reports and forms electronically in a computer-readable format using the approved System of Record submission method specified by the **COUNTY**. When required, reports or exhibits must be certified by signature. An electronic signature is acceptable for all reports, forms, and attachments within the *Subrecipient Agreement Checklist*.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

**SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS:** The **COUNTY** or its agents may also require the **SUBRECIPIENT** to submit additional non-project related reports, documentation, and information which are beneficial to determine the **SUBRECIPIENT'S** capacity, compliance, and performance related to this this Federal award compliance. The **COUNTY** may request external reports, including but not limited to, prior and current fiscal year audits, other agency monitoring reports or reviews under other funding sources, organizational

documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, documentation, and information requested by the County or its agents.

## **SECTION VII: AUDITS, MONITORING, AND RECORDS**

**SUBSECTION VII.A. – AUDITS AND INSPECTIONS:** In accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508, the **SUBRECIPIENT** will allow the **COUNTY**, Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the **SUBRECIPIENT'S** non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant (CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

**SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS:** Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** must conduct a single or program-specific audit if it expends \$1,000,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

In accordance with 2 CFR 200.514, a complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs



detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit reports electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any associated corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant expressing an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

**SUBSECTION VII.C. – SUBRECIPIENT RISK ASSESSMENTS AND MONITORING:** In accordance with 2 CFR 200.332, the **COUNTY**, as HUD's Grantee and a pass-through entity, must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. To enable those periodic assessments, the **SUBRECIPIENT** must provide information and documentation as required to the **COUNTY**. The **COUNTY'S** risk assessments results will be used to support the **COUNTY'S** oversight strategies and the level and frequency of monitoring, technical assistance, training to the **SUBRECIPIENT**.

The **SUBRECIPIENT** agrees to permit the **COUNTY** and persons duly authorized by the **COUNTY**, HUD, and other Federal, state, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** including interviews of any clients and employees of the **SUBRECIPIENT** to assess satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY** and persons duly authorized, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring will include: (1) reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate how activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies documented by the **COUNTY** within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted deficiencies as defined by the **COUNTY**. The **SUBRECIPIENT'S** failure to correct or provide the **COUNTY** with accepted justification for the deficiencies within the time specified by the **COUNTY** may result in withholding of payments or being

deemed in breach or default of this Agreement and may result in the termination of this Agreement.

In response to **SUBRECIPIENT** deficiencies or other instances of capacity concerns prior to this Agreement, the **COUNTY** may also impose additional conditions on the use of the CDBG-DR funds, as noted under *Exhibit I – CDBG-DR Special Terms and Conditions*. This Exhibit ensures future compliance through trainings, technical assistance, and capacity building in an effort to correct or avoid early noncompliance.

**SUBSECTION VII.D. – RECORDKEEPING REQUIREMENTS:** The **SUBRECIPIENT** must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance's Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the **SUBRECIPIENT** and the **COUNTY** for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with the longer of the records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334 and State of Florida GS1-SL, except that the **SUBRECIPIENT** must:

1. Retain records for individual CDBG-DR activities for 5 years after the Agreement has ended, as prescribed in State of Florida GS1-SL.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied and for 5 years following that satisfaction.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income, and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under *Exhibit H – Certification of CDBG-DR Compliance Provisions*.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors, and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XIII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the **COUNTY**

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

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

## **SECTION VIII: CONTRACTOR STATUS**

**SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR:** It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **COUNTY'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and the **COUNTY**, and the **COUNTY** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including, but not limited to, unpaid minimum wages and/or overtime premiums.

**SUBSECTION VIII.B. – SUBCONTRACTS:** Primary roles and responsibilities of the **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the **SUBRECIPIENT** must have a written contract. The **SUBRECIPIENT** must provide written notice to the **COUNTY** of all subcontractors, as well as provide copies of all contracts entered into with subcontractors, upon the **COUNTY'S** request. Procurement and/or bidding of non-primary roles and responsibilities must be awarded on a fair and non-collusive basis and must be in compliance with all applicable Lee County, State of Florida, and Federal procurement standards at 2 CFR 200.318-327. The **SUBRECIPIENT** shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the **SUBRECIPIENT** shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Agreement, *Exhibit H – Certification of CDBG-DR Compliance Provisions*, and *Exhibit F – Application*, as applicable, and must be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

**SUBSECTION VIII.C. – CONTRACTS AND FEDERAL PROCUREMENT STANDARDS:** If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women's business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable state and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;
7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to *Exhibit H – Certification of CDBG-DR Compliance Provisions*)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

## **SECTION IX:**           **CONFLICTS OF INTEREST**

The **SUBRECIPIENT** agrees 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 activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict-of-interest policy that complies with the process for promptly identifying and addressing such conflicts.

Any potential conflict of interest shall be reported using the **COUNTY'S** disclosure form.

## **SECTION X:**           **RISK MANAGEMENT**

**SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY:** To the fullest extent permitted by applicable

law, **SUBRECIPIENT** shall protect, defend, indemnify, save and hold the **COUNTY**, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the **SUBRECIPIENT** resulting from the **SUBRECIPIENT'S** work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the **SUBRECIPIENT'S** performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the **COUNTY**, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, the **SUBRECIPIENT** hereby agrees to indemnify the **COUNTY** for all reasonable expenses and attorney's fees incurred by or imposed upon the **COUNTY** in connection therewith for any loss, damage, injury, liability, or other casualty. The **SUBRECIPIENT** additionally agrees that the **COUNTY** may employ an attorney of the **COUNTY'S** own selection to appear and defend any such action, on behalf of the **COUNTY**, at the expense of the **SUBRECIPIENT**. The **SUBRECIPIENT** further agrees to pay all reasonable expenses and attorney's fees incurred by the **COUNTY** in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the **SUBRECIPIENT** and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

#### **SUBSECTION X.B. – INSURANCE REQUIREMENTS**

##### **INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance **namimg Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (*Exhibit G – Certificate(s) of*

**Insurance**). Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before the expiration date.

1. **Workers' Compensation**: Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:
    - \$100,000 per accident
    - \$500,000 disease limit
    - \$100,000 disease limit per employee
  2. **Commercial General Liability**: Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
    - \$500,000 bodily injury per person (BI)
    - \$1,000,000 bodily injury per occurrence (BI)
    - \$500,000 property damage (PD) or
    - \$1,000,000 combined single limit (CSL) of BI and PD
- The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.
3. **Business Auto Liability**: The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
    - \$100,000 bodily injury per person (BI)
    - \$300,000 bodily injury per occurrence (BI)
    - \$100,000 property damage (PD) or
    - \$300,000 combined single limit (CSL) of BI and PD
  4. **Directors & Officers Liability**: Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
  5. **Fidelity Bonding**: Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

#### **INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS**

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

**SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION**: The **COUNTY** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

#### **SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION**

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2 CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of

any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

**SUBSECTION XI.A. – SUSPENSION:** The **COUNTY** reserves the right to suspend, withhold, withdraw, or recapture funding for failure to comply with the requirements of this Agreement. If the **SUBRECIPIENT** fails to submit required documents by the due date, the **COUNTY** can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

**SUBSECTION XI.B. – EVENTS OF DEFAULT:** If any of the following events occur (“Events of Default”), the **COUNTY** may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in SUBSECTION XI.C. REMEDIES or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**, is or becomes false or misleading in any respect, or if the **SUBRECIPIENT** fails to keep or perform any of the obligations, terms, or covenants in this Agreement with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;
2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY'S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties' employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar causes wholly beyond both Parties' control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delays or disruptions in the **SUBRECIPIENT'S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, at its sole discretion, will determine if the delay is excusable under this

Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

**SUBSECTION XI.C. – REMEDIES:** If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days, the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XIX. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment; Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for any failed/incomplete activities, ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
4. Exercise any corrective or remedial actions, including but not limited to:
  - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
  - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - c. Advise the **SUBRECIPIENT** to suspend, discontinue, or refrain from incurring costs for any activities in question.
5. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend, or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

**SUBSECTION XI.D. – TERMINATION BY COUNTY:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.



If the financing for this project is contingent upon funding sources other than Lee County as identified in the *application* for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

**SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** may, to the extent authorized by law, withhold payments to the **SUBRECIPIENT** for the purpose of set-off until the exact amount of damages due to the **COUNTY** from the **SUBRECIPIENT** is determined.

In accordance with 24 CFR 570.503, upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

## **SECTION XII: USE AND REVERSION OF ASSETS, REAL PROPERTY**

The **SUBRECIPIENT** must ensure that any equipment or fixed assets purchased in whole or in part with CDBG-DR funds be adequately safeguarded and assure such assets are used solely for authorized purposes. The purchase, use, management and disposition of equipment and other capital assets must comply with 24 CFR 200.313, 24 CFR 200.439, the applicable Federal Register Guidance, and 24 CFR 570. See SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION regarding the revision of any CDBG-DR funds or assets upon termination or expiration of this agreement. Per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income, and shall be returned to the **COUNTY** within 30 days of receipt of the proceeds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$25,000 must (1) be used to meet a national objective until five years after expiration or termination of this Agreement (24 CFR 570.505), unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

## **SECTION XIII: ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it

is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

**SUBSECTION XIII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS:** The **COUNTY** will not intentionally award Agreements to any **SUBRECIPIENT** who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

**SUBSECTION XIII.B. - E-VERIFY REQUIREMENTS:** The **SUBRECIPIENT** must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

**SUBSECTION XIII.C. – NATIONAL OBJECTIVE:** All activities funded with CDBG-DR funds must meet

the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under SUBSECTION II.C. NATIONAL OBJECTIVE. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

**SUBSECTION XIII.D. – USE OF FUNDS AND ORDER OF ASSISTANCE:** CDBG–DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, before awarding CDBG-DR assistance for the cost of carrying out the same activity.

The **SUBRECIPIENT** shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description. Exhibit H – Certification of CDBG-DR Compliance Provisions further outlines Duplication of Benefits certifications which the **SUBRECIPIENT** must adhere to. Failure to do so can result in a return of funds as further outlined within this Agreement under SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SUBSECTION XIII.E. DUPLICATION OF BENEFITS.

**SUBSECTION XIII.E. – DUPLICATION OF BENEFITS:** The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under SUBSECTION XIII.D. USE OF FUNDS AND ORDER OF ASSISTANCE. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (see Exhibit K – CDBG-DR Program Subrogation Agreement).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S application**. This notification must include a statement explaining how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable

for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

**SUBSECTION XIII.F. – CIVIL RIGHTS REQUIREMENTS:** The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the **SUBRECIPIENT** assures and certifies the following:

1. That they will comply with all applicable Federal, state and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of Federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project outreach, project, or activity materials including communique in the form of digital (website) media and paper materials.
  - b. Section 109 - Title I of the Housing & Community Development Act of 1974
  - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
  - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
  - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 (“ADA”) (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which gives civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT’S** Single-Point-of-Contact.
3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)
- [Guidelines for promoting Fair Housing for individuals with Limited English Proficiency \(LEP\)](#)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative

marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures can be found on the Fair Housing and Equal Opportunities HUD website.

**SUBSECTION XIII.G. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE:** In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict-of-interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse (FWA) training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such complaints to the **COUNTY**.

**SUBSECTION XIII.H. – INELIGIBLE ACTIVITIES:** The **SUBRECIPIENT** assures that it will not conduct or expend CDBG-DR funds on any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

**SUBSECTION XIII.I. – PROGRAM INCOME:** The **SUBRECIPIENT** shall report to the **COUNTY** all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the **SUBRECIPIENT'S** periodic reporting outlined under SECTION VI. REPORTS AND EXHIBITS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

The **SUBRECIPIENT** must return to the **COUNTY**, prior to closeout, any program income generated by the project and its activities. The **COUNTY** certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists, or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

**SUBSECTION XIII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS:** The **COUNTY**, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the **COUNTY**, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan also details how the **COUNTY** will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website

requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

**SUBSECTION XIII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII):** As previously referenced under SUBSECTION VII.D. RECORDKEEPING REQUIREMENTS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.*

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the SUBRECIPIENT must implement reasonable measures to safeguard Personally Identifiable Information (PII) and other sensitive data. These measures should form part of the SUBRECIPIENT's internal control framework to ensure compliance with federal regulations. The SUBRECIPIENT is responsible for maintaining appropriate safeguards to prevent unauthorized access, use, or disclosure of such information, consistent with cybersecurity best practices and the applicable federal, state, and local laws governing data protection.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a "covered entity," as the law defines that term. Any "personal health information" (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this project and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently "de-identified" to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Methods to accomplish the highest levels of public service coupled with PHI confidentiality will be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

**SUBSECTION XIII.L. – NECESSARY AND REASONABLE REQUIREMENTS:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

**SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK:** In accordance with 2 CFR 200.1 and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free,

nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements").

Any and all patent rights accruing under, or in connection with, the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under, or in connection with, the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the **COUNTY**. If any books, manuals, films, or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to **COUNTY**. Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

**SUBSECTION XIII.N. – FEDERAL TERMS AND CONDITIONS:** For Federal CDBG-DR funded programs, the **SUBRECIPIENT** has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The **COUNTY** outlines full CDBG-DR Compliance Provisions for the **SUBRECIPIENT** under Exhibit H – Certification of CDBG-DR Compliance Provisions and details program management standards within the respective program's manual.

**SUBSECTION XIII.O. – STATE AND LOCAL GOVERNMENT REQUIREMENTS:** The **SUBRECIPIENT** agrees to the following statements as it relates to state and/or local government requirements:

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who

knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).

4. The **SUBRECIPIENT** will comply with and implement this Agreement in a manner satisfactory to Lee County and HUD and consistent with all applicable laws, regulations, and policies and procedures that may be required as a condition of Lee County providing the grant funds, including but not limited to, all applicable program administration and compliance requirements set forth by this Agreement, and in accordance with the CDBG-DR NOFA Application, CDBG-DR Action Plan, and any other documentation previously provided by the **SUBRECIPIENT**, attached as Exhibit F – Application, and made a part hereof.
5. Lee County's provision of grant funds under this Agreement is specifically conditioned on the **SUBRECIPIENT's** compliance with this provision and all terms and conditions of this Agreement, the most recently published version of Lee County's *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*, and the CDBG-DR *Critical Infrastructure Program Policies and Procedures Manual*, which can be accessed on <https://cdbgdr.leegov.com>, and any amendments thereto, related Federal Register Guidance (including Guidance, which is provided under future Federal Register Notices), and the requirements of the authorities cited above, as the same may be amended from time to time.
6. The **SUBRECIPIENT** will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
7. The **SUBRECIPIENT** will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.
8. If needed, **SUBRECIPIENT** may be called upon to assist the **COUNTY** during a natural disaster or emergency. This may include, but is not limited to, the use of the **SUBRECIPIENT'S** facility to assist with Emergency Food Stamp preregistration if the facility is operations and use of staff to assist with case management and post-disaster shelter assessments. **SUBRECIPIENT** will be responsible to notify United Way 211 via phone, email, or through submission of online survey form, immediately after a disaster declaration if the location is accessible and operational and of any **SUBRECIPIENT** staff who are available to assist with recovery efforts.

#### **SECTION XIV: OTHER PROVISIONS AND CONDITIONS**

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.



If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY**.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-DR funds.

#### **SECTION XV: CITIZEN COMPLAINTS**

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt the **COUNTY's** written citizen complaint policy or provide their own policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time for the response is required.

#### **SECTION XVI: LEGAL AUTHORIZATION**

The **SUBRECIPIENT** certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The **SUBRECIPIENT** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation, or any other legal or financial condition that would in any way prohibit, restrain, or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

#### **SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE**

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process, requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.
5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

#### **SECTION XVIII:      AGREEMENT CLOSEOUT**

The **SUBRECIPIENT** must complete a closeout checklist and final closeout reports to ensure complete and final documentation of all finance and program activities. The closeout checklist and reports must be submitted to the **COUNTY** within 90 days after the end date of this agreement.

The closeout checklist must include documentation and certification that:

1. All CDBG-DR funds have been expended within the exception of any closeout liabilities or contingent liabilities (24 CFR 570.509(a)(1));
2. All work financed with CDBG-DR funds has been completed, is eligible, and meets a national objective, including activities financed through escrow accounts, loan guarantees, or similar mechanisms; performance and expenditure reports have been submitted and account for program income and administrative expenditures (24 CFR 570.509(a)(2-5)); and
3. All other responsibilities under this Agreement have been met or the **COUNTY** has determined that there is no further benefit in keeping the Agreement open to secure performance (24 CFR 570.509(a)(6)).

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);
2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);

4. *Final Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

Based on the **SUBRECIPIENT'S** final reports and other relevant information, the **COUNTY** may execute a closeout agreement that specifies closeout costs or contingent liabilities that are subject to payment with CDBG-DR funds after the closeout agreement is signed; continuing responsibilities after closeout; or other provisions appropriate to special circumstances.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a **SUBRECIPIENT** does not affect:

1. The **COUNTY's** right to disallow costs and/or recover funds on the basis of a later audit or other review.
2. The **SUBRECIPIENT's** obligation to return funds due to the **COUNTY** from subsequent refunds, corrections, or other transactions.
3. The **COUNTY** and **SUBRECIPIENT'S** obligation to comply with records retention as specified in 2 CFR 200, Subpart D—Post Federal Award Requirements, Records Retention and Access, including 2 CFR 200.334-338, as modified by 24 CFR 570.502(a)(7)(ii).
4. The **SUBRECIPIENT's** responsibilities for property management and disposition:
  - o For real property in 24 CFR 570.503(b)(7).
  - o For other property, as applicable in 2 CFR 200, Subpart D, Post Federal Award Requirements, Property Standards, including:
    - 2 CFR 200.310 (Insurance coverage).
    - 2 CFR 200.312 (Federally owned and exempt property).
    - 2 CFR 200.313 and 24 CFR 570.502(a)(6) (Equipment).
    - 2 CFR 200.314 (Supplies).
    - 2 CFR 200.315 (Intangible property).
    - 2 CFR 200.316 (Property trust relationship).
    - Audit requirements in 2 CFR 200, Subpart F.

**SECTION XIX:           NOTICES**

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

**SUBRECIPIENT**

Name: Andy Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2525 Estero Boulevard, Fort  
Myers Beach, FL 33931  
Telephone: (239) 313-0895  
Email: andyhyatt@fmbgov.com

**COUNTY**

Name: Jeannie Sutton  
Title: Director  
Agency: Office of Strategic Resources and  
Government Affairs  
Address: 1500 Monroe St., Fort Myers, FL 33901  
Telephone: (239) 822-8438  
Email: JSutton@leegov.com

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Andy Hyatt

Name (printed/typed)

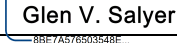
Signed by:  
  
2F8F25CEB4A742D...  
Signature

Town Manager

Title

Glen V. Salyer

Name (printed/typed)

Signed by:  
  
8BE7A57650354BE...  
Signature

Assistant County Manager

Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.

**SECTION XX:           ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.

**IN WITNESS THEREOF**, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, Reports, and Forms as indicated on the *Subrecipient Agreement Document Checklist* to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT: TOWN OF FORT MYERS BEACH**

Signed by:

BY: Andrew Hyatt

Signature

Andrew Hyatt

Name (print)

1/13/2025 | 10:43 AM EST

Date

ATTEST:  
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

Signed by:

BY: Melissa Butler

Deputy Clerk

DocuSigned by:

BY: Kevin Ruane

Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

DocuSigned by:

Amanda L. Swindle

County Attorney's Office



**EXHIBIT A**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROGRAM/PROJECT ACTIVITY OVERVIEW**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Critical Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for program and project eligibility with core HUD CDBG-DR requirements. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record.

**Program/Project Activity Overview**

**Project Name:** North Island Water Tower Complex Rehabilitation

**CDBG-DR Program eligible activity:** Rehabilitation/reconstruction of public facilities

**The National Objective to be achieved for each activity as a result of this Project:** Activities designed to meet community development needs having a particular urgency ("Urgent Needs").

*Per 24 CFR 570.208(c), to comply with the national objective of meeting community development needs having a particular urgency, and activity must be designed to alleviate existing conditions which the grantee certifies:*

1. Pose a serious and immediate threat to the health or welfare of the community;
2. Are of recent origin or recently became urgent;
3. The grantee/subgrantee is unable to finance the activity on its own; and,
4. Other resources of funding are not available to carry out the activity.

*In accordance with FR-6393-N-01, this activity is using the Urgent Need national objective which is allowed for a period of 36 months after the applicability date of the Lee County's Allocation Announcement Notice (May 18, 2023).*

**The method of measuring the National Objective, if LMI:** Not Applicable – activity will not meet a LMI national objective

**The number of individuals benefiting as a result of this Project:**

- Total beneficiaries: 6,670
- Total low/mod beneficiaries: 2,055

**CDBG-DR storm tie-back and/or Mitigation resilience measure:** The Town of Fort Myers Beach was devastated by the unprecedented impacts of Hurricane Ian, and the Town still has many unmet needs today. Prior to Hurricane Ian, two water tanks supplied potable water to the entire island. Since Ian destroyed the North Water Tower Complex, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable

water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable. Reconstruction of the North Water Tower complex with increased resiliency measures will ensure that a critical FEMA lifeline – potable water – is preserved for all residents and businesses in the Town of Fort Myers Beach. Creating a resilient and sustainable network of critical infrastructure is a primary community goal for the Town of Fort Myers Beach, and replacement of the North Island Water Tower and repair / reconstruction of the surrounding complex is foundational for the Town's recovery. The urgency and importance of this project cannot be overstated. Through this project, CDBG-DR funds will be used to address the critical unmet need for a reliable, resilient, and sustainable supply of potable water for all residents and businesses in the Town of Fort Myers Beach. This is a critical infrastructure project that will provide both immediate and long-term impacts for a community that was devastated by Hurricane Ian.

**EXHIBIT B**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Critical Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Project Activity Scope of Work Description ("Work")**

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Critical Infrastructure Program to support the critically necessary replacement and repair of the North Island Water Tower Complex. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for a consistent supply of potable water, consistent with the FEMA Water Systems lifeline category.

The North Island Water Tower Complex is one of two potable water facilities on the island; together, the two facilities were responsible for holding and distributing potable water to all residents and businesses in the Town of Fort Myers Beach. Hurricane Ian heavily impacted the North Island Water Tower Complex, damaging the lower level of the pump building and all above-ground valves and pumps. The storage area and grounds were scoured by 15-feet of storm surge. Post-Ian inspection deemed the tank itself unusable; as such, the Town of Fort Myers Beach has operated with a single water tank since Hurricane Ian. With only a single operational water tank, the Town is in a critical situation because it is more susceptible to potential impacts of future emergency events that could decommission the only remaining source of potable water on the island.

The scope of this critical infrastructure project includes (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach. The project will be constructed in accordance with all current building codes and the control building will be hardened. All improvements will be built in compliance with



current FEMA flood elevations, such that components of the facility and structures themselves are elevated above base flood elevation. The scope of work also includes all design, permitting, and construction-phase oversight services that may be necessary to ensure that the project is implemented successfully. Procurement activities will be conducted in accordance with 2 CFR 200.320 and with applicable Florida Statutes.

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, access to a critical resource such as potable water is paramount to the community. With CDBG-DR funding to support this project, the Town can provide residents with a resilient drinking water supply and system and reliable access to potable water for daily activities, such as drinking, cooking, and cleaning. Completion of this project will enable the town to maintain dependable access to clean drinking water for all residents on the island by building a resilient facility that is more likely to withstand future natural and climate-related hazards than pre-Ian potable water infrastructure.

The project proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, will fully restore and secure a critical FEMA lifeline - potable water supply - for the Town of Fort Myers Beach. The completed project will increase the resiliency of the Town's potable water infrastructure by installing a system designed to withstand future natural and climate-related hazardous events.

By constructing resilient and secure potable water infrastructure, this project will create confidence in local residents and businesses that a dependable supply of water will be available for daily activities such as drinking, cleaning, and cooking. Reliable infrastructure is foundational for continued residential and commercial recovery, development, and growth in areas that were completely devastated by Hurricane Ian.

**Design and Approach:** The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public

administration. Mr. Hyatt will perform general oversight of project implementation and completion.

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Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with

comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### **Major Project Milestones**

| <b>Milestone</b>                         | <b>Due Date</b> |
|------------------------------------------|-----------------|
| Design and Permitting Complete           | 12/31/2026      |
| Construction Begins                      | 04/30/2027      |
| 50% Construction                         | 01/30/2028      |
| Closeout and Final Reimbursement Request | 12/31/2028      |

**EXHIBIT C**  
**FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County’s financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Financial and Grant Management System Budget Worksheet**

As noted within the Agreement, the Subrecipient’s allocation of CDBG-DR funding for this project is broken down in the following manner:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$4,447,752.66                     |
| Activity Delivery Funds               | \$234,092.24                       |
| Total                                 | \$4,681,844.90                     |

**EXHIBIT D**  
**INDIRECT COST RATE ALLOCATION PLAN**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Critical Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Indirect Cost Rate Allocation Plan**

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: **Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.**

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.

**EXHIBIT E****PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and, if applicable, the Subrecipient's approved application in response to the \_ NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

**Projected Performance Measures and Outcomes**

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

| Eligible Activity Type                                        | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
| Rehabilitation/ reconstruction of public facilities           | # of buildings (non-residential)                                                                                   |                 |
|                                                               | <b># of Linear feet of green public improvement</b>                                                                |                 |
|                                                               | # of Non-business Organizations benefitting                                                                        |                 |
|                                                               | <b># of public facilities</b>                                                                                      | 1               |
|                                                               | <b># of Linear feet of Public Improvement</b>                                                                      |                 |
|                                                               | # of Acres wetlands                                                                                                |                 |
|                                                               | # of Linear miles of Public Improvement                                                                            |                 |
|                                                               | # of cable feet of public utility                                                                                  |                 |
|                                                               | <b># of Properties</b>                                                                                             |                 |
|                                                               | <b># of Elevated Structures</b>                                                                                    |                 |
|                                                               | # of Businesses                                                                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects | <b># acres of newly added or improved green space</b>                                                              |                 |
|                                                               | # acres of wetlands created                                                                                        |                 |
|                                                               | # cubic feet of stormwater storage added                                                                           |                 |
|                                                               | % decrease in affluent discharged                                                                                  |                 |
|                                                               | % decrease in area inundated by flooding                                                                           |                 |
|                                                               | % decrease in disruption hours to residents and businesses from impacts of storm events                            |                 |
|                                                               | % decrease in NFIP CRS score                                                                                       |                 |

| Eligible Activity Type                                                    | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                                                                           | % decrease in road closures in target area during a flood event                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects<br>(cont'd) | % decrease water surface elevation level during a flood with a qualifying event                                    |                 |
|                                                                           | \$ estimated flood loss avoidance                                                                                  |                 |
|                                                                           | \$ Funds allocated for water management/flood mitigation improvements                                              |                 |
|                                                                           | \$ Funds allocated for water-quality improvements                                                                  |                 |
|                                                                           | % increase in acres of cropland protected from flooding                                                            |                 |
|                                                                           | % increase in groundwater infiltration                                                                             |                 |
|                                                                           | % increase in number of acres converted to open space                                                              |                 |
|                                                                           | % increase in pumping capacity                                                                                     |                 |
|                                                                           | # linear feet of streams restored                                                                                  |                 |
|                                                                           | # occupied structures in floodplain                                                                                |                 |
|                                                                           | # of acres green infrastructure created                                                                            |                 |
|                                                                           | # of acres green space created                                                                                     |                 |
|                                                                           | # of acres green space preserved                                                                                   |                 |
|                                                                           | # of acres no longer vulnerable to flood events                                                                    |                 |
|                                                                           | # of acres of native vegetation planted                                                                            |                 |
|                                                                           | # of acres with improved multiple hazard risk mapping                                                              |                 |



| Eligible Activity Type                                                    | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                                                                           | # of brownfield acres converted to wetland                                                                         |                 |
|                                                                           | # of buildings (non-residential)                                                                                   |                 |
|                                                                           | # of containment systems constructed                                                                               |                 |
|                                                                           | # of Elevated Structures                                                                                           |                 |
|                                                                           | # of fewer outages of critical facilities and utilities                                                            |                 |
|                                                                           | # of green infrastructure projects constructed                                                                     |                 |
|                                                                           | # of greenspace users                                                                                              |                 |
|                                                                           | # of Linear feet of Public Improvement                                                                             |                 |
|                                                                           | # of Linear Feet of Sewer Lines                                                                                    |                 |
| MIT - Public Facilities and Improvements-Non Covered Projects<br>(cont'd) | # of linear feet of trails constructed                                                                             |                 |
|                                                                           | # of Linear Feet of Water Lines                                                                                    |                 |
|                                                                           | # of Linear miles of Public Improvement                                                                            |                 |
|                                                                           | # of Non-business Organizations benefitting                                                                        |                 |
|                                                                           | # of non-invasive species trees planted on project sites                                                           |                 |
|                                                                           | # of properties protected from future flooding                                                                     |                 |
|                                                                           | # of properties with access above 100-yr flood level                                                               |                 |
|                                                                           | # of public facilities<br># of pump stations repaired/replaced                                                     |                 |

| Eligible Activity Type | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
|                        | # of reduced hours streets are flooded                                                                             |                 |
|                        | # of residents protected from future flooding                                                                      |                 |
|                        | # of Section 3 Labor Hours                                                                                         | 5,600           |
|                        | # of small water retention devices/systems installed                                                               |                 |
|                        | # of storm water projects implemented                                                                              |                 |
|                        | # of Targeted Section 3 Labor Hours                                                                                | 280             |
|                        | # of Total Labor Hours                                                                                             | 22,400          |
|                        | # of vacant lots repurposed                                                                                        |                 |
|                        | # of water control structures repaired/replaced                                                                    |                 |
|                        | % reduction in emergency maintenance costs                                                                         |                 |
|                        | % reduction in energy costs                                                                                        |                 |
|                        | % reduction in loss of service                                                                                     |                 |
|                        | % reduction of sanitary sewer overflows                                                                            |                 |
|                        | % reduction of watershed nitrate loading                                                                           |                 |
|                        | % reduction of water surface elevation level                                                                       |                 |
|                        | # of structures harden against future flood events                                                                 |                 |
|                        | # of Persons                                                                                                       |                 |

**EXHIBIT F****APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Critical Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Application**

*Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:*

1. *Subrecipient Agreement*
2. *Critical Infrastructure Program NOFA.*
3. *Critical Infrastructure Program Guidelines*
4. *Notice to Proceed*
5. *Subrecipient's application in response to the Notice of Funding Availability*



# Critical Infrastructure Program

**Organization Information**

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2731 Oak Street Fort Myers Beach, FL 33931
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

**Authorized Organization Representative**

- ▶ Name: Andrew Hyatt
- ▶ Title: Town Manager

**Contact Person**

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)
- ▶ Telephone: (239) 266-4673

**Partner Organization**

- ▶ Will your organization be partnering with any other organizations? No



## Project Information

### Project Information

► Name: North Island Water Tower Complex Rehabilitation

### Project Type

- |                                                                                                             |                                                                  |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Water/Sewer Line Install                                                           | <input type="checkbox"/> Water Treatment Plant                   |
| <input type="checkbox"/> Lift Stations                                                                      | <input type="checkbox"/> Drainage Improvements                   |
| <input type="checkbox"/> Pump Stations                                                                      | <input type="checkbox"/> Electrical/Utilities Burial/Replacement |
| <input type="checkbox"/> Wastewater Treatment Plant                                                         |                                                                  |
| <input type="checkbox"/> Backup Generator: Must be a permanent fix to the structure. No portable generators |                                                                  |

► Other: Replacement of Potable Water Tank and Related Facilities



## Target Service Location

### Target Service Location

- |                                                        |                                                    |
|--------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> City of Cape Coral            | <input type="checkbox"/> Town of Fort Myers Beach  |
| <input checked="" type="checkbox"/> City of Fort Myers | <input type="checkbox"/> Village of Estero         |
| <input type="checkbox"/> City of Bonita Springs        | <input type="checkbox"/> Unincorporated Lee County |
| <input type="checkbox"/> City of Sanibel               | <input type="checkbox"/> All of Lee County         |



## National Objective

► National Objective: Urgent Need

### Provide a description how the proposed project will meet the selected National Objective

As a direct result of Hurricane Ian, the designated activity area meets the definition of a blighted area under 163.340, F.S. The project area includes a substantial number of deteriorated or deteriorating structures leading to economic distress, including both unsafe conditions and deterioration of the project site and improvements.

Additionally, as a direct result of the impacts of Hurricane Ian, public improvements throughout the area are in a general state of deterioration and more than 25% of properties throughout the area exhibit physical deterioration of buildings/improvements due to damage from Hurricane Ian.

## National Objective Descriptions

| National Objective                   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| L/M Income Area Benefit              | Census block groups that align with the service area maps                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| L/M Income Limited Clientele         | The infrastructure improvements benefit a specific persons who are presumed by HUD to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| L/M Income Job Creation or Retention | The project proposes activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons. Must include income certifications or describe method on how LMI job creation will be documented                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Urgent Need                          | Does the narrative description on the application under Urgent Need provide specific examples of needs that have urgency, including how the existing conditions pose a serious and immediate threat to the health and welfare of the community?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Slums and Blight                     | Does the designated activity area meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law? Additionally, the area must meet one of the two conditions: <ul style="list-style-type: none"> <li>• Public improvements throughout the area are in a general state of deterioration; or</li> <li>• At least 25 percent of the properties throughout the area exhibit one or more of the following: <ul style="list-style-type: none"> <li>• Physical deterioration of buildings/improvements;</li> <li>• Abandonment of properties;</li> <li>• Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;</li> <li>• Significant declines in property values or abnormally low property values relative to other areas in the community; or</li> <li>• Known or suspected environmental contamination</li> </ul> </li> </ul> |





## The scope of the project

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Critical Infrastructure Program to support the critically necessary replacement and repair of the North Island Water Tower Complex. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for a consistent supply of potable water, consistent with the FEMA Water Systems lifeline category.

The North Island Water Tower Complex is one of two potable water facilities on the island; together, the two facilities were responsible for holding and distributing potable water to all residents and businesses in the Town of Fort Myers Beach. Hurricane Ian heavily impacted the North Island Water Tower Complex, damaging the lower level of the pump building and all above-ground valves and pumps. The storage area and grounds were scoured by 15-feet of storm surge. Post-Ian inspection deemed the tank itself unusable; as such, the Town of Fort Myers Beach has operated with a single water tank since Hurricane Ian. With only a single operational water tank, the Town is in a critical situation because it is more susceptible to potential impacts of future emergency events that could decommission the only remaining source of potable water on the island.

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Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, access to a critical resource such as potable water is paramount to the community. With CDBG-DR funding to support this project, the Town can provide residents with a resilient drinking water supply and system and reliable access to potable water for daily activities, such as drinking, cooking, and cleaning. Completion of this project will enable the town to maintain dependable access to clean drinking water for all residents on the island by building a resilient facility that is more likely to withstand future natural and climate-related hazards than pre-Ian potable water infrastructure.

## The projected outcome(s) of the project

The project proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, will fully restore and secure a critical FEMA lifeline - potable water supply - for the Town of Fort Myers Beach. The completed project will increase the resiliency of the Town's potable water infrastructure by installing a system designed to withstand future natural and climate-related hazardous events.

By constructing resilient and secure potable water infrastructure, this project will create confidence in local residents and businesses that a dependable supply of water will be available for daily activities such as drinking, cleaning, and cooking. Reliable infrastructure is foundational for continued residential and commercial recovery, development, and growth in areas that were completely devastated by Hurricane Ian.

### **The unmet or mitigation need that is being addressed by the project and how it aligns with community goals**

The Town of Fort Myers Beach was devastated by the unprecedented impacts of Hurricane Ian, and the Town still has many unmet needs today. Prior to Hurricane Ian, two water tanks supplied potable water to the entire island. Since Ian destroyed the North Water Tower Complex, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable. Reconstruction of the North Water Tower complex with increased resiliency measures will ensure that a critical FEMA lifeline – potable water – is preserved for all residents and businesses in the Town of Fort Myers Beach.

Creating a resilient and sustainable network of critical infrastructure is a primary community goal for the Town of Fort Myers Beach, and replacement of the North Island Water Tower and repair / reconstruction of the surrounding complex is foundational for the Town's recovery. The urgency and importance of this project cannot be overstated. Through this project, CDBG-DR funds will be used to address the critical unmet need for a reliable, resilient, and sustainable supply of potable water for all residents and businesses in the Town of Fort Myers Beach. This is a critical infrastructure project that will provide both immediate and long-term impacts for a community that was devastated by Hurricane Ian.



## Description of your agency's experience completing projects of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the project and oversee all compliance requirements.

The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

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**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level



## Project Design and Approach: Applicant/Subrecipient

state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### The applicant's plan of executing the Subgrantee Agreement

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### The applicant's plan for Oversight and Monitoring of Subgrantee

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

### Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.



## Project Design and Approach: Applicant/Subrecipient

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Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.



**The partner's experience undertaking projects of similar complexity and providing public services**

N/A

**The partner's plan for Maintenance and Operations**

N/A

**Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management**

N/A



**Describe how the proposed project integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to, reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines**

The Town of Fort Myers Beach is acutely aware of the heightened vulnerability its community faces in light of natural and climate-related hazards. In response, our proposed project for rebuilding and updating the Town's North Island Water Tower Complex places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life.

The Town's methodology involves a multi-faceted approach to identifying and addressing natural hazard risks. Initially, the Town's consultants will conduct a thorough review using the ERR checklists provided by HUD to catalog all of the relevant environmental factors including land-use and floodplain management to identify any issues for mitigation. This review will inform the development of mitigation efforts and best management practices required of the hired contractor when constructing the project. The goal is to not only comply with, but exceed current standards for resilience, incorporating the latest science and best practices in disaster risk reduction. Moreover, the Town will instruct the project engineer to incorporate resilient infrastructure designs to the greatest extent practicable, including elevation of project components above base flood elevation, utilization of reinforced construction materials, and the integration of green infrastructure to manage stormwater and reduce flood risk. These measures are aimed at minimizing damage during disasters, ensuring rapid recovery in the aftermath of future disasters, and reducing long-term costs of rebuilding and insurance.

Ultimately, the Town's project will be designed and completed to enhance the long-term resilience of Fort Myers Beach by embedding sustainability and resilience into the community lifeline – potable water. Through the use of mitigation strategies and best management practices throughout project construction, coupled with a commitment to ongoing evaluation and adaptation of those strategies, the Town will further its goal of providing reliable and resilient potable water infrastructure that can more effectively withstand future disasters and climate-related hazards. This forward-thinking approach ensures that the community's recovery and development are built on a foundation of resilience, protecting its people, the economy, and the Town's unique way of life for generations to come.

**Identify the risks or hazards being reduced and the impacts that those hazards have on people and property**

This project will address critical risks and hazards, primarily those related to natural disasters and climate change, to ensure the resilience and reliability of Fort Myers Beach's water supply system. Risks or hazards that will be mitigated by completion of this project include those further described below. By addressing these risks, the project not only restores essential infrastructure but also enhances the resilience of Fort Myers Beach to future natural hazards and climate-related risks. The improved North Island



Water Tower Complex will provide a reliable and secure potable water supply, protecting the health, safety, and well-being of residents and supporting the community's long-term recovery and resilience. (1) Hurricane and Tropical Storm Damage: Hurricanes and tropical storms, like Hurricane Ian, can cause extensive damage to infrastructure, including water storage tanks, control buildings, and associated equipment.

Impacts of Hurricane and Tropical Storm Damage on People and Property: Damage to any water tower complex can lead to a loss of potable water supply, creating a public health crisis. Lack of access to clean water can result in waterborne diseases, impacting the health and well-being of residents. Property damage can include water contamination and structural damage to homes and businesses reliant on the water supply. Since Ian destroyed the North Water Tower, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable.

Mitigation through this Project: The new concrete poly-lined tank will be designed to withstand severe weather conditions, reducing the likelihood of damage during future hurricanes and tropical storms. This resilience will help to ensure a continuous supply of potable water, protecting public health and property.

(2) Flooding and Storm Surge: Flooding and storm surges, often accompanying hurricanes and heavy rain events, pose a significant threat to low-lying areas, including critical infrastructure like water systems.

Impacts of Flooding and Storm Surge on People and Property: Flooding can inundate and damage pumps, valves, and control systems, rendering the water supply inoperable. Elevated pumps and valves mitigate this risk, ensuring continuous operation and reducing the likelihood of water supply disruption. The impact on property includes damage structures and other facilities located in the North Island Water Tower Complex, further compounding the risk of an inoperable water supply system.

Mitigation through Project: Elevating pumps, valves, equipment, and other structures above the base flood elevation will protect them from flood damage, increasing the likelihood that the water system will remain operational during and after storm surges and heavy rainfall events. Elevation of critical components will help to maintain water service continuity and minimizes property damage.

(3) Sea Level Rise: Long-term sea level rise, a result of climate change, increases the risk of chronic flooding and exacerbates storm surge impacts.

Impacts of Sea Level Rise on People and Property: Persistent flooding can lead to regular interruptions in water service, damage to infrastructure, and increased maintenance costs. The elevation of critical components and robust construction of new facilities reduce these risks, safeguarding water quality and availability for residents and businesses.

Mitigation through Project: By constructing elevated and durable infrastructure, the project addresses the challenges posed by sea level rise, ensuring that the water system remains functional and reliable despite changing environmental conditions. (4) Environmental Contamination: Damage to water infrastructure can lead to contamination from debris, chemicals, and pathogens entering the water supply.

Impacts of Environmental Contamination on People and Property: Contaminated water poses severe health risks, including gastrointestinal illnesses and other diseases. The secure and modern design of the new tank, along with enhanced security measures, will

help to prevent contamination, ensuring a safe water supply for the community.

Mitigation through Project: The construction of a modern, secure water storage tank and ancillary structures with robust safety features will prevent environmental contamination, ensuring the water supply remains clean and safe for consumption.

(5) Vandalism and Security Threats: Infrastructure can be vulnerable to vandalism, theft, and other security threats, which can compromise the water supply.

Impact of Vandalism and Security Threats on People and Property: Security breaches can disrupt water services, leading to outages and potential contamination. Enhanced security measures, such as fencing and monitoring systems, mitigate these risks, ensuring uninterrupted and safe water supply.

Mitigation through Project: The project includes significant security upgrades, such as fencing and around-the-clock monitoring systems, which will protect the water infrastructure from vandalism and other security threats, ensuring the reliability and safety of the water supply.

By addressing these risks, the project not only restores essential infrastructure but also enhances the resilience of Fort Myers Beach to future natural hazards and climate-related risks. The improved water tower complex will provide a reliable and secure potable water supply, protecting the health, safety, and well-being of residents and supporting the community's long-term recovery and resilience.

**Describe the value of the proposed project to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the project will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data**

Replacement of the water tower complex in the Town of Fort Myers Beach will yield significant long-term benefits and positive short-term impacts. In the immediate term, the project will enhance the reliability of the water supply, ensuring that residents and businesses have consistent access to potable water. This reliable water supply is crucial for maintaining public health, supporting local businesses, and sustaining the daily life of the community.

In normal circumstances, rebuilding the water tower complex will, upon completion, immediately restore the Town's potable water system to full functionality, as it has been operating at reduced capacity with only one storage tank since Hurricane Ian. The new infrastructure will improve the overall efficiency of water storage and distribution, reducing the need for frequent maintenance and operational costs. Modern and efficient systems will promote sustainable water management practices, which are essential for addressing challenges such as climate change, population growth, and increased water demand. The enhanced security measures, including fencing and monitoring systems, will protect the water supply from contamination and other threats, further ensuring the health and safety of the community.

In the long term, the benefits of the project extend to increased resilience against natural disasters and climate-related risks. The new water tower complex will be designed to more effectively withstand severe weather conditions, such as hurricanes, floods, and

storm surges, thereby minimizing the risk of water supply disruptions during and after extreme weather events. Elevated pumps and reinforced structures will help Fort Myers Beach maintain a functional and reliable water system, even in the face of future natural disasters. This resilience will significantly contribute to the town's overall disaster preparedness and recovery capabilities.

Furthermore, the project will support the economic stability and growth of Fort Myers Beach. A reliable water infrastructure is critical for the thriving tourism industry and other local businesses. The new water tower complex will help maintain property values and attract new businesses, fostering economic development and prosperity.

By investing in resilient and durable infrastructure, the town will achieve significant long-term cost savings. The reduced risk of damage from natural disasters, combined with lower maintenance requirements and increased efficiency, will lower expenses over time, allowing funds to be allocated to other essential services and projects. This investment will also enhance community confidence in local governance, fostering a sense of security and stability among residents. In conclusion, the replacement of the water tower complex in the Town will provide both immediate and long-term benefits, enhancing the town's resilience, economic prosperity, and environmental sustainability. The project will ensure a reliable and secure potable water supply, protecting the health, safety, and well-being of the community while preparing it for future challenges and extreme events.

**Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities**

**1. Execution of a Subrecipient Agreement: Award + 1 month.**

The Town, upon receiving notification of award, will submit required policies and other documentation to Lee County for review and comment. After thorough review, the Subrecipient Agreement will be presented to the Town Council for approval. Once executed the Subrecipient Agreement will be submitted to Lee County for final execution.

**Final Deliverable:** An executed Subrecipient Agreement for the North Island Water Tower Complex Rehabilitation project.

**Prerequisite Dependencies or Actions:** Receipt of a Subrecipient Agreement from Lee County.

**2. Completion of Engineering Procurement: Award + 4 months.**

The Town of Fort Myers Beach will solicit Statements of Qualifications from Florida Certified Engineering firms to complete the design and permitting activities necessary for project completion. Procurement activities will be conducted in accordance with 2 CFR 200 Procurement Standards (2 CFR 200.317-327) and Florida Statute 287.055. In compliance with these requirements, the Town will ensure that professional services are competitively solicited and a price for the contract is negotiated prior to contract execution. This process will be documented, along with the Town's determination for use of an RFQ, rather than Invitation to Bid (ITB) or a Request for Proposals (RFP).

**Final Deliverable:** An executed contract for professional engineering services.

**Prerequisite Dependencies or Actions:** Execution of a Subrecipient Agreement, Lee County review of procurement documentation, Lee County authorization to execute a contract for Engineering Services.

**3. Completion of Project Design and Permitting: Award + 16 Months.**

The Florida Certified Engineer selected for this project will complete all project design and permitting activities. Throughout project design, the project engineer will work closely with Town Staff responsible for project oversight. The project engineer will provide comprehensive services for the replacement of the water tower complex in the Town of Fort Myers Beach. These services include conducting developing conceptual and detailed designs for the new infrastructure, with a particular focus on resiliency against natural disasters and climate-related hazards. The engineer will ensure regulatory compliance and assist with permitting, while managing the project from inception to completion, including construction supervision and coordination with contractors. The engineer will provide additional services, as needed, such as surveys, geotechnical assessments, wetlands delineations, etc. The engineer will also work closely with the Town and Tidal Basin to ensure that final contract documents address the federal provisions required by Appendix II to 2 CFR Part 200, mitigation activities required by the final ERR, and applicable terms and conditions of the CDBG-DR Subrecipient Agreement, such as Section 3, Davis-Bacon, utilization of MBE/WBE contractors and subcontractors, registration with SAM.gov, confirmation of debarment and suspension

status for all contractors and subcontractors, etc.

Final Deliverable: Permit documents for project construction; plans, specifications, and contract documents for solicitation of construction bids.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services.

#### 4. Completion of the Environmental Review Record (ERR): Award + 16 Months.

Concurrently with project design and permitting efforts, the Town will work with Tidal Basin and Gouras & Associates to compile the HUD-required environmental review record. Activities for compilation of the ERR may include, but are not limited to: compilation of project information for distribution to interested federal, state, local, and tribal stakeholders; coordination of stakeholder feedback related to project information; compilation of an 8-Step Process (if required); completion of HUD-issued environmental worksheets to assess possible areas of impact; analysis of publicly available environmental resources such as EPA's NEPAAssist Tool, USFWS's iPac Tool, the National Wetlands Inventory, and others, to assess potential environmental impacts; publication of required public notices for floodplain and/or wetlands impacts (when applicable), Findings of No Significant Impact (FONSIs), and Notices of Intent to Request Release of Funds (RROFs). Should interested stakeholders request or require additional studies or reports of a technical nature (e.g., wetlands delineations, ESA's, Cultural Resources Surveys, etc.), the Town will task the project engineer with completion of said studies or reports and will coordinate ensure that interested stakeholders are able to review requested documentation.

Upon certification of the ERR, the Town will publish required public notices, consider comments received, and submit the final ERR package, including HUD Form 7015.15, to Lee County for review and issuance of Authority to Use Grant Funds (AUGF). The Town will ensure that no choice-limiting actions are taken prior to issuance of AUGF.

Final Deliverable: A certified Environmental Review Record and receipt of AUGF from Lee County

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; execution of a project-specific Task Order with Tidal Basin, which will include compilation of the ERR.

#### 5. Completion of Construction Procurement: Award + 19 Months.

The Town of Fort Myers Beach will competitively solicit bids for renovation and rehabilitation of the North Water Tower Complex, in accordance with 2 CFR 200.320(b)(1) and applicable Florida Statutes. The engineer will compile an Opinion of Probable Construction Costs prior to acceptance of bids. After bids are accepted, the engineer will review all bids received to ensure that bid prices are reasonable and that the low bidder is qualified to complete the scope of work. The Town will take the affirmative steps listed at 2 CFR 200.321(b) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The project engineer will coordinate all pre-bid and pre-construction conferences, in conjunction with the Town and Tidal Basin, during which critical federal compliance requirements will be reviewed in detail (e.g., Davis-Bacon Act Requirements, Section 3 Requirements, MBE/WBE outreach requirements, prohibition on participation of debarred or suspended entities, etc.).

Final Deliverable: An executed construction contract for North Water Tower Complex Rehabilitation activities.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF.

6. Completion of Construction Activities: Award + 33 months.

The construction contractor procured by the Town of Fort Myers Beach will construct the North Water Tower Complex Rehabilitation project in accordance with the plans, specifications, and contract documents issued by the project engineer and the Town of Fort Myers Beach. The project engineer will closely oversee construction activities to ensure quality of work, and the Town, with support from Tidal Basin, will oversee and document compliance with applicable labor standards and Section 3 requirements. Throughout this phase, the general contractor will submit weekly Certified Payroll Reports to ensure that workers are paid in accordance applicable wage rates. The general contractor will also submit documentation of Section 3 compliance on a weekly, monthly and quarterly basis to ensure adherence to quantitative benchmarks and qualitative efforts.

Final Deliverable: Completion of North Island Water Tower Complex Rehabilitation construction activities; Delivery of as-builts for the project.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities.

7. Project Closeout: Award + 36 Months.

Upon completion of construction activities, the Town and Tidal Basin will work with Lee County to submit all documentation required for closeout of the Subrecipient Agreement.

Final Deliverable: Lee County acceptance of final closeout documentation.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities; Completion of Construction Activities.

### **Define project milestones (i.e. Design, Construction, Progress Meetings, Certification of Completion, Closeout, or any other milestones as applicable)**

Project milestones include:

1. Execution of a Subrecipient Agreement.
2. Completion of Engineering Procurement.
3. Completion of the Environmental Review Record (ERR).
4. Completion of Project Design and Permitting.



5. Completion of Construction Procurement.
6. Completion of Construction Activities.
7. Completion of Project Closeout.

### Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 36-month period of performance for completion of the North Water Tower Complex Rehabilitation project. Estimated project spending and drawdowns total \$5,000,000.00.

Month 1 – Month 4: \$6,944.44 per Month (Through completion of engineering procurement).

Month 5 – Month 16: \$41,736.11 per Month (Through completion of design, permitting, and completion of the environmental review record).

Month 17 – Month 19: \$14,444.44 per Month (Through construction procurement).

Month 20 – Month 33: \$314,801.59 per Month (Through construction completion).

Month 34 – Month 36: \$6,944.44 per Month (Through completion of project closeout).

### Proposed reporting for outcomes achieved

The Town will hold regularly scheduled status meetings with the consultant team as well as the hired engineer and construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Section VI: Reports of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Section VI: Reports.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the North Island Water Tower Complex Rehabilitation project is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the project timeline on track, adaptable, and transparent to all stakeholders involved. Regularly scheduled status meetings with the Town, the Town's consultant team, and the project engineer are a critical component of the Town's approach to project activities. These meetings serve multiple purposes, including providing a forum for continuous progress monitoring and enabling the Town and the teams to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring

that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the project outcomes remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Section VI: Reports of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the consultants and engineering teams are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the project continues to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a completed project on schedule that will benefit the Town for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the project is conducted with the highest levels of efficiency, transparency, and accountability.



## Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its North Island Water Tower Complex Rehabilitation project prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed planning activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

The Town consulted with two other municipalities that have completed projects of similar size and scope to determine a reasonable budget for construction activities. These consultations were instrumental in gathering valuable insights into the current market rates for construction costs for potable water projects. By soliciting estimates from multiple municipalities, the Town was able to establish a benchmark for anticipated construction costs, ensuring that the budget reflected the true scope and complexity of the work required. At this time, the Town has determined that \$2.1 million budget is appropriate for removal and replacement of the water tower, with an additional \$2.0 million budgeted for all other construction activities necessary to complete the water tower complex.

The Town utilized industry standard percentages to estimate the budget needed for ADC's, engineering design and permitting, additional engineering services, and construction-phase engineering and inspection. The Town acknowledges that the cost-plus-percentage of construction cost method of contracting is strictly prohibited by 2 CFR 200 and affirms that any contract executed will strictly utilize allowable contracting methods appropriate to the specific activities to be performed. The industry standard percentages indicated below have been utilized in this case for budgeting purposes only. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Critical Infrastructure Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. Activities may include project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the North Water Tower Complex Rehabilitation project. The Town has budgeted basic engineering and design services at approximately 11% of construction costs, consistent with FEMA Cost Curve A for a \$4.1 million construction budget ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)).

The Town has included a budget line item for permitting activities and other studies (e.g.,

geotechnical reports, boundary surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.) that may be needed for project completion. Determination of permitting costs and costs for other studies is often unknown until engineering due diligence is underway; as such, the Town has incorporated a budget line item estimated at 2% of construction costs. Once an engineering firm is selected and necessary permits are determined, a more specific estimate for these costs can be established.

The Town has budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services ([https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services\\_12-21-2015.pdf](https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf)).

### **Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the project is completed on time and within budget**

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of construction activities, engineering design and permitting, and ADCs. Should the firm fixed price, lump sum method of contracting not be appropriate for any category of required services, the Town may use a time-and-materials type contract that includes a ceiling price; however this method of contracting will only be used after a determination that no other contract type is suitable, consistent with 2 CFR 200.318(j). Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary.

The Town will hold regularly scheduled status meetings with the consultant teams, the project engineer, and the construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

### **Describe the cost and plan for funding for operations and maintenance.**

Upon completion of the water tower complex, the Town of Fort Myers Beach will implement a detailed operations and maintenance (O&M;) plan to ensure its long-term functionality and reliability. The estimated annual cost for O&M; includes routine inspections, preventive maintenance, repairs, and system upgrades to address wear and tear. These tasks will be performed by trained Town staff, ensuring familiarity with the system and prompt attention to any issues. The costs will be covered through a combination of water utility revenues, municipal budget allocations, and potential grants or subsidies (when available) aimed at supporting infrastructure resilience. This proactive approach to funding O&M; will help safeguard the investment in the new infrastructure,

providing a continuous and reliable water supply for the community.

**Describe how the project is innovative, based on national best practices, and designed in accordance with an existing evidence-based program**

During proposal scoring, consideration will be given to the selection of an engineering firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to potable water and drinking water projects in post-disaster, coastal communities. Incorporation of this as a selection metric in the RFQ will ensure that the selected engineering firm is both experienced in potable water-based projects that are forward-thinking and innovative and is also capable of providing actionable designs that can be of function and utility in both short- and long-term Town development.

The commitment to innovation and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to the North Island Water Tower Complex Rehabilitation project, particularly in the context of post-disaster and coastal community resilience. This commitment will be operationalized through the selection process for an engineering firm, ensuring that the chosen firm brings knowledge, experience, and creativity to the project.

The selected engineer will be instructed to design a project that, to the extent feasible, will employ state-of-the-art materials and technology designed to maximize efficiency and minimize environmental impact. The concrete poly-lined tank is specifically chosen for its superior performance in harsh environmental conditions. Advanced pumping and valve systems will be incorporated, designed to be energy-efficient and easy to maintain. Security measures will include high-definition surveillance cameras and secure access controls to ensure comprehensive monitoring and safety of the facility. Other possible best practices may include utilization of LED lighting, low-impact construction practices, and the incorporation of green spaces around the facility to promote biodiversity and aid in natural water filtration.

### **A description of how you will coordinate with other planning, community development, and/or recovery or resilience projects and initiatives that are underway**

The Town of Fort Myers Beach will coordinate the water tower complex replacement project with existing planning, community development, and resilience initiatives to maximize efficiency and ensure comprehensive community benefits. Collaboration with ongoing infrastructure and resilience projects, such as flood mitigation efforts, stormwater management upgrades, and coastal protection initiatives, will be a priority. By aligning the water tower project with these initiatives, the Town can leverage shared resources and expertise.

The Town will engage with local planning and development departments to integrate the water tower project into the broader community development strategy. This integration will ensure that the project supports and enhances other ongoing and planned improvements in the area, such as housing developments, transportation upgrades, and public space enhancements.

By coordinating with other projects and initiatives, the Town of Fort Myers Beach aims to create a cohesive and resilient community infrastructure that not only meets immediate needs but also prepares for future challenges. This collaborative approach will enhance the effectiveness and sustainability of the water tower complex and contribute to the overall resilience and development of the town.

Furthermore, the Town of Fort Myers Beach was awarded funding for Comprehensive and Long-Term Recovery Planning efforts through the Lee County Recovery and Resiliency Planning Program. As reliable availability of potable water is a critical FEMA lifeline, this project will be foundational to resiliency planning recommendations identified through that project.

### **Describe how you will coordinate with other partners carrying out related activities and/or projects**

The Town of Fort Myers Beach will coordinate with various partners to enhance the impact and efficiency of the North Water Tower Complex Rehabilitation project. As needed, the Town may conduct meetings or workshops with neighboring municipalities, regional planning councils, and state and federal agencies to facilitate information sharing and alignment with other infrastructure initiatives. Interdepartmental coordination within the Town's government will ensure cohesive planning. Collaboration with utility providers and contractors will optimize service integration and reduce construction conflicts. The Town will also consider regional resilience initiatives and, as required, work with state and federal agencies to secure permits and technical support. This collaborative approach will ensure the project's success and contribute to the community's long-term resilience and development.

## A description of the area of need that will be addressed

Prior to Hurricane Ian, the Town relied on two water towers to store and distribute potable water to its residents and businesses; however, hurricane and storm surge damage to the North Water Tower Complex rendered the North Tower completely unusable. Since that time, the Town has persisted with one operational water tower for the entire island. This reduction in water storage capacity has severely impacted the community. The single remaining water tower is insufficient to meet the demands of both residents and the large number of tourists who visit the area, particularly during peak seasons. This limited capacity compromises the town's ability to ensure a consistent and reliable supply of safe drinking water, which is essential for public health, sanitation, and firefighting capabilities.

The lack of adequate water infrastructure also threatens the local economy. Fort Myers Beach is a popular tourist destination, and the tourism and hospitality industries are crucial to the town's economic well-being. The unreliable water supply can deter tourists, disrupt business operations, and impede economic recovery efforts, prolonging the community's recovery from the hurricane.

Moreover, Fort Myers Beach is vulnerable to natural disasters, including hurricanes, storm surges, and flooding. The destruction of the North Water Tower Complex has highlighted the need for resilient infrastructure that can withstand such events. Replacing the destroyed water tower with a more robust and disaster-resistant system is essential for the town's long-term resilience and sustainability.

Addressing this critical need by restoring and enhancing the water storage capacity will significantly improve the health, safety, and economic stability of Fort Myers Beach. This project will ensure that the town can provide a reliable and secure potable water supply, supporting both current residents and future generations, and bolstering the community's overall resilience against future natural disasters and climate-related hazards.

## A description of the intended impact the plan will have on the community and area of high need

Rehabilitation of the North Water Tower Complex in Fort Myers Beach is intended to have profound and far-reaching impacts on the community, addressing several critical areas of high need that have been exacerbated by Hurricane Ian.

**Restoration of Reliable Water Supply:** The primary impact of the project will be the restoration of a reliable and secure potable water supply for the entire island. With the new water tower in place, the Town will once again have sufficient capacity to meet the water needs of both residents and the influx of tourists. This will ensure that the community has consistent access to safe drinking water, which is vital for public health, hygiene, and sanitation. **Enhanced Public Health and Safety:** By reinstating and improving the water infrastructure, the project will significantly enhance public health and safety. Reliable access to potable water reduces the risk of waterborne diseases and ensures that sanitation systems function effectively. Additionally, the enhanced infrastructure will provide adequate water pressure and volume necessary for firefighting, contributing to the overall safety and emergency preparedness of the community.

**Economic Stability and Growth:** A reliable water supply will support the economic stability and growth of Fort Myers Beach. The tourism and hospitality industries, which are key drivers of the local economy, depend on a consistent and adequate water supply. The project will help attract and retain visitors, ensuring that businesses can operate smoothly and efficiently. This, in turn, will contribute to the town's economic recovery and long-term prosperity.

**Increased Resilience to Natural Disasters:** The new water tower complex will be designed with resilient features to withstand future natural disasters and climate-related hazards. Elevated pumps, reinforced structures, and secure facilities will ensure that the water supply remains operational during extreme weather events, minimizing the risk of service interruptions. This increased resilience will enhance the community's overall preparedness and ability to recover quickly from future disasters.

**Improved Quality of Life:** Overall, the project will improve the quality of life for the residents of Fort Myers Beach. Access to a reliable water supply is fundamental to daily living, and the enhanced infrastructure will provide peace of mind and stability for the community. The project will support the well-being of current residents and future generations, fostering a more resilient and vibrant community.

By addressing these high-need areas, the replacement of the North Water Tower Complex will have a transformative impact on Fort Myers Beach, ensuring that the town can thrive and adapt to future challenges.

## **A description of the intended beneficiaries of the project, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the project**

The intended beneficiaries of the water tower complex replacement project are all residents of Fort Myers Beach, who will experience significant improvements in their daily lives due to a reliable and secure potable water supply. Geographically, this includes all of Census Tracts 601 and 602. All residents of those Tracts are considered intended beneficiaries, including HUD-defined vulnerable populations within those areas. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. While potable water supply is critical to all residents of the island, these two groups are particularly susceptible to disproportionate impacts of inadequate water infrastructure and will greatly benefit from the enhanced resilience and reliability of the new water tower complex.

Additionally, the project will support the local tourism-dependent economy, benefiting business owners and workers who rely on a stable water supply for their livelihoods. By ensuring a consistent and safe water supply, the project will contribute to the overall health, safety, and economic stability of the entire Fort Myers Beach community, fostering an inclusive environment where all residents can thrive.

A project area map and corresponding beneficiary data from the HUD Low and Moderate Income Summary Data (LMISD) dataset and mapping tool is attached.



The applicable census tracts and block groups that are projected to benefit from the project. Census data can be found here: [Low- and Moderate-Income Area Data](#)

|   | Census Tract      | Block Group |
|---|-------------------|-------------|
| 1 | 0601.02           | 1,2,3,4,5   |
| 2 | 0602.01           | 1,2,3       |
| 3 | 0602.02 / 0602.03 | 1,2 / 1,2   |

### The types of entities benefitting from the plan

- ☒ Residents
- ☒ Local Government
- ☒ Businesses
- ☐ Other:

- If “Residents” is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the project

|                                |      |
|--------------------------------|------|
| Total Number of Beneficiaries: | 6670 |
| Total LMI Beneficiaries:       | 2055 |



**The target populations from the table below who will benefit from the project**

- ☒ Populations presumed by HUD to be LMI persons:
  - Abused children
  - Elderly persons (62 and older)
  - Battered spouses
  - Homeless persons
  - Severely disabled adults (as defined by the Census)
  - Illiterate adults
  - Persons living with AIDS
  - Migrant farm workers
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
  - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
    - Geography
    - Markets
    - Prevalent housing stock and tenure
    - History
    - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
  - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life



**A description of the method used to identify the intended beneficiaries of the project if it were implemented**

A single water system provides potable water to the entire island and Town of Fort Myers Beach. Implementation of this project will enhance the resilience and reliability of the potable water system for all island residents and businesses by restoring two water towers to the system. Given that the North Tower will enhance the single system that serves the entire island, the intended beneficiaries include all residents of the island.

This project will be of particular benefit to the elderly and disabled populations in the Town of Fort Myers Beach. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. While potable water supply is critical to all residents of the island, these two groups are particularly susceptible to disproportionate impacts of inadequate water infrastructure and will greatly benefit from the enhanced resilience and reliability of the new water tower complex.

**A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement**

The Town of Fort Myers Beach notified the public of its intention to apply for infrastructure funds through the Lee County – CDBG Critical Infrastructure program. Notice was published in a newspaper of local circulation in block/display ad format on Friday, May 17, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person. Interested parties were invited to make public comments at the Town Meeting held on Monday, May 20, 2024; written comments were accepted through Thursday, May 23, 2024.

No comments were received.

## A description and justification of the proposed costs

The total project budget for rehabilitation of the North Island Water Tower Complex is estimated at \$5,000,000. Additional information regarding detailed budget line items is provided below:

**Construction Activities: \$4,100,000.00.** Construction funds will be utilized for (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach.

The Town consulted with two other municipalities that have completed projects of similar size and scope to determine a reasonable budget for construction activities and has determined that \$2.1 million budget is appropriate for removal and replacement of the water tower, with an additional \$2.0 million budgeted for all other construction activities necessary to complete the water tower complex.

**Activity Delivery Costs: \$250,000.00.** ADC funds will be utilized for project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Critical Infrastructure Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the North Water Tower Complex Rehabilitation project.

**Engineering Fees: \$450,000.00.** Engineering funds will be utilized for costs associated with basic engineering and design services normally performed by an engineering firm on construction projects. Such services include preliminary engineering analysis, preliminary design, final design, and construction-phase professional services.

**Permitting / Studies: \$80,000.00.** Funds specific to permitting and studies will be utilized for costs related to permitting activities and other studies that may be necessary throughout the life of the project. Permitting includes all activities necessary for issuance of a required permit, such as initial assessment of permits required, development of permit applications, submission of permit applications, and coordination with permitting agencies from application submission to issuance of a permit. Other studies include any

other studies that may be needed to secure permitting, complete the Environmental Review Record, or ensure that engineering and design of project components; this may include geotechnical reports, topographical surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.

Construction-Phase Engineering & Inspection (CEI): \$120,000.00. Funds for CEI services will be utilized for costs related to basic construction management activities. These may include activities such as daily or weekly site inspections and monitoring of construction methods to meet specified standards; site supervision to ensure safety and efficiency on the construction site, adhering to regulations and best practices; compliance monitoring to verify adherence to local, state, and federal regulations, ensuring all necessary permits are obtained and maintained; and compilation of detailed CEI Reports to track construction progress, including daily logs and inspection reports.

### **A description of whether the project will be implemented with applicant staff, vendor support and/or other**

The project will be implemented by a team comprised of Town staff and vendor support. Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, including Mr. Andrew Hyatt, Mr. Frank Kropacek, and Mr. Joe Onzick. To supplement staff expertise and capacity, the Town has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. Tidal Basin Group is further supported by Gouras & Associates, LLC, whose team members collectively have more than 70 years of combined experience working with state and federal funding, including CDBG-DR funding, and projects of all scopes and sizes.

The Town will competitively procure the services of an engineering firm licensed in the state of Florida to complete all design, permitting, other studies, and construction-phase engineering and inspection. The Town will competitively procure a properly licensed construction contractor to implement all construction activities based upon the plans, specifications, and contract documents developed by the project engineer.

### **A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable**

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services and one contractual agreement for construction services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

Contract A - Contractual Activity Delivery Services:

The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to supplement Town staff in project-specific activity delivery services. An existing

contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for project-specific activity delivery services. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance.

Timeframe associated with Contract A: Award + 1 month through project closeout.

Dependencies associated with Contract A: Issuance of an award for planning funds.

Contract B - Engineering, Permitting, and CEI Services (including other studies):

The Town of Fort Myers Beach will competitively procure a Florida-licensed professional engineering firm to complete all project engineering and design, secure all necessary permitting, perform all construction-phase oversight, and complete other studies that may be required throughout the life of the project. Upon project award, the Town will develop procurement documents and solicit Statements of Qualifications from firms qualified to perform these services. The Town anticipates that funding under this contract will be expended as follows:

- Engineering and Design Services: 75% of Basic Engineering Fee expended consistently throughout project design; 5% of Basic Engineering Fee expended throughout construction bidding; 20% of Basic Engineering Fee expended throughout construction phase activities.
- Permitting and Other Studies: 100% of Permitting/Other Study Fees expended during the project design phase.
- Construction-Phase Engineering and Inspection: 100% of CEI Fees expended consistently throughout the construction phase.

Timeframe associated with Contract B: Award + 4 months to Award + 33 months.

Dependencies associated with Contract B: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract. To address and control for dependencies, the Town will ensure that an RFQ for solicitation of engineering services developed promptly upon award of project funding.

Contract C - Construction Activities:

The Town of Fort Myers Beach will competitively procure a qualified and licensed construction company to construct the project based on the plans, specifications, and contract documents prepared by the project engineer. The Town anticipates that funding under this contract will be expended consistently throughout the project's construction phase.

Timeframe associated with Contract C: Award + 21 months to Award + 33 months.

Dependencies associated with Contract C: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract; Completion of project design and permitting; Completion of the ERR and issuance of AUFG; Completion of Construction Procurement; Execution of a Construction Contract. To address and control for dependencies, the Town will regularly coordinate with the project engineer to ensure that pre-construction activities are progressing on-budget and on-schedule.



## Budget Form

| Description                     | CDBG-DR Funds Requested | Leveraged Funds | Project Cost   |
|---------------------------------|-------------------------|-----------------|----------------|
| Activity Delivery Costs         |                         |                 |                |
| Environmental Review Costs      | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| File Management                 | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Inspections                     | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Program Administration          | \$250,000.00            | \$0.00          | \$250,000.00   |
| Source of External Funds        | N/A                     |                 |                |
| Construction                    |                         |                 |                |
| Bonding/Insurance               | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Construction Management         | \$120,000.00            | \$0.00          | \$120,000.00   |
| Source of External Funds        | N/A                     |                 |                |
| Debris Removal                  | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Demolition                      | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Fixtures/Equipment              | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| General Contractor              | \$4,100,000.00          | \$0.00          | \$4,100,000.00 |
| Source of External Funds        | N/A                     |                 |                |
| Landscaping                     | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Maintenance of Traffic          | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Mobilization                    | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Site Preparation                | \$0.00                  | \$0.00          | \$0.00         |
| Source of External Funds        | N/A                     |                 |                |
| Planning/Design                 |                         |                 |                |
| Development of Bidding Document | \$50,000.00             | \$0.00          | \$50,000.00    |
| Source of External Funds        | N/A                     |                 |                |



# Budget Form

|                          |              |        |              |
|--------------------------|--------------|--------|--------------|
| Drawings/Blueprints      | \$400,000.00 | \$0.00 | \$400,000.00 |
| Source of External Funds | N/A          |        |              |
| Land Acquisition         | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Permitting               | \$80,000.00  | \$0.00 | \$80,000.00  |
| Source of External Funds | N/A          |        |              |
| Site Plan                | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Surveys                  | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |
| Testing                  | \$0.00       | \$0.00 | \$0.00       |
| Source of External Funds | N/A          |        |              |

## Funding Summary

| CDBG-DR Funds Requested | Leveraged Funds | Project Cost   |
|-------------------------|-----------------|----------------|
| \$5,000,000.00          | \$0             | \$5,000,000.00 |

## Duplication of Benefits

| Source of Funds                                               | Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Status of Funds |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| FEMA Building Resilient Infrastructure and Communities (BRIC) | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| FEMA Hazard Mitigation Grant Program (HMGP)                   | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| FEMA Public Assistance (PA)                                   | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Identified      |
| Purpose of Funds:                                             | <p>The Town is currently working with FEMA to secure funding that would contribute to the implementation of this project; however, at this time, funding has not been committed. No other leveraged funding sources are currently committed to the organization for this project. Should leveraged funds from any source be committed to this project, the Town of Fort Myers Beach will promptly notify Lee County and adjust CDBG-DR funding awarded to ensure that no Duplication of Benefits exists.</p> |                 |
| Local (Municipal) Funds                                       | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Other CDBG-DR Funds (from Florida COM)                        | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Other State Funds                                             | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Resilient Florida                                             | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| US Army Corps of Engineers (USACE)                            | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| US Department of Transportation                               | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N/A             |
| Purpose of Funds:                                             | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |
| Total                                                         | \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |



## Capacity to perform financial management and oversight

The Town of Fort Myers Beach will manage financial aspects of project implementation in accordance with established financial management policies and procedures. Financial management will be overseen by the Town's Financial Director, Mr. Joe Onzick. Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick oversees fund accounting and financial compliance for the project.

To supplement the Town staff's expertise and capacity for financial management and oversight, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and management of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout.

## Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

The Town of Fort Myers Beach staff members listed below will perform respective grant management functions for the project:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a town or city manager. Andy has an associate degree in general business from Cleveland State Community College in Cleveland, Tennessee. From the University of Tennessee at Chattanooga, he has a bachelor's degree in political science and a master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county, and state government administration ranging from contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying geology and geophysics. Mr. Kropacek will be the Town's





## Applicant Capacity and Experience: Applicant/Subrecipient

primary day-to-day contact for all project activities and will directly oversee and coordinate project implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the project.

To supplement the Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL, overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to support HUD compliance efforts, proper reporting, and adherence to the proposed project schedule. Among other grant management functions, Tidal Basin will support procurement efforts in accordance with 2 CFR 200, Davis Bacon Labor Standards Compliance reporting and oversight, HUD Section 3 reporting and oversight, and confirmation that all costs can be tied to the project's eligible activity and national objective.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, DBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

### Internal auditing capability

The Town of Fort Myers Beach will perform internal monitoring and financial compliance oversight in accordance with established financial management policies and procedures.



## Applicant Capacity and Experience: Applicant/Subrecipient

Internal monitoring will be overseen by the Town's Financial Director, Mr. Joe Onzick. Mr. Onzick previously served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College.

To supplement the Town's staff capacity related to internal monitoring and financial compliance, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation.

With Mr. Onzick's oversight and supervision of both Town staff and contractual support, the Town has demonstrated capacity to perform internal financial monitoring and experience for compliance with HUD and Lee County requirements.

### Administrative staffing

The Town of Fort Myers Beach staff will be available to support the necessary day-to-day administrative functions required for successful project implementation. Administrative staff will be overseen by Mr. Andrew Hyatt and Mr. Frank Kropacek.

To supplement the Town staff's administrative capacity, Fort Myers Beach will utilize the services of Tidal Basin Group. Tidal Basin Group will be further supported by Gouras & Associates, LLC, for CDBG-DR specific administrative staffing needs.

### Monitoring and control of timely expenditure of funds



## Applicant Capacity and Experience: Applicant/Subrecipient

The Town of Fort Myers Beach understands that monitoring and control of timely expenditures of funds is paramount to a successful project. These elements will be overseen by the Town's Financial Director, Mr. Joe Onzick, in accordance with established financial management policies and procedures. The Town of Fort Myers Beach staff, along with its partners in Tidal Basin Group and Gouras & Associates, LLC, have the capacity and experience to monitor the funding and expenditures of CDBG-DR funds from project award through closeout.

Prior to expenditure of funds, procurement efforts will be conducted in accordance with 2 CFR 200 procurement standards to ensure that project activities are allowable, reasonable, and cost-effective. Additionally, the Town will adhere to cost and/or price analysis requirements, as applicable, to support the proper usage of project funds.

**Describe how the subrecipient will implement Construction, Davis Bacon, and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

The Town will utilize the expertise of Tidal Basin Group and their partner, Gouras & Associates, LLC, (the Town's contractual support) to ensure the proper implementation of the construction related federal requirements of the Davis Bacon and its related acts. Construction solicitation documents and related contract documents will include Form HUD-4010, the appropriate Department of Labor Wage Decision(s), and the requirements of Executive Order 14026, which must be accepted by the contractor prior to contract execution to ensure that prevailing wage rates are met or exceeded. Labor standards requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. Required payroll reporting will be submitted by contractors on a weekly basis and reviewed by Town staff and contractual support to ensure compliance with prevailing wage requirements. Town staff and contractual support will be available to all construction contractors to resolve any issues that may arise throughout construction activities, such as payment and documentation of wage restitution, new job classification requests, and payment and documentation of liquidated damages. Throughout construction, on-site employee interviews will also be conducted and documented via HUD Form-11 to confirm that weekly payroll reports are accurate and consistent with the types of work performed by on-site laborers.

**Confirm that the subrecipient will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled**



## Applicant Capacity and Experience: Applicant/Subrecipient

The Town confirms that it will not take any choice limiting actions, including, but not limited to, physical work or construction activities, until environmental clearance is issued and Authority to Use Grant Funds is obtained. The Town understands that the result of committing a choice limiting action could result in the termination of the award and that, in the event of excessive environmental issues, the award of CDBG-DR funds may be cancelled.

**Explain the applicant/subrecipient's plan to provide OR ensure the subgrantee provides opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be, especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75**

The Town of Fort Myers Beach understands that the implementation of Section 3 requirements and striving to meet the quantitative and qualitative goals laid out by the regulations are of paramount importance to the effective recovery of the community. Solicitation documents and related contract documents for Section 3-covered contracts will include HUD-required Section 3 Contract Clauses and require contractors to submit Section 3 reporting throughout the life of the contract. Section 3 documentation, including a Section 3 plan and employee and business certifications, will be required for bid submission and Section 3 terms and conditions must be accepted by the contractor prior to contract execution. The construction contract will also require the prime contractor to incorporate Section 3 terms and conditions into all subcontracts. Section 3 requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. All contractor and subcontractor employees working on the covered contract (existing employees and new hires) will be required to submit an Employee Self-Certification for Section 3 Qualification form. Required Section 3 reporting will be submitted by covered contractors and subcontractors on a weekly, monthly, and quarterly basis and reviewed by Town staff and contractual support to ensure that quantitative and qualitative efforts are effectively implemented. Contractors will be required to complete qualitative efforts along with the Town by utilizing the list provided by HUD in 24 CFR part 75.

**Describe how the subrecipient will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities**

The Town of Fort Myers Beach will utilize the State of Florida's minority, women, and veteran owned business directory (<https://vendor.myfloridamarketplace.com/search/vendor>) to solicit minority, women, and veteran owned businesses for participation in each contract procured as a result of this project. All solicitation documents for services to be performed through this project will encourage participation of minority, women, and veteran owned businesses and all contracts and subcontracts issued will require compliance with 2 CFR 200.321, such that subcontracting opportunities must be made



## Applicant Capacity and Experience: Applicant/Subrecipient

available, as a priority, to minority, women, or veteran owned businesses when possible. The Town will document all outreach efforts to demonstrate that affirmative steps were taken to ensure good faith effort outreach to minority, women, and veteran-owned businesses.

### Subrecipients must provide their procurement policy documents for analysis

The Town of Fort Myers Beach will provide all procurement policy documentation to Lee County for analysis.

### Subrecipient's ability to Complete Subgrantee Capacity Assessment

N/A

### Subrecipient's ability to Complete Subgrantee Risk Assessment

N/A

### Subrecipient's Ability to Execute a Subgrantee Agreement

N/A

### Please describe Subrecipient's Plans for Subgrantee Oversight and Monitoring

N/A



## Applicant Capacity and Experience: Subgrantee

### Subgrantee's Capacity to perform financial management and oversight

N/A

### Subgrantee's Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

N/A

### Subgrantee's Internal auditing capability

N/A

### Subgrantee's Administrative staffing

N/A

### Subgrantee's Monitoring and control of timely expenditure of funds

N/A

**Describe how the subgrantee will implement Construction, Davis Bacon and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution**

N/A



## Applicant Capacity and Experience: Subgrantee

Confirm that the subgrantee will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled

N/A

Explain the subgrantee's plan to provide opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be , especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75

N/A

Describe how the subgrantee will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities

N/A

Subgrantee's must comply with 2 CFR Part 200 requirements for procurement

N/A



Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 05/24/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 173.165.214.193



**EXHIBIT G****CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Critical Infrastructure Program* NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

**Certificate(s) of Insurance**

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place:

**(1) Workers' Compensation Coverage**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(2) Commercial General Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(3) Business Auto Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**(4) Directors & Officers Liability**

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(5) Fidelity Bonding

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

**EXHIBIT H (SIGNATURE REQUIRED)****CERTIFICATIONS**  
**CDBG-DR COMPLIANCE PROVISIONS**  
*Housing and Infrastructure*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the Agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the Subrecipient certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

**1. NATIONAL OBJECTIVES**

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

## **2. DUPLICATION OF BENEFITS**

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

- a. CDBG-DR Funds as Match (Infrastructure):** When applicable and approved by the County, Subrecipients may use grant funds to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or U.S. Army Corps of Engineers (USACE). By law, only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Furthermore, Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or which funds are also made available by, FEMA or USACE.

For all match activities, Subrecipients must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

## **3. EQUAL EMPLOYMENT OPPORTUNITY**

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. Title VI of the Civil Rights Act of 1964:** This act provides that no person shall

be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a

qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

#### 4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

## **5. ENVIRONMENTAL PROTECTION AND ACTS**

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, if a subrecipient is a state agency or an agency of a political subdivision of a state, it and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## 6. **CONSTRUCTION STANDARDS**

While the following Construction Standards requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the *CDBG-DR Construction Standards Procedure* for Housing Programs and applicable program guidelines.

- a. **Green and Resilient Building Standards in Housing:** All new construction or rehabilitation of residential structures must meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC-700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification



from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD

- b. Rehabilitation of Nonsubstantially Damaged Residential Buildings (Housing):** Per Federal Register Notice 88 FR 32046, for rehabilitation other than the rehabilitation of substantially damaged residential buildings described in 6.a. above, the Subrecipient must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

- c. Broadband Infrastructure in Housing:** Per Federal Register Notice 88 FR 32046, any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four units must include installation of broadband infrastructure.

**d. Elevation Standards (Housing and Infrastructure):**

- i. ***Housing***: All new construction or rehabilitation of residential structures and located in the one percent annual chance (or 100-year) floodplain must be elevated at least two feet above the base flood elevation.
  - ii. ***Mixed-use and Non Residential***: Non-residential structures and infrastructure must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
  - iii. ***Critical Actions***: Structures and services defined at 24 CFR 55.2(b)(3) and within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2-3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
- e. Planning and Design (Infrastructure):** All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the Subrecipient is required to provide resilience performance metrics as identified by the County.

- f. Flood Control Structures (Infrastructure and Non-Residential Structures):**

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining approval from the County, HUD, and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Additional requirements and approval steps are outlined under Federal Register Notice guidance at 88 FR 32046.

## **7. AFFORDABILITY PERIOD REQUIREMENTS (HOUSING)**

While the following minimum affordability period requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the applicable program guidelines regarding affordability period requirements.

- a. **New Construction and Rehabilitation of Affordable Rental Housing:** To meet the LMI housing national objective, a Subrecipient who implements rental housing activities that will result in the new construction or rehabilitation of five or more units, assisted with CDBG-DR funds, must rent to LMI households at affordable rents as described within the *Lee County Action Plan for CDBG-DR Funds*. Furthermore, the minimum timeframes, enforceability, and other related requirements acceptable for compliance can be found under the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the of 24 CFR 92.252(e). The County has adopted these requirements and spells out affordability restriction enforcement and minimum affordability periods within the respective program guidelines, which Subrecipients are required to follow, where applicable.
- b. **New Construction of Homes Built for LMI Households:** For Subrecipients who implement activities where there is a construction of new single-family units (four units or less) for homeownership that will meet the LMI housing national objective criteria, the County has set affordability restrictions, which follow minimum affordability period and enforcements mechanisms of the HOME requirements set at 24 CFR 92.254(a)(4). Subrecipients whose activities are applicable to these requirements must follow the County's respective program guidelines regarding affordability restrictions, resale or recapture requirements, affordability period requirements, and all other requirements prescribed under the applicable guidelines regarding affordability.

## **8. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, VETERAN OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, veteran owned businesses, and labor

surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses, veteran owned businesses, and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's and veteran's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, veteran owned, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, veteran owned businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

## **9. POLITICAL ACTIVITY**

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

## **10. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT**

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## **11. DEBARMENT AND SUSPENSION**

A contract award ([2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

By executing this Agreement or contract, the Subrecipient or Contractor verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs and will not enter into contracts with any entity that has been suspended or debarred from federal contract work.

## **12. CONFLICT OF INTEREST**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

### **13. DOMESTIC PREFERENCES FOR PROCUREMENTS**

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

### **14. DAVIS-BACON AND RELATED LABOR STANDARD ACTS**

- a. **Davis Bacon Act:** Subrecipient or Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 31413148) and 29 CFR Subtitle A, Parts 1, 3 and 5, as applicable, to construction, alteration, and repair contracts over \$2,000.00.
- b. **AntiKickback Act of 1986:** Subrecipient or Contractor shall ensure that all contracts comply with the AntiKickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.
- c. **Contract Work Hours and Safety Standards Act of 1962:** Subrecipient or Contractor shall ensure all contracts comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. § 3702) which requires that workers

receive overtime compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- d. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this agreement or contract. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract").
- e. Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

### **15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

The work to be performed under this contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3), and implementing regulation at [24 CFR, Part 75](#). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The responsibilities outlined in 24 CFR Part 75.19 include:

- a. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- b. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

#### **Section 3 Clause**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- c. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- d. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

**16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (42 U.S.C. 4601 et seq.) – “URA”**

The Subrecipient understands that activities and projects it undertakes with CDBG–DR funds may be subject to the URA at 49 CFR Part 24, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in Federal Register Notices 88 FR 3198 and 88 FR 32046. In such Notices, HUD waived or provided alternative requirements for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

Subrecipients are required to adopt the County’s Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to undertaking any activity assisted with CDBG-DR funding which involves relocation. The written policy must be available to the public, describe the relocation assistance that the Subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

In the event of displacement because of a federally funded award, Subrecipients must comply with the URA, for any household, regardless of income, which is involuntarily and permanently displaced, and to comply with Section 104(d). The County also provides notice to Subrecipients that any demolition or disposition of public housing is



subject to Section 18 of United States Housing Act of 1937, as amended, and 24 CFR Part 970.

**17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

**18. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS**

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
- 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

**c. Contractors shall:**

- 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

**19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

**20. PATENTS**

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or

his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

## **21. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

## **22. DRUG-FREE WORKPLACE ACT OF 1988**

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

**23. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)**

Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
  2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract
- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
  - b. If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

**24. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION**

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

## **25. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

## **26. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

## **27. ACCESS TO RECORDS – MAINTENANCE OF RECORDS**

Lee County, the Department of Housing and Urban Development, the Comptroller

Version 2.0, 10/01/2024

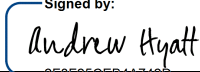
General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County’s final closeout of the grant.

**28. INSPECTION**

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

|     |                                                                                                                                                    |                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| BY: | <div>Signed by:</div> <div></div> <div>2F8F25CEB4A742D...</div> | 1/13/2025   10:43 AM EST |
|     | Signature                                                                                                                                          | Date                     |
|     | Andrew Hyatt                                                                                                                                       |                          |
|     | Name (print)                                                                                                                                       |                          |

**EXHIBIT I****CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

**1. INITIAL RISK ASSESSMENT**

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

**2. RISK ASSESSMENT**

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

**3. SPECIAL CONDITIONS**

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

**A. ENVIRONMENTAL REVIEW SPECIAL CONDITION**

The environmental review for this project is currently classified as "Exempt" under 24 CFR §58.34. However, upon the completion of 30% design, the Subrecipient must initiate the process for an Environmental Assessment (EA) pursuant to 24 CFR Part 58.

The Subrecipient shall adhere to the following requirements upon reaching 30% design completion:

1. **Notification to the County:** The Subrecipient must notify their Grant Manager and Lee County in writing via email or a VistaTRAK note that the project has reached 30% design completion.
2. **Submission of Designs:** The Subrecipient must upload the 30% design documents to VistaTRAK for County review.
3. **Restriction on Activities:** The Subrecipient must not execute any construction contracts, commit funds, or undertake any choice-limiting actions as defined in 24 CFR §58.22, until an Authority to Use Grant Funds (AUGF) has been issued by HUD.
4. **Coordination with Lee County:** The Subrecipient must coordinate closely with Lee County to ensure compliance with all applicable federal, state, and local environmental review requirements.

Failure to comply with these conditions may result in noncompliance findings and the withholding of reimbursement for project expenses until compliance is achieved and documented.



**EXHIBIT J**  
**SUBRECIPIENT STAFF ORGANIZATION**  
**North Island Water Tower Complex Rehabilitation**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

**Section 1: Subrecipient Contract Administrator**

**1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

**2. Contact Information**

Name: Andrew Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: andyhyatt@fmbgov.com

**Section 2: Project Manager**

**1. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

## **2. Contact Information**

Name: Frank Kropacek  
Title: Operations and Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: fkropacek@fmbgov.com

## **Section 3: Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 4: Section 504 Coordinator**

**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: amy@fmbgov.com

**Section 5: Fair Housing Coordinator****1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: Joe Onzick  
Title: Finance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street, Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: JOnzick@fmbgov.com

## **Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? If so how many, and list names.

No

## EXHIBIT K

### **CDBG-DR PROGRAM SUBROGATION AGREEMENT**

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between Town of Fort Myers Beach (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's application for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

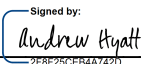
**Warning:** Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

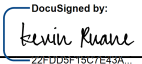
The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

TOWN OF FORT MYERS BEACH

LEE COUNTY

By: Andrew Hyatt  
Signature:   
Title: Town Manager  
Date: 1/13/2025 | 10:43 AM EST

By: Kevin Ruane  
Signature:   
Title: Chair  
Date: 1/21/2025 | 3:28 PM EST

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10157 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

Notification to Lee County of key employee change is required in accordance with the CDBG-DR Subrecipient Agreement

**What the action accomplishes:**

To stay in compliance with the CDBG-DR requirements

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

---

5. **Background:**

**Attachments:**

1. NS 25-205, First Amendment for Resiliency Planning
2. NS Exhibit A - 1st Amendment to DR10157
3. NS Attachment A to First Amendment Resiliency Planning
4. DR10157\_-\_Town\_of\_Fort\_Myers\_Beach\_Long\_Term\_Recovery\_Plan\_and\_Comprehen\_1Hz2G8A

**Financial Impact:**

Direct impact is to be out of compliance with CDBG-DR

6. **Alternative Action**

Do not accept the recommendations and forfeit the agreement

7. **Management Recommendations:**

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Final Approval - 6/10/2025



**RESOLUTION NUMBER 25-205**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10157 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

**WHEREAS**, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

**WHEREAS**, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager, and Joe Onzick, as Financial Director, with William McKannay; and

**WHEREAS**, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

**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 First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

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 by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

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

ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT  
LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
CDBG-DR SUBRECIPIENT AGREEMENT**

**THIS FIRST AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10157 – Recovery and Resiliency Planning Program.

**WITNESSETH:**

**WHEREAS**, on November 20, 2023, the Town and Lee County entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that named the Town’s key personnel involved in the project; and

**WHEREAS**, Exhibit J also required the Town to notify Lee County within 30 days in the event of a change in key personnel; and

**WHEREAS**, recently William McKannay was appointed to serve as the Town Manager and will also be assuming the role of Financial Director replacing Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director; and

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

**1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

**2. Exhibit J.** Exhibit J is amended as provided in Attachment A.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**LEE COUNTY BOARD OF COUNTY  
COMMISSIONERS**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** Lee County, Florida

**ATTEST:**

**Town of Fort Myers Beach**

---

**Amy Baker, Town Clerk**

---

**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

---

**Vose Law Firm, Town Attorney**

## ATTACHMENT A TO FIRST AMENDMENT

### EXHIBIT J

#### SUBRECIPIENT STAFF ORGANIZATION

##### Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XIX. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

***{Lee County to REVIEW Subrecipient information below to create a profile for entrance into the County's grant management system, and for which the Subrecipient can update and modify when changes are made.}***

#### Section 1: Subrecipient Contract Administrator

##### 1. Description

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XIX. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XIX. NOTICES of the Agreement.

##### 2. Contact Information

Name: ~~Andrew Hyatt~~ William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202

Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

## **Section 2: Project Manager**

### **3. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

### **4. Contact Information**

Name: Frankie Kropacek  
Title: Operations & Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: [fkropacek@fmbgov.com](mailto:fkropacek@fmbgov.com)

## **Section 3: Section 3, Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a*

Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

**Section 4: Section 504 Coordinator**

**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

**2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2371 Oak Street Fort Myers Beach FL, 33931  
Telephone: 239-765-0202  
Email: amy@fmbgov.com

**Section 5: Fair Housing Coordinator**

**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively

promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

## **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison/Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202  
Email: jasonf@fmbgov.com

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: ~~Joe Onzick~~ William McKannay  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: 239-765-0202



Email: [will.mckannay@fmbgov.com](mailto:will.mckannay@fmbgov.com)

**Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? Yes

If so how many, and list names:

Yes, all town staff listed in this Exhibit may assist with other Town programs other than CDBG-DR

**CDBG-DR SUBRECIPIENT AGREEMENT**

*The following information is provided pursuant to 2 CFR 200.332(a)(1)*

|                                                                                                  |                                                                                                                                |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>Federal Award Identification Number (FAIN)/<br/>HUD CDBG-DR Grant No.:</b>                    | B-23-UN-12-0002                                                                                                                |
| <b>Assistance Listing Number (formerly CFDA #):</b>                                              | 14.218 Community Development Block<br>Grants/Entitlement Grants                                                                |
| <b>Federal Register Notice &amp; Public Law:</b>                                                 | FR-6393-N-01: PL-117-328                                                                                                       |
| <b>Federal Award (HUD Grant Agreement) Date:</b>                                                 | 11/20/2023                                                                                                                     |
| <b>Agreement No.:</b>                                                                            | DR10157                                                                                                                        |
| <b>Responsible Entity (RE):</b>                                                                  | Lee County                                                                                                                     |
| <b>Lead and Responsible Department:</b>                                                          | Office of Strategic Resources and Government Affairs                                                                           |
| <b>CDBG-DR Funding Source/Program:</b>                                                           | US Department of Housing and Urban Development                                                                                 |
| <b>Subrecipient Name:</b>                                                                        | Town of Fort Myers Beach                                                                                                       |
| <b>Subrecipient ID (Unique Entity Identifier via<br/>SAM.gov):</b>                               | J87EFSEEQ884                                                                                                                   |
| <b>Subrecipient Period of Performance (Start Date):</b>                                          | 08/01/2024                                                                                                                     |
| <b>Subrecipient Period of Performance (End Date):</b>                                            | 07/30/2026                                                                                                                     |
| <b>Total Amount Obligated via Agreement:</b>                                                     | \$1,575,000.00                                                                                                                 |
| <b>Total CDBG-DR Obligation to Subrecipient (all<br/>Agreements, including this obligation):</b> | \$1,575,000.00                                                                                                                 |
| <b>Project/Activity ID(s):</b>                                                                   | DR10157                                                                                                                        |
| <b>Federal Award Program/Project/Activity<br/>Description:</b>                                   | Recovery and Resiliency Planning Program/Town of<br>Fort Myers Beach Long Term Recovery Plan and<br>Comprehensive Plan Updates |
| <b>Does the Federal award include an Indirect Cost<br/>Rate for Subrecipient?</b>                | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                                                            |
|                                                                                                  | <input type="checkbox"/> Negotiated Rate _____%                                                                                |
| <b>If Yes, is the Indirect Cost Rate a:</b>                                                      | <input type="checkbox"/> De Minimis Rate                                                                                       |

**Official County Contact for Award:** Glen Salyer, Assistant County Manager; 2115 Second St., Fort Myers, FL 33901; Phone: (239) 533-2315; Email: [GSalyer@leegov.com](mailto:GSalyer@leegov.com)

**SUBRECIPIENT AGREEMENT BETWEEN**  
**THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AND**  
**TOWN OF FORT MYERS BEACH**

This **AGREEMENT** between Lee County, a political subdivision and charter county of the State of Florida, hereinafter referred to as “**COUNTY**,” and TOWN OF FORT MYERS BEACH a local government/municipality registered under the laws of Florida Statute, Chapters 165 and 166, hereinafter referred to as “**SUBRECIPIENT**” will become effective upon the date (“Effective Date”) after being signed by the Board of County Commissioners (BOCC).

**SECTION I:**                    **RECITALS**

**WHEREAS**, pursuant to Public Law (P.L.) 117-328, the “Department of Housing and Urban Development Appropriations Act, 2023” (hereinafter referred to as the “Appropriation Act”), and the “Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice,” 88 Federal Register (FR) 32046 (May 18, 2023); (hereinafter referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the “Action Plan”) for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as “Grantee.”

**WHEREAS**, the **COUNTY** believes it is in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to **SUBRECIPIENTS** for the benefit of Lee County residents. CDBG-DR funding made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee’s Federal award, for which the use of the subaward funds must conform to the **COUNTY’S** intent as stated in the applicable Notice of Funding Availability (NOFA) Application, and attachments, and/or exhibits, and all other terms and conditions as specified.

**WHEREAS**, the **COUNTY** has legal authority to disburse funds as a subaward under the Federal award and to enter into this Agreement with the **SUBRECIPIENT**, who by signing this Agreement, represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the Action Plan has been developed to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, therefore the **COUNTY** and the **SUBRECIPIENT** agree as follows:

**SECTION II:**                    **SCOPE OF WORK AND ACTIVITIES**

The **COUNTY** provides the **SUBRECIPIENT** the award under this Agreement to perform project activities under the **COUNTY’S** CDBG-DR Recovery and Resiliency Planning Program. Any proposal,

application, or exhibit associated with this CDBG-DR funding award are binding and incorporated herein as a part of this **AGREEMENT**.

The **SUBRECIPIENT** shall submit to the **COUNTY** the required information and documentation to complete Exhibits A (Scope of Work and Activities – Program/Project Activity Overview) & B (Scope of Work and Activities – Project Activity Scope of Work Description). If there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and content requirements of the Exhibit, the **COUNTY'S** has sole and absolute discretion; the **COUNTY'S** decisions shall prevail.

The **SUBRECIPIENT** must provide a statement of work, in accordance with 24 CFR 570.503 detailing the work to be performed, a schedule for completing the work, and a budget. The statement of work as prescribed by the **COUNTY** under Exhibits A and B must provide sufficient data and detail to provide a sound basis for the **COUNTY** to monitor performance.

The **SUBRECIPIENT** agrees to abide by all applicable state and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY'S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

**SUBSECTION II.A. – MID REQUIREMENT:** The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

**SUBSECTION II.B. – ELIGIBLE ACTIVITIES:** CDBG-DR funds are provided for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 United States Code (U.S.C.) 5301 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of related risk. The **SUBRECIPIENT** must utilize CDBG-DR funds, as prescribed under 24 CFR 570 Subpart C – Eligible Activities, and for alternative requirements and waivers as prescribed within the Federal Register Guidance. Furthermore, the **SUBRECIPIENT** shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the **COUNTY'S** CDBG-DR **Recovery and Resiliency Planning Program**.

**SUBSECTION II.C. – NATIONAL OBJECTIVE:** The **SUBRECIPIENT** must meet the criteria for one of the CDBG-DR program's national objectives. For this scope of work, the **SUBRECIPIENT** must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan

☒ Activities expended for planning and administrative costs under 24 CFR 570.205 and 24 CFR 570.206, which are considered to address the national objectives.

**SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”:** The **COUNTY** is responsible for informing the **SUBRECIPIENT** of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the **COUNTY**, the **SUBRECIPIENT** is responsible for documenting proof of the designation. For recovery activities, the **SUBRECIPIENT** must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the **SUBRECIPIENT** must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the **COUNTY'S** mitigation needs assessment in the MID areas under its

Action Plan; (3) is a CDBG-eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the **COUNTY** may require the **SUBRECIPIENT** to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The **COUNTY** will spell out specific requirements for the **SUBRECIPIENT**, its project, and the project’s eligible activity under Exhibit A – Scope of Work and Activities – Program/Project Activity Overview and Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description.

### **SECTION III:**      **TERM OF AGREEMENT**

This Agreement shall begin on August 1<sup>st</sup>, 2024 (“the Effective Date”) and end on July 30<sup>th</sup>, 2026, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement shall have the same force and effect as a written signature for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides written justification that is satisfactory to the **COUNTY**, in its sole discretion, and the **COUNTY’S** authorized organizational representative approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

### **SECTION IV:**      **AGREEMENT MODIFICATIONS AND AMENDMENTS**

**SUBRECIPIENT** must submit a written request, via the County’s approved method for submitting such request, for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). The **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA), the BoCC, or their designee may approve amendments to the Agreement, in accordance with the **COUNTY’S** *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*. As noted within the Manual, the **COUNTY** reserves the right to review the request from the **SUBRECIPIENT** and determine whether an amendment is required or whether County Manager or BOCC approval is needed.

The **COUNTY** also affirms that it may unilaterally modify or amend any Manuals or Exhibits which are referenced throughout this Agreement without prior notification or agreement by the **SUBRECIPIENT**.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activity or beneficiaries must first receive HUD approval before consideration by the **COUNTY** to amend the Agreement.

## **SECTION V: COMPENSATION AND ALLOWABLE PAYMENTS**

**SUBSECTION V.A. – AGREEMENT PAYMENT:** The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed **\$1,575,000.00** The **COUNTY’S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

The **SUBRECIPIENT** will provide supporting documentation of eligible expenses as stated within this SUBSECTION and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the **COUNTY’S** annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY’S** CDBG-DR **Recovery and Resiliency Planning Program**. The **SUBRECIPIENT** shall expend the allocation as follows:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$1,500,000.00                     |
| Activity Delivery Funds               | \$75,000.00                        |
| <b>TOTAL</b>                          | <b>\$1,575,000.00</b>              |

Furthermore, “not to exceed” line items and activity budgets under this Agreement shall be identified within the approved budget under the *Project Budget and Expense (Sources and Uses) Worksheet*.

After the **COUNTY** has approved funding and the Office of Strategic Resources and Government Affairs (SRGA) has issued an Agreement related to the funded project, the **SUBRECIPIENT** should sign and return the Agreement within 30 days for execution. In addition, the **SUBRECIPIENT** should begin to draw down funds as agreed upon within the project milestones set out under the *Project Schedule and Milestones* reporting deliverable unless additional time is authorized by the **COUNTY**. Failure to return the signed Agreement or begin spending funds within the agreed upon time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** attests that necessary written administrative procedures, processes, and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes, and fiscal controls must, at a minimum, comply with applicable state and Federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement. The **SUBRECIPIENT** agrees to remedy any deficiencies in its written administrative procedures, processes, and fiscal controls identified by the **COUNTY** or duly authorized CDBG-DR authorities.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the Payment Request Form(s) as outlined under SUBSECTION VI.A. REPORTING AND AGREEMENT DELIVERABLES. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are

ineligible for funding with CDBG-DR funds.

If funds are not available to fully execute the project associated with this Agreement because of actions by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or the provision of SECTION XIII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

**SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS):** The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which are incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation to meet regulatory and statutory requirements, including cross-cutting requirements. If, as a result of monitoring or audit, the **COUNTY** determines that submitted costs are not documented, a payment may be deferred. If costs are found to be unallowable and payment has been made, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is established by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to disallowed cost, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for disallowed costs or fines resulting from acts of noncompliance.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the Federal Government, in each of its sole discretion, to be an ineligible expenditure or a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the

**COUNTY** under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XIX. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **COUNTY'S** provision of training, technical assistance, quality assurance and quality control reviews are in no way intended to alleviate the **SUBRECIPIENT** of the responsibility to administer activities in accordance with all federal, state, and local requirements, including the requirements outlined within this Agreement. The **SUBRECIPIENT** acknowledges full responsibility to return funds to the **COUNTY** in the event that HUD or other auditing agency determines that activities or costs are disallowed.

The **SUBRECIPIENT** will report all suspected or verified fraud to the **COUNTY**, regardless of whether the suspected or verified fraud is associated with disallowed cost or other perceived harm to the **SUBRECIPIENT** or the **COUNTY**.

## **SECTION VI:           REPORTS AND EXHIBITS**

**SUBSECTION VI.A – REPORTING AND AGREEMENT DELIVERABLES:** The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in the **COUNTY'S** approved system, including monthly performance reports and documentation outlined in all applicable exhibits to enable the Grantee to submit the required reporting to HUD within the Disaster Recovery Grant Reporting (DRGR) system.

The **SUBRECIPIENT'S** monthly reports, include administrative activity, financial activity, and program activity, must include sufficiently detailed summaries of the current status, progress, and completed work. The **SUBRECIPIENT** is responsible for all reporting of work of all contractors, subcontractors, and other entities under contract or agreement related to this Agreement.

At a minimum the following information will be required to be submitted in the system of record by the **SUBRECIPIENT**. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld in accordance with SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) until the reports are completed. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision, reasons for withholding payment, and the remedy for corrective action the **SUBRECIPIENT** must follow. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT'S** reporting deliverables include, but are not limited to, the following information:

1. **Project Schedule and Milestones:** A table or description of the work task, project start and end dates, other significant milestones (e.g., 50% complete), and timelines for the **SUBRECIPIENT** to submit outputs or deliverables to the **COUNTY**.
2. **Project Budget and Expense (Sources and Uses) Worksheet:** The **SUBRECIPIENT** must provide budget narratives and tables to describe all funding sources and the potential uses of those funding sources for the purposes of completing the project. This narrative will include, but may not be limited to, (a) a description and justification of the proposed costs, (b) a description of project implementation support with **SUBRECIPIENT** or vendor staff, (c) sources of leveraged funds committed by the **SUBRECIPIENT** to the project, and (d) timelines for the projected expenditure of CDBG-DR funds.
3. **Payment Request Form:** The means by which the **COUNTY** and the **SUBRECIPIENT** document project and activity expenses and requests for payment. The **SUBRECEIPIENT** shall utilize this form



when submitting or requesting any costs for payment and the form must be accompanied by legible supporting documentation to indicate the reasonableness, allowability, and appropriate procurement of the expense(s).

As noted under SECTION III. TERM OF AGREEMENT and SECTION V. COMPENSATION AND ALLOWABLE PAYMENTS, all payments are reimbursements for eligible expenses or services defined as uncompensated expenses rendered during the Agreement term and paid prior to the final payment request due date. Copies of supporting documentation are required as part of the Payment Request for review of grant compliance and before payment will be authorized by the **COUNTY** to the **SUBRECIPIENT**. Reimbursement for eligible expenses will be made after review and authorization of a correct and complete Payment Request Form and required back up documentation. In accordance with the Federal Register Guidance, the **COUNTY** must be payor of last resort, meaning that if services are eligible to be billed to any other entity or funding source, including but not limited to, Medicaid, third party insurance or any other entity or funding source, the **COUNTY** will not pay for that service.

Appropriate back-up/supporting documentation may include cancelled checks, vendor invoices, authorized purchase orders, attendance/service logs, other funder invoices, expenditure spreadsheets or other original documentation, as well as a copy of the **SUBRECIPIENT'S** check issued with authorized signature. For construction contracts, inspection reports from qualified officials should be submitted with the appropriate monthly payment request.

The **SUBRECIPIENT** must submit the *Payment Request Form* with an authorized signature. Cancelled checks, paystubs, payroll reports, bank statements, and/or other documentation from vendors that expenses have been paid or services provided may be verified.

As applicable, processing of payment requests is also subject to the requirements and conditions as set forth within the **COUNTY'S Hurricane Ian CDBG-DR Subrecipient Manual**.

4. **Monthly Activity Report:** The **SUBRECIPIENT** must identify information for this report that ties actual, real-time project and expenditure status to the approved activity budget, scope of work, and projected outcomes. Narratives on budget activity, project progress or delays, and performance measures are included within this report.
5. **Demographics and Beneficiary Report:** The **SUBRECIPIENT** must report on data and include documentation, such as maps detailing service areas, number of individual persons benefitting from the project, and other demographic information on households, where applicable, to indicate the public benefit of the project and activity.
6. **Project Amendment Request:** As referenced under SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS, the **SUBRECIPIENT** must notify the County and provide information on any project or activity changes within a project amendment request for the **COUNTY** to determine whether the request rises to the level of an amendment to the Agreement.
7. **Single Audit Certification Form:** The **SUBRECIPIENT**, if a nonprofit or governmental organization, must complete a form to certify whether it has expended \$750,000 in federal and/or state funding within the **SUBRECIPIENT'S** given Fiscal Year.
8. **Davis-Bacon and Related Acts (DBRA) Labor Standards Reports (as applicable):** When an activity triggers DBRA requirements, the **SUBRECIPIENT** must report and submit information on assigned labor compliance staff, labor compliance review processes and outcomes, bid and contract requirements documentation, work classification and minimum prevailing wage rates, written clearance of labor compliance issue resolutions, file maintenance plans, and payroll review plans.

9. **Section 3 Reports (as applicable):** When an activity triggers Section 3 requirements, the **SUBRECIPIENT** is required to submit data and information on Targeted Section 3 worker labor hours, Section 3 worker labor hours, total worker labor hours, and other qualitative efforts which the **SUBRECIPIENT** and their vendors took in an attempt to reach or achieve Section 3 goals.
10. **Closeout Report:** The **SUBRECIPIENT** must report project completion data and provide documentation of closeout processes in relation to this project and activity(ies).

The **SUBRECIPIENT'S Agreement deliverables (as identified within "Exhibits")**, which the **SUBRECIPIENT** must follow, include, but are not limited to, the following information:

11. **Exhibit A: Scope of Work and Activities – Program/Project Activity Overview:** Brief description on the identified and agreed-upon CDBG-DR Program eligible activity, National Objective to be achieved for the activity and measures, as applicable, the number of individuals benefitting as a result of the project and its activities, and the appropriate CDBG-DR storm tie-back or resilience need being met, in accordance with SECTION II. SCOPE OF WORK AND ACTIVITIES.
12. **Exhibit B: Scope of Work and Activities – Project Activity Scope of Work Description:** Detailed scope of work defining the plan, design, and approach for the activity.
13. **Exhibit C: Financial/Grant Management System Budget Worksheet:** The high level, official budget for the project as approved under SECTION V.A. AGREEMENT PAYMENT. Any adjustments to this budget will require an amendment in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS.
14. **Exhibit D: Indirect Cost Rate Allocation Plan (as applicable):** As identified within the **NOFA Application** or the **Recovery and Resiliency Planning Program**, the **SUBRECIPIENT** has the option for the **COUNTY** to approve an indirect cost rate allocation plan. Where applicable, the plan and approval of the indirect cost rate for this Agreement is established under this Exhibit.
15. **Exhibit E: Projected Performance Measures and Outcomes Form:** The **COUNTY** will utilize the **SUBRECIPIENT'S** detailed scope of work to establish and project out specific performance metrics which the **SUBRECIPIENT** is required to meet to as a condition of project completion and closeout. The **COUNTY** will select the performance measure based on the eligible activity and proposed scope of work approved within the **NOFA Application** for the **Recovery and Resiliency Planning Program**.
16. **Exhibit F: Application:** The **SUBRECIPIENT'S** approved application is attached to this Agreement for identification and understanding of **SUBRECIPIENT'S** responses to critical project components.
17. **Exhibit G: Certificate(s) of Insurance:** In accordance with SECTION X.B. INSURANCE REQUIREMENTS, the **SUBRECIPIENT** must supply insurance coverage for the implementation of the project. This Exhibit will contain those required insurance coverages of the **SUBRECIPIENT**.
18. **Exhibit H: Certification of CDBG-DR Compliance Provisions:** This Exhibit outlines the compliance provisions which the **SUBRECIPIENT** must follow as a requirement of the federal CDBG-DR funding award. The **SUBRECIPIENT** must certify adherence with these conditions.
19. **Exhibit I: CDBG-DR Special Terms and Conditions:** The **COUNTY** may identify specific conditions, including but not limited to, training, technical assistance, capacity building, and policy development, which the **SUBRECIPIENT** must complete as a condition of receiving the CDBG-DR funding award.

20. **Exhibit J: Subrecipient Staff Organization:** In addition to annual certifications of continued operations, the **SUBRECIPIENT** is required to provide evidence of staff who will be responsible for conducting certain actions during project implementation. This Exhibit contains the contact information of those individual staff members.
21. **Exhibit K: CDBG-DR Program Subrogation Agreement:** As noted under SUBSECTION XIII.E. DUPLICATION OF BENEFITS and the Federal Register Guidance, the **SUBRECIPIENT**, as a recipient of federal assistance, must sign a Subrogation Agreement before the **COUNTY** can disburse CDBG-DR assistance to the **SUBRECIPIENT**.

An electronic signature or a scanned copy of the report with signature is acceptable for all reports or exhibits included above for which signatures are required. The **COUNTY** will instruct the **SUBRECIPIENT** on the approved System of Record under which the **SUBRECIPIENT** is expected to provide this data and information.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notes in the *Subrecipient Agreement Document Checklist*, the required forms and reports the **SUBRECIPIENT** must submit. These reports and forms include, but are not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, closeout reports, and periodic certifications as described above.

The **SUBRECIPIENT** should submit all reports and forms electronically in a computer-readable format using the approved System of Record submission method specified by the **COUNTY**. When required, reports or exhibits must be certified by signature. An electronic signature is acceptable for all reports, forms, and attachments within the *Subrecipient Agreement Document Checklist*.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

**SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS:** The **COUNTY** or its agents may also require the **SUBRECIPIENT** to submit additional non-project related reports, documentation, and information which are beneficial to determine the **SUBRECIPIENT'S** capacity, compliance, and performance related to this Federal award compliance. The **COUNTY** may request external reports, including but not limited to, prior and current fiscal year audits, other agency monitoring reports or reviews under other funding sources, organizational documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, documentation, and information requested by the County or its agents.

## **SECTION VII: AUDITS, MONITORING, AND RECORDS**

**SUBSECTION VII.A. – AUDITS AND INSPECTIONS:** In accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508, the **SUBRECIPIENT** will allow the **COUNTY**, Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the **SUBRECIPIENT'S** non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant

(CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

**SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS:** Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** must conduct a single or program-specific audit if it expends \$750,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

In accordance with 2 CFR 200.514, a complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit reports electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any associated corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant expressing an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

**SUBSECTION VII.C. – SUBRECIPIENT RISK ASSESSMENTS AND MONITORING:** In accordance with 2 CFR 200.332, the **COUNTY**, as HUD's Grantee and a pass-through entity, must evaluate each

subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. To enable those periodic assessments, the **SUBRECIPIENT** must provide information and documentation as required to the **COUNTY**. The **COUNTY'S** risk assessments results will be used to support the **COUNTY'S** oversight strategies and the level and frequency of monitoring, technical assistance, training to the **SUBRECIPIENT**.

The **SUBRECIPIENT** agrees to permit the **COUNTY** and persons duly authorized by the **COUNTY**, HUD, and other Federal, state, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** including interviews of any clients and employees of the **SUBRECIPIENT** to assess satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY** and persons duly authorized, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring will include: (1) reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate how activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies documented by the **COUNTY** within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted deficiencies as defined by the **COUNTY**. The **SUBRECIPIENT'S** failure to correct or provide the **COUNTY** with accepted justification for the deficiencies within the time specified by the **COUNTY** may result in withholding of payments or being deemed in breach or default of this Agreement and may result in the termination of this Agreement.

In response to **SUBRECIPIENT** deficiencies or other instances of capacity concerns prior to this Agreement, the **COUNTY** may also impose additional conditions on the use of the CDBG-DR funds, as noted under Exhibit I – CDBG-DR Special Terms and Conditions. This Exhibit ensures future compliance through trainings, technical assistance, and capacity building in an effort to correct or avoid early noncompliance.

**SUBSECTION VII.D. – RECORDKEEPING REQUIREMENTS:** The **SUBRECIPIENT** must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance's Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the **SUBRECIPIENT** and the **COUNTY** for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with the longer of the records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334 and State of Florida GS1-SL, except that the **SUBRECIPIENT** must:

1. Retain records for individual CDBG-DR activities for 5 years after the Agreement has ended, as prescribed in State of Florida GS1-SL.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied and for 5 years following that satisfaction.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income, and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under Exhibit H – Certification of CDBG-DR Compliance Provisions.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors, and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XIII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

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

**IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC**

**RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901,  
http://www.leegov.com/publicrecords.**

## **SECTION VIII: CONTRACTOR STATUS**

**SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR:** It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **COUNTY'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and the **COUNTY**, and the **COUNTY** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including, but not limited to, unpaid minimum wages and/or overtime premiums.

**SUBSECTION VIII.B. – SUBCONTRACTS:** Primary roles and responsibilities of the **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the **SUBRECIPIENT** must have a written contract. The **SUBRECIPIENT** must provide written notice to the **COUNTY** of all subcontractors, as well as provide copies of all contracts entered into with subcontractors, upon the **COUNTY'S** request. Procurement and/or bidding of non-primary roles and responsibilities must be awarded on a fair and non-collusive basis and must be in compliance with all applicable Lee County, State of Florida, and Federal procurement standards at 2 CFR 200.318-327. The **SUBRECIPIENT** shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the **SUBRECIPIENT** shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Agreement, Exhibit H – Certification of CDBG-DR Compliance Provisions, and Exhibit F – Application, as applicable, and must be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

**SUBSECTION VIII.C. – CONTRACTS AND FEDERAL PROCUREMENT STANDARDS:** If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women's business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable state and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;

7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to Exhibit H – Certification of CDBG-DR Compliance Provisions)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

## **SECTION IX:**            **CONFLICTS OF INTEREST**

The **SUBRECIPIENT** agrees 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 activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict-of-interest policy that complies with the process for promptly identifying and addressing such conflicts.

Any potential conflict of interest shall be reported using the **COUNTY'S** disclosure form.

## **SECTION X:**            **RISK MANAGEMENT**

**SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY:** To the fullest extent permitted by applicable law, **SUBRECIPIENT** shall protect, defend, indemnify, save and hold the **COUNTY**, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the **SUBRECIPIENT** resulting from the **SUBRECIPIENT'S** work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the **SUBRECIPIENT'S** performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the **COUNTY**, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, the **SUBRECIPIENT** hereby agrees to indemnify the **COUNTY** for all reasonable expenses and attorney's fees incurred by or imposed upon the **COUNTY** in connection therewith for any loss, damage, injury, liability, or other casualty. The **SUBRECIPIENT** additionally agrees that the **COUNTY** may employ an attorney of the **COUNTY'S** own selection to appear and defend any such action, on behalf of the **COUNTY**, at the expense of the **SUBRECIPIENT**. The **SUBRECIPIENT** further agrees to pay all reasonable expenses and attorney's fees incurred by the **COUNTY** in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the



**SUBRECIPIENT** and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

**SUBSECTION X.B. – INSURANCE REQUIREMENTS****INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance **namings Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (**Exhibit G – Certificate(s) of Insurance**). Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before the expiration date.

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:
  - \$100,000 per accident
  - \$500,000 disease limit
  - \$100,000 disease limit per employee
2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
  - \$500,000 bodily injury per person (BI)
  - \$1,000,000 bodily injury per occurrence (BI)
  - \$500,000 property damage (PD) or
  - \$1,000,000 combined single limit (CSL) of BI and PD

The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
  - \$100,000 bodily injury per person (BI)
  - \$300,000 bodily injury per occurrence (BI)
  - \$100,000 property damage (PD) or
  - \$300,000 combined single limit (CSL) of BI and PD
4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

#### **INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS**

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

**SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION:** The **COUNTY** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

### **SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION**

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2 CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

**SUBSECTION XI.A. – SUSPENSION:** The **COUNTY** reserves the right to suspend funding for failure to comply with the requirements of this Agreement. If the **SUBRECIPIENT** fails to submit required documents by the due date, the **COUNTY** can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

**SUBSECTION XI.B. – EVENTS OF DEFAULT:** If any of the following events occur ("Events of Default"), the **COUNTY** may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in SUBSECTION XI.C. REMEDIES or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**,

is or becomes false or misleading in any respect, or if the **SUBRECIPIENT** fails to keep or perform any of the obligations, terms, or covenants in this Agreement with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY'S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties' employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar causes wholly beyond both Parties' control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delays or disruptions in the **SUBRECIPIENT'S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, at its sole discretion, will determine if the delay is excusable under this Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

**SUBSECTION XI.C. – REMEDIES:** If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days,

the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XIX. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment;
4. Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
5. Exercise any corrective or remedial actions, including but not limited to:
  - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
  - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - c. Advise the **SUBRECIPIENT** to suspend, discontinue, or refrain from incurring costs for any activities in question.
6. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend, or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

**SUBSECTION XI.D. – TERMINATION BY COUNTY:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

If the financing for this project is contingent upon funding sources other than Lee County as identified in the application for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

**SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT:** Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** may, to the extent authorized by law, withhold payments to the **SUBRECIPIENT** for the

purpose of set-off until the exact amount of damages due to the **COUNTY** from the **SUBRECIPIENT** is determined.

In accordance with 24 CFR 570.503, upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

## **SECTION XII:**      **USE AND REVERSION OF ASSETS, REAL PROPERTY**

The **SUBRECIPIENT** must ensure that any equipment or fixed assets purchased in whole or in part with CDBG-DR funds be adequately safeguarded and assure such assets are used solely for authorized purposes. The purchase, use, management and disposition of equipment and other capital assets must comply with 24 CFR 200.313, 24 CFR 200.439, the applicable Federal Register Guidance, and 24 CFR 570. See SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION regarding the revision of any CDBG-DR funds or assets upon termination or expiration of this agreement. Per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income, and shall be returned to the **COUNTY** within 30 days of receipt of the proceeds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$25,000 must (1) be used to meet a national objective until five years after expiration or termination of this Agreement (24 CFR 570.505), unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

## **SECTION XIII:**      **ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

**SUBSECTION XIII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS:** The **COUNTY** will not intentionally award Agreements to any **SUBRECIPIENT** who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely

unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

**SUBSECTION XIII.B. - E-VERIFY REQUIREMENTS:** The **SUBRECIPIENT** must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

**SUBSECTION XIII.C. – NATIONAL OBJECTIVE:** All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under SUBSECTION II.C. NATIONAL OBJECTIVE. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

**SUBSECTION XIII.D. – USE OF FUNDS AND ORDER OF ASSISTANCE:** CDBG–DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, before awarding CDBG-DR assistance for the cost of carrying out the same activity.

The **SUBRECIPIENT** shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description, Exhibit H – Certification of CDBG-DR

**Compliance Provisions** further outlines Duplication of Benefits certifications which the **SUBRECIPIENT** must adhere to. Failure to do so can result in a return of funds as further outlined within this Agreement under SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SUBSECTION XIII.E. DUPLICATION OF BENEFITS.

**SUBSECTION XIII.E. – DUPLICATION OF BENEFITS:** The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under SUBSECTION XIII.D. USE OF FUNDS AND ORDER OF ASSISTANCE. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (see Exhibit K – CDBG-DR Program Subrogation Agreement).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** application. This notification must include a statement explaining how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

**SUBSECTION XIII.F. – CIVIL RIGHTS REQUIREMENTS:** The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the **SUBRECIPIENT** assures and certifies the following:

1. That they will comply with all applicable Federal, state and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of Federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project

outreach, project, or activity materials including communiques in the form of digital (website) media and paper materials.

- b. Section 109 - Title I of the Housing & Community Development Act of 1974
  - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
  - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
  - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 ("ADA") (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which give civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT'S** Single-Point-of-Contact.
  3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
  4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
  5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)
- [Guidelines for promoting Fair Housing for individuals with Limited English Proficiency \(LEP\)](#)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures can be found on the Fair Housing and Equal Opportunities HUD website.

**SUBSECTION XIII.G. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE:** In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict-of-interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse (FWA) training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such



complaints to the **COUNTY**.

**SUBSECTION XIII.H. – INELIGIBLE ACTIVITIES:** The **SUBRECIPIENT** assures that it will not conduct or expend CDBG-DR funds on any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

**SUBSECTION XIII.I. – PROGRAM INCOME:** The **SUBRECIPIENT** shall report to the **COUNTY** all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the **SUBRECIPIENT'S** periodic reporting outlined under SECTION VI. REPORTS AND EXHIBITS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

The **SUBRECIPIENT** must return to the **COUNTY**, prior to closeout, any program income generated by the project and its activities. The **COUNTY** certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists, or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

**SUBSECTION XIII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS:** The **COUNTY**, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the **COUNTY**, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan also details how the **COUNTY** will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

**SUBSECTION XIII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII):** As previously referenced under SUBSECTION VII.D. RECORDKEEPING REQUIREMENTS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from*

*disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.*

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the **SUBRECIPIENT** shall take reasonable measures to safeguard protected PII and other information HUD or the **COUNTY** designates as sensitive or the **SUBRECIPIENT** considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and responsibility over confidentiality.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a “covered entity,” as the law defines that term. Any “personal health information” (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this project and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently “de-identified” to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Methods to accomplish the highest levels of public service coupled with PHI confidentiality will be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

**SUBSECTION XIII.L. – NECESSARY AND REASONABLE REQUIREMENTS:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

**SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK:** In accordance with 2 CFR 200.1 and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 (“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”).

Any and all patent rights accruing under, or in connection with, the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under, or in connection with, the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the **COUNTY**. If any books, manuals, films, or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to

**COUNTY.** Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

**SUBSECTION XIII.N. – FEDERAL TERMS AND CONDITIONS:** For Federal CDBG-DR funded programs, the **SUBRECIPIENT** has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The **COUNTY** outlines full CDBG-DR Compliance Provisions for the **SUBRECIPIENT** under Exhibit H – Certification of CDBG-DR Compliance Provisions and details program management standards within the respective program's manual.

**SUBSECTION XIII.O. – STATE AND LOCAL GOVERNMENT REQUIREMENTS:** The **SUBRECIPIENT** agrees to the following statements as it relates to state and/or local government requirements:

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
4. The **SUBRECIPIENT** will comply with and implement this Agreement in a manner satisfactory to Lee County and HUD and consistent with all applicable laws, regulations, and policies and procedures that may be required as a condition of Lee County providing the grant funds, including but not limited to, all applicable program administration and compliance requirements set forth by this Agreement, and in accordance with the CDBG-DR NOFA Application, CDBG-DR Action Plan, and any other documentation previously provided by the **SUBRECIPIENT**, attached as Exhibit F – Application, and made a part hereof.
5. Lee County's provision of grant funds under this Agreement is specifically conditioned on the **SUBRECIPIENT's** compliance with this provision and all terms and conditions of this Agreement, the most recently published version of Lee County's *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*, and the CDBG-DR **Recovery and Resiliency Planning Program** Policies and Procedures Manual, which can be accessed on <https://cdbgdr.leegov.com>, and any amendments thereto, related Federal Register Guidance (including Guidance, which is provided under future Federal Register Notices), and the requirements of the authorities cited above, as the same may be amended from time to time.

6. The **SUBRECIPIENT** will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
7. The **SUBRECIPIENT** will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.
8. If needed, **SUBRECIPIENT** may be called upon to assist the **COUNTY** during a natural disaster or emergency. This may include, but is not limited to, the use of the **SUBRECIPIENT'S** facility to assist with Emergency Food Stamp preregistration if the facility is operations and use of staff to assist with case management and post-disaster shelter assessments. **SUBRECIPIENT** will be responsible to notify United Way 211 via phone, email, or through submission of online survey form, immediately after a disaster declaration if the location is accessible and operational and of any **SUBRECIPIENT** staff who are available to assist with recovery efforts.

#### **SECTION XIV: OTHER PROVISIONS AND CONDITIONS**

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.

If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY**.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-DR funds.

#### **SECTION XV: CITIZEN COMPLAINTS**

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt the **COUNTY's** written citizen complaint policy or provide their own policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time for the response is required.

#### **SECTION XVI: LEGAL AUTHORIZATION**

The **SUBRECIPIENT** certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The **SUBRECIPIENT** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation, or any other legal or financial condition that would in any way prohibit, restrain, or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

#### **SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE**

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process, requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party

irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

## **SECTION XVIII:      AGREEMENT CLOSEOUT**

The **SUBRECIPIENT** must complete a closeout checklist and final closeout reports to ensure complete and final documentation of all finance and program activities. The closeout checklist and reports must be submitted to the **COUNTY** within 90 days after the end date of this agreement.

The closeout checklist must include documentation and certification that:

1. All CDBG-DR funds have been expended within the exception of any closeout liabilities or contingent liabilities (24 CFR 570.509(a)(1));
2. All work financed with CDBG-DR funds has been completed, is eligible, and meets a national objective, including activities financed through escrow accounts, loan guarantees, or similar mechanisms; performance and expenditure reports have been submitted and account for program income and administrative expenditures (24 CFR 570.509(a)(2-5)); and
3. All other responsibilities under this Agreement have been met or the **COUNTY** has determined that there is no further benefit in keeping the Agreement open to secure performance (24 CFR 570.509(a)(6)).

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);
2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);
4. Final *Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

Based on the **SUBRECIPIENT'S** final reports and other relevant information, the **COUNTY** may execute a closeout agreement that specifies closeout costs or contingent liabilities that are subject to payment with CDBG-DR funds after the closeout agreement is signed; continuing responsibilities after closeout; or other provisions appropriate to special circumstances.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a **SUBRECIPIENT** does not affect:

1. The **COUNTY's** right to disallow costs and/or recover funds on the basis of a later audit or other review.
2. The **SUBRECIPIENT's** obligation to return funds due to the **COUNTY** from subsequent refunds, corrections, or other transactions.
3. The **COUNTY** and **SUBRECIPIENTS'S** obligation to comply with records retention as specified in 2 CFR 200, Subpart D—Post Federal Award Requirements, Records Retention and Access, including 2 CFR 200.334-338, as modified by 24 CFR 570.502(a)(7)(ii).
4. The **SUBRECIPIENT's** responsibilities for property management and disposition:

- For real property in 24 CFR 570.503(b)(7).
- For other property, as applicable in 2 CFR 200, Subpart D, Post Federal Award Requirements, Property Standards, including:
  - 2 CFR 200.310 (Insurance coverage).
  - 2 CFR 200.312 (Federally owned and exempt property).
  - 2 CFR 200.313 and 24 CFR 570.502(a)(6) (Equipment).
  - 2 CFR 200.314 (Supplies).
  - 2 CFR 200.315 (Intangible property).
  - 2 CFR 200.316 (Property trust relationship).
  - Audit requirements in 2 CFR 200, Subpart F.

**SECTION XIX:           NOTICES**

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

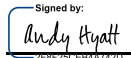
**SUBRECIPIENT**

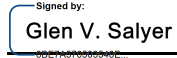
Name: Andy Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2525 Estero Boulevard, Fort Myers Beach, FL 33931  
Telephone: (239) 313-0895  
Email: [andyhyatt@fmbgov.com](mailto:andyhyatt@fmbgov.com)

**COUNTY**

Name: Glen Salyer  
Title: Assistant County Manager  
Agency: Office of Strategic Resources and Government Affairs  
Address: 2115 Second St. Fort Myers, FL 33901  
Telephone: (239) 533-2315  
Email: [GSalyer@leegov.com](mailto:GSalyer@leegov.com)

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Andy Hyatt  
\_\_\_\_\_  
Name (printed/typed)  
  
  
\_\_\_\_\_  
Signature  
  
Town Manager  
\_\_\_\_\_  
Title

Glen V. Salyer  
\_\_\_\_\_  
Name (printed/typed)  
  
  
\_\_\_\_\_  
Signature  
  
Assistant County Manager  
\_\_\_\_\_  
Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.

**SECTION XX:           ALL TERMS AND CONDITIONS INCLUDED**

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.



**IN WITNESS THEREOF**, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, Reports, and Forms as indicated on the *Risk Assessment Document Checklist* to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT:** Town of Fort Myers Beach

BY: 

Signed by:  
*Andy Hyatt*  
3F8F266EB44742B...

Signature

Andy Hyatt

Name (print)

7/17/2024 | 8:54 AM EDT

Date

ATTEST:  
CLERK OF CIRCUIT COURT

BY: 

Signed by:  
*Melissa Butler*  
34140A0DDF07442...

deputy clerk

Signed by:



BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: 

DocuSigned by:  
*Mike Greenwell*  
55F580F7224445A...

Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

DocuSigned by:  
*Amanda L. Swindle*  
EC9B5A5584DD473...

County Attorney's Office

**EXHIBIT A**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROGRAM/PROJECT ACTIVITY OVERVIEW**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for program and project eligibility with core HUD CDBG-DR requirements. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record.

**Program/Project Activity Overview**

**Project Name:** Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates

**CDBG-DR Program eligible activity:** Planning

**The National Objective to be achieved for each activity as a result of this Project:** Activities expended for planning and administrative costs under 24 CFR 570.205 and 24 CFR 570.206, which are considered to address the national objectives.

**The method of measuring the National Objective, if LMI:**

**The number of individuals benefiting as a result of this Project:**

- Total beneficiaries: 0.00
- Total low/mod beneficiaries: 0.00

**CDBG-DR storm tie-back and/or Mitigation resilience measure:** Natural hazard risks, including climate-related risks, are of critical concern to the Town of Fort Myers Beach. In updating the Town's comprehensive plan and developing a long-term recovery strategy, the Town has established "Sustainability and Resiliency Measures" as a foundational consideration. The plan will address the following: mitigation measures and strategies to reduce natural hazard risks, including climate-related risks; reduction of risks to people and property; mitigation measures and strategies to reduce the risk of public service interruption for the community, especially those members of the community who are most vulnerable to natural and climate-related risks; and resiliency of community lifelines. This may include activities such as review of building codes, land-use regulations, and floodplain management strategies, strategies to preserve natural barriers such as wetlands and coastal barriers, and resilient infrastructure considerations, such as minimum elevations and reinforced buildings and materials. The proposed plan for updating the Town's comprehensive plan and crafting a long-term recovery strategy places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life.

Town of Fort Myers Beach  
DR10157  
Exhibit A  
Page 2

**EXHIBIT B**  
**SCOPE OF WORK AND ACTIVITIES**  
**PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Project Activity Scope of Work Description ("Work")**

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Recovery and Resiliency Planning Program to support critically necessary island-wide recovery and resilience planning initiatives. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for modernized, comprehensive and actionable recovery plans to guide the town's implementation of its recovery strategy, fully considering unmet needs, mitigation best practices and sustainability. Since the adoption of its last comprehensive plan on January 1, 1999, and subsequent amendments with the latest in 2009, the town recognizes the urgent need for an updated and strategic framework to guide its recovery from the catastrophic impacts of Hurricane Ian. The proposed funding will enable the creation of an updated comprehensive plan that thoroughly evaluates the current conditions, outlines a forward-looking vision for the community, and specifies actionable steps toward realizing this vision. This comprehensive planning endeavor will address key areas critical to the community's recovery and resilience, in accordance with Florida Statute 163.3177. ([http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0163/Sections/0163.3177.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/Sections/0163.3177.html)) Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, planning efforts beyond those addressed in a typical Comprehensive Plan are needed. Through this project, the Town of Fort Myers Beach will build upon comprehensive planning activities to address the Town's Long Term Recovery Planning objectives. The Town aims to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning and execution. The planning process will prioritize recovery and redevelopment strategies that mitigate future risks, ensure continuity of critical services, protect vulnerable populations, and strengthen the community's resilience against natural and climate-related hazards. By incorporating considerations for FEMA Community Lifelines and aiming to reduce the disproportionate impacts on vulnerable groups, the plan will lay the groundwork for a resilient rebuild of Fort Myers Beach. The scope of planning activities encompasses all necessary data collection, studies, and analyses to formulate a holistic recovery strategy. Ultimately, comprehensive plan updates and a long-term recovery plan will not only provide strategic direction but also offer practical guidance for the effective

implementation of recovery actions, setting a precedent for resilience in the face of future challenges. The town may accomplish comprehensive planning updates and long-term recovery planning objectives through either development of a single plan or two symbiotic plans, based on upon expert guidance received from procured planning consultants with experience of projects in similar size and scope. In accordance with 2 CFR 200.318(d), the Town plans to procure a single contractor to complete both comprehensive plan updates and long term recovery planning activities to avoid procurement of duplicative services. While planning activities could be divided into separate projects and/or contracts, consolidation of this procurement will avoid procurement of duplicative services and a single contract can be expected to result in the most economical and fiscally responsible approach to pricing. The proposed planning initiatives for the Town of Fort Myers Beach, through the support of Community Development Block Grant Disaster Recovery (CDBG-DR) funding, are intended to fully address the unmet needs and mitigation requirements exposed by Hurricane Ian's devastation. By focusing on an integrative and community-driven approach, these initiatives will ensure that recovery planning is not only comprehensive but also deeply rooted in the real, on-the-ground needs of the community. The planning process will engage in a thorough analysis of unmet needs, identifying gaps in the existing recovery framework that have left certain areas, populations, or infrastructure vulnerabilities unaddressed. This will be achieved through a combination of data-driven evaluation and active engagement with community stakeholders, ensuring that the perspectives and experiences of those most affected by Hurricane Ian are central to the recovery strategy. By doing so, the plan will target resources and efforts towards the areas of greatest need, ensuring efficient use of funds and efforts. Furthermore, the approach to mitigation will be both forward-looking and grounded in best practices. Recognizing the changing climate and increasing frequency of severe weather events, the plan will incorporate cutting-edge resilience and mitigation strategies. These strategies will be focused not just on immediate recovery, but on long-term sustainability and preparedness for future events. By integrating the latest in climate adaptation and resilience thinking, the plan will position Fort Myers Beach as a leader in disaster preparedness, ensuring that the community is more robust and better protected against future threats. Additionally, the planning process itself will be characterized by efficiency and durability. By leveraging existing resources, engaging a wide range of stakeholders, and focusing on actionable outcomes, the planning initiatives will maximize impact while ensuring that the strategies developed are feasible and sustainable over the long term. The emphasis on actionable steps, grounded in a realistic assessment of resources and capabilities, will ensure that the plan is not just a visionary document but a practical roadmap to recovery and resilience. In summary, the comprehensive and long-term recovery planning proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, is a carefully designed approach to address the significant challenges posed by Hurricane Ian. By focusing on unmet needs, employing best-practice mitigation strategies, and ensuring the planning process is efficient and durable, the Town of Fort Myers Beach will not only recover from the impacts of Hurricane Ian but will emerge as a stronger, more resilient community, ready to face the challenges of the future with confidence.

**Design and Approach:** Phase I - Procurement: Upon award, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals

(RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327. In selecting a planning consultant, the Town will consider criteria such as: - Project understanding, original approach, and familiarity with innovative comprehensive and long-term recovery planning concepts. - Capabilities and previous experience in comparable projects and specialized experience and technical competence of the consultant, such as experience with post-disaster planning efforts that consider FEMA Community Lifelines and focus on community resilience and reduction of disproportionate impacts on vulnerable groups. - Demonstrated ability to utilize public engagement in the development of comprehensive and long-term recovery planning initiatives. - Proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to planning strategies. - Personnel assigned to the project demonstrating the consultant's capacity to complete the plans on time and within budget. - The Consultant's familiarity with the unique considerations of coastal communities in planning efforts; and, - Utilization of minority businesses and women's business enterprises, as required by 2 CFR 200.321. PHASE I DELIVERABLE: Execution of a contract for comprehensive plan updates and long-term recovery planning services. Phase II – Define Detailed Objectives and Deliverables: Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of comprehensive and long-term recovery planning initiatives. Foundational considerations of the Town's planning efforts will be: - Community Impact and Community Engagement: The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic “area of high need”. Planning efforts will include extensive and inclusive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that will be impacted by planning efforts. - Sustainability and Resiliency Measures: Given the devastation suffered by the Town of Fort Myers Beach, sustainability and resiliency measures to mitigate future risks are fundamental “areas of high need” related to planning efforts. Mitigation or resiliency measures and strategies to reduce natural hazard risks are critical components of planning efforts. These include climate-related risks, such as reducing risks to people and property, public service interruption for members who are most vulnerable to natural and climate-related risks, disproportionate impacts of economic, social, and climate shocks to vulnerable populations, including those with disabilities, the elderly, LMI households and neighborhoods, and non-native English speakers, and/or community lifelines. - Local Coordination and Avoidance of Redundancy: To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning efforts will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community. Updates to the Town's comprehensive plan will be conducted in accordance with the required and optional elements of comprehensive plans specified in F.S. 163.3177. Additional areas of focus for the Town's long-term recovery planning activities may include considerations important to the Town beyond those specified in statute; as such, the Town acknowledges that the selected planning consultant may suggest areas of study based on industry best practices and the unique recovery challenges

faced by the Town of Fort Myers Beach. Potential areas of study include, but are not limited to: - Existing Conditions - Vision and Goals - Land Use - Housing Strategy, with particular emphasis on Workforce Housing - Critical Infrastructure - Community Resilience - Community Facilities - Environmental Considerations - Economic Revitalization - Demographics and Trends - Cultural Considerations

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges. In Phase II, the Town will determine if a single plan to achieve both comprehensive plan updates and detail long-term recovery objectives is the most effective approach to accomplish planning goals, or if two separate, but symbiotic plans are more appropriate.

**PHASE II DELIVERABLE:** A detailed implementation plan for completion of planning activities and a corresponding timeline for project completion.

**Phase III – Plan Development:** The planning consultant will be responsible for all activities necessary to develop comprehensive plan updates and the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, draft plan documents will be presented for Town review, consideration, and feedback.

**PHASE III DELIVERABLE:** Draft comprehensive plan updates and a draft long-term recovery plan for Town review.

**Phase IV - Plan Refinement:** Based on feedback provided in Phase III, the planning consultant will modify and refine the comprehensive recovery plan to ensure that the Town's detailed objectives have been addressed.

**PHASE IV DELIVERABLE:** Final comprehensive plan updates and a final long-term recovery plan for Town adoption.

**Phase V – Plan Adoption:** The planning consultant will publicly present the final comprehensive plan updates and the final long-term recovery plan, after which the Town can adopt the plans for implementation.

**EXHIBIT C**  
**FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County’s financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Financial and Grant Management System Budget Worksheet**

As noted within the Agreement, the Subrecipient’s allocation of CDBG-DR funding for this project is broken down in the following manner:

|                                       | Most Impacted and Distressed (MID) |
|---------------------------------------|------------------------------------|
| Activity Funds (Direct Project Costs) | \$1,500,000.00                     |
| Activity Delivery Funds               | \$75,000.00                        |
| Total                                 | \$1,575,000.00                     |



**EXHIBIT D**  
**INDIRECT COST RATE ALLOCATION PLAN**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

**Indirect Cost Rate Allocation Plan**

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.

**EXHIBIT E****PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Recovery and Resiliency Planning NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

**Projected Performance Measures and Outcomes**

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

*{SELECT TABLE ROWS which are appropriate for the eligible activity(ies) provided under Exhibit A – From that point, select only those eligible activity performance measures which the Subrecipient will report on and provide that table below. The table may continue onto a second or third page}*

| Eligible Activity Type | Possible Performance Measures/Accomplishments<br>(select at least one measure for the eligible activity being met) | Projected Total |
|------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|
| Planning               | # of Water Management/Flood Maps Updated                                                                           |                 |
|                        | # of Community Engagement Meetings/Events Conducted                                                                |                 |
|                        | # of Public Education Meetings Conducted                                                                           |                 |
|                        | # of Hazard Mitigation Plans Prepared                                                                              |                 |
|                        | # of Resilience Plans Created                                                                                      |                 |
|                        | # of Plans or Planning Products                                                                                    | 1               |
|                        | # of Water Management/Flood Plans Completed                                                                        |                 |
|                        | # of Floodplain Design Standards Updated                                                                           |                 |
|                        | # of Survey Respondents with an Increased Understanding of Flood Risks and Water Management Issues                 |                 |
|                        | # of Mitigation Plans Completed                                                                                    |                 |
|                        | # of Plans Adopted                                                                                                 | 1               |
|                        | # of Non-Business Organizations Benefiting                                                                         |                 |
|                        | # of Entities at Resilience Meetings                                                                               |                 |
|                        | # of Climate Action Plans Completed                                                                                |                 |
|                        | # of Acres with Improved Multiple Hazard Risk Mapping                                                              |                 |
|                        | # of Disaster Recovery Plans Completed                                                                             |                 |
|                        | # of Persons at Resilience Meetings                                                                                |                 |
|                        | # of Planning Studies and Initiatives Completed                                                                    |                 |
|                        | Other                                                                                                              |                 |

**EXHIBIT F****APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the *Recovery and Resiliency Planning NOFA*. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

**Application**

*Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:*

1. *Subrecipient Agreement*
2. *Notice of Funding Availability Recovery and Resiliency Planning.*
3. *Recovery and Resiliency Planning Program Guidelines*
4. *Notice to Proceed*
5. *Subrecipient's application in response to the Notice of Funding Availability*

**{INCLUDE/DROP IN the project application and Program Guidelines into this Exhibit to complete it}.**



Lee County  
*Southwest Florida*

# Recovery and Resiliency Planning Program



### Organization Information

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2525 Estero Boulevard Fort Myers Beach, FL 33931
- ▶ Organization Type: Unit of general local government
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

### Authorized Organization Representative

- ▶ Name: Frank Kropacek
- ▶ Title: Operations & Compliance Director

### Contact Person

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: [jasonf@fmbgov.com](mailto:jasonf@fmbgov.com)
- ▶ Telephone: (239) 266-4673



Plan Information

- ▶ Plan Name: Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates
- ▶ Plan Type: New Plan

Plan Type

- |                                                                                               |                                                               |
|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <input checked="" type="checkbox"/> Comprehensive                                             | <input checked="" type="checkbox"/> Historic Preservation     |
| <input checked="" type="checkbox"/> Community Development                                     | <input checked="" type="checkbox"/> Housing                   |
| <input checked="" type="checkbox"/> Continuity of Operations                                  | <input checked="" type="checkbox"/> Land-Use                  |
| <input checked="" type="checkbox"/> Economic Revitalization                                   | <input checked="" type="checkbox"/> Open Space and Recreation |
| <input checked="" type="checkbox"/> Energy Use and Conservation                               | <input checked="" type="checkbox"/> Transportation            |
| <input checked="" type="checkbox"/> Floodplain, Wetlands Management, or other Natural Hazards | <input checked="" type="checkbox"/> Utilities                 |
| <input type="checkbox"/> Other:                                                               | <input checked="" type="checkbox"/> Human Services            |



## Target Services Location

### Target Service Location

- |                                                 |                                                              |
|-------------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> City of Cape Coral     | <input checked="" type="checkbox"/> Town of Fort Myers Beach |
| <input type="checkbox"/> City of Fort Myers     | <input type="checkbox"/> Village of Estero                   |
| <input type="checkbox"/> City of Bonita Springs | <input type="checkbox"/> Unincorporated Lee County           |
| <input type="checkbox"/> City of Sanibel        | <input type="checkbox"/> All of Lee County                   |
| <input type="checkbox"/> Other:                 |                                                              |

### Additional Service Areas

- Service Areas Outside Lee County: No



## The scope and projected outcome(s) of the plan

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Recovery and Resiliency Planning Program to support critically necessary island-wide recovery and resilience planning initiatives. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for modernized, comprehensive and actionable recovery plans to guide the town's implementation of its recovery strategy, fully considering unmet needs, mitigation best practices and sustainability.

Since the adoption of its last comprehensive plan on January 1, 1999, and subsequent amendments with the latest in 2009, the town recognizes the urgent need for an updated and strategic framework to guide its recovery from the catastrophic impacts of Hurricane Ian. The proposed funding will enable the creation of an updated comprehensive plan that thoroughly evaluates the current conditions, outlines a forward-looking vision for the community, and specifies actionable steps toward realizing this vision. This comprehensive planning endeavor will address key areas critical to the community's recovery and resilience, in accordance with Florida Statute 163.3177. ([http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL;=0100-0199/0163/Sections/0163.3177.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL;=0100-0199/0163/Sections/0163.3177.html))

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, planning efforts beyond those addressed in a typical Comprehensive Plan are needed. Through this project, the Town of Fort Myers Beach will build upon comprehensive planning activities to address the Town's Long Term Recovery Planning objectives. The Town aims to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning and execution.

The planning process will prioritize recovery and redevelopment strategies that mitigate future risks, ensure continuity of critical services, protect vulnerable populations, and strengthen the community's resilience against natural and climate-related hazards. By incorporating considerations for FEMA Community Lifelines and aiming to reduce the disproportionate impacts on vulnerable groups, the plan will lay the groundwork for a resilient rebuild of Fort Myers Beach.

The scope of planning activities encompasses all necessary data collection, studies, and analyses to formulate a holistic recovery strategy. Ultimately, comprehensive plan updates and a long-term recovery plan will not only provide strategic direction but also offer practical guidance for the effective implementation of recovery actions, setting a precedent for resilience in the face of future challenges. The town may accomplish comprehensive planning updates and long-term recovery planning objectives through either development of a single plan or two symbiotic plans, based on upon expert guidance received from procured planning consultants with experience of projects in similar size and scope. In accordance with 2 CFR 200.318(d), the Town plans to procure a single contractor to complete both comprehensive plan updates and long term recovery planning activities to avoid procurement of duplicative services. While planning activities could be divided into separate projects and/or contracts, consolidation of this procurement will avoid procurement of duplicative services and a single contract can be expected to result in the most economical and fiscally responsible approach to pricing.

The proposed planning initiatives for the Town of Fort Myers Beach, through the support

of Community Development Block Grant Disaster Recovery (CDBG-DR) funding, are intended to fully address the unmet needs and mitigation requirements exposed by Hurricane Ian's devastation. By focusing on an integrative and community-driven approach, these initiatives will ensure that recovery planning is not only comprehensive but also deeply rooted in the real, on-the-ground needs of the community. The planning process will engage in a thorough analysis of unmet needs, identifying gaps in the existing recovery framework that have left certain areas, populations, or infrastructure vulnerabilities unaddressed. This will be achieved through a combination of data-driven evaluation and active engagement with community stakeholders, ensuring that the perspectives and experiences of those most affected by Hurricane Ian are central to the recovery strategy. By doing so, the plan will target resources and efforts towards the areas of greatest need, ensuring efficient use of funds and efforts.

Furthermore, the approach to mitigation will be both forward-looking and grounded in best practices. Recognizing the changing climate and increasing frequency of severe weather events, the plan will incorporate cutting-edge resilience and mitigation strategies. These strategies will be focused not just on immediate recovery, but on long-term sustainability and preparedness for future events. By integrating the latest in climate adaptation and resilience thinking, the plan will position Fort Myers Beach as a leader in disaster preparedness, ensuring that the community is more robust and better protected against future threats.

Additionally, the planning process itself will be characterized by efficiency and durability. By leveraging existing resources, engaging a wide range of stakeholders, and focusing on actionable outcomes, the planning initiatives will maximize impact while ensuring that the strategies developed are feasible and sustainable over the long term. The emphasis on actionable steps, grounded in a realistic assessment of resources and capabilities, will ensure that the plan is not just a visionary document but a practical roadmap to recovery and resilience.

In summary, the comprehensive and long-term recovery planning proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, is a carefully designed approach to address the significant challenges posed by Hurricane Ian. By focusing on unmet needs, employing best-practice mitigation strategies, and ensuring the planning process is efficient and durable, the Town of Fort Myers Beach will not only recover from the impacts of Hurricane Ian but will emerge as a stronger, more resilient community, ready to face the challenges of the future with confidence.

## Implementation Plan - The approach to completing the plan

### Phase I - Procurement:

Upon award, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals (RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR

200.318-327. In selecting a planning consultant, the Town will consider criteria such as: - Project understanding, original approach, and familiarity with innovative comprehensive and long-term recovery planning concepts. - Capabilities and previous experience in comparable projects and specialized experience and technical competence of the consultant, such as experience with post-disaster planning efforts that consider FEMA Community Lifelines and focus on community resilience and reduction of disproportionate impacts on vulnerable groups. - Demonstrated ability to utilize public engagement in the development of comprehensive and long-term recovery planning initiatives. - Proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to planning strategies. - Personnel assigned to the project demonstrating the consultant's capacity to complete the plans on time and within budget. - The Consultant's familiarity with the unique considerations of coastal communities in planning efforts; and, - Utilization of minority businesses and women's business enterprises, as required by 2 CFR 200.321.

PHASE I DELIVERABLE: Execution of a contract for comprehensive plan updates and long-term recovery planning services.

Phase II – Define Detailed Objectives and Deliverables:

Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of comprehensive and long-term recovery planning initiatives. Foundational considerations of the Town's planning efforts will be: - Community Impact and Community Engagement: The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic “area of high need”. Planning efforts will include extensive and inclusive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that will be impacted by planning efforts. - Sustainability and Resiliency Measures: Given the devastation suffered by the Town of Fort Myers Beach, sustainability and resiliency measures to mitigate future risks are fundamental “areas of high need” related to planning efforts. Mitigation or resiliency measures and strategies to reduce natural hazard risks are critical components of planning efforts. These include climate-related risks, such as reducing risks to people and property, public service interruption for members who are most vulnerable to natural and climate-related risks, disproportionate impacts of economic, social, and climate shocks to vulnerable populations, including those with disabilities, the elderly, LMI households and neighborhoods, and non-native English speakers, and/or community lifelines. - Local Coordination and Avoidance of Redundancy: To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning efforts will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community.

Updates to the Town's comprehensive plan will be conducted in accordance with the required and optional elements of comprehensive plans specified in F.S. 163.3177. Additional areas of focus for the Town's long-term recovery planning activities may include considerations important to the Town beyond those specified in statute; as such, the Town acknowledges that the selected planning consultant may suggest areas of study based on industry best practices and the unique recovery challenges faced by the Town of Fort Myers Beach. Potential areas of study include, but are not limited to: - Existing Conditions - Vision and Goals - Land Use - Housing Strategy, with particular emphasis on Workforce Housing - Critical Infrastructure - Community Resilience - Community Facilities - Environmental Considerations - Economic Revitalization - Demographics and Trends - Cultural Considerations

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

In Phase II, the Town will determine if a single plan to achieve both comprehensive plan updates and detail long-term recovery objectives is the most effective approach to accomplish planning goals, or if two separate, but symbiotic plans are more appropriate.

**PHASE II DELIVERABLE:** A detailed implementation plan for completion of planning activities and a corresponding timeline for project completion.

**Phase III – Plan Development:**

The planning consultant will be responsible for all activities necessary to develop comprehensive plan updates and the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, draft plan documents will be presented for Town review, consideration, and feedback.

**PHASE III DELIVERABLE:** Draft comprehensive plan updates and a draft long-term recovery plan for Town review.

**Phase IV - Plan Refinement:**

Based on feedback provided in Phase III, the planning consultant will modify and refine the comprehensive recovery plan to ensure that the Town's detailed objectives have been addressed.

**PHASE IV DELIVERABLE:** Final comprehensive plan updates and a final long-term recovery plan for Town adoption.

**Phase V – Plan Adoption:**

The planning consultant will publicly present the final comprehensive plan updates and the final long-term recovery plan, after which the Town can adopt the plans for implementation.

## **The unmet or mitigation need that is being addressed by the plan and how the plan aligns with community goals**

The Town of Fort Myers Beach has not undergone comprehensive planning since 1999, with the most recent updates having been adopted in 2009. Even without the unprecedented destruction of Hurricane Ian, the Town of Fort Myers Beach would be long overdue for comprehensive planning updates; however, Hurricane Ian's devastation of the community has created increased urgency for current comprehensive planning efforts and supplemental long term recovery planning. Every facet of the Town was impacted by

this disaster. As rebuilding and recovery continues, it is critical that the Town has current comprehensive planning, while also addressing unique post-disaster challenges in a broader long-term recovery plan. In conjunction, accomplishing these objectives (through either a single plan or separate plans) will promote thoughtful, intentional recovery and future development that is both (a) aligned with the community's vision and (b) implemented with resilience and sustainability in mind.

The urgency and importance of comprehensive and long-term recovery planning activities for Fort Myers Beach in the aftermath of Hurricane Ian cannot be overstated. The catastrophic impacts of the hurricane have exposed vulnerabilities across every facet of the town, from infrastructure and housing to the local economy and natural environment. The disaster has not only underscored the need for immediate rebuilding efforts but has also highlighted the critical necessity for strategic, forward-thinking planning to ensure the community's resilience and sustainability in the face of future challenges.

The proposed comprehensive planning activities will provide a framework for the Town of Fort Myers Beach to rebuild in a manner that corrects pre-existing vulnerabilities and strengthens the community against future storms and climate-related impacts. This planning is crucial for identifying areas where the town's infrastructure, buildings, and public services can be improved and made more resilient. By doing so, the town will not only recover from the immediate damage inflicted by Hurricane Ian but also enhance its overall capacity to withstand and quickly recover from future disasters.

Furthermore, integrating long-term recovery planning with comprehensive planning efforts will ensure that the town's development trajectory is both sustainable and reflective of the community's vision. This dual approach allows for the incorporation of modern urban planning principles, environmental conservation, and sustainable development practices that are critical for addressing the challenges of climate change and sea-level rise. It provides a unique opportunity to reimagine Fort Myers Beach as a model of resilience, where economic, social, and environmental sustainability are interwoven into the fabric of the community.

Additionally, these planning activities are essential for securing the trust and support of the community. Engaging residents and stakeholders in the planning process fosters a sense of ownership and collective responsibility for the town's recovery and future. This participatory approach ensures that recovery efforts are not only aligned with the community's needs and aspirations but also bolster the social cohesion necessary for effective long-term resilience.

Moreover, comprehensive and long-term recovery planning will enable Fort Myers Beach to leverage funding and resources more effectively. By presenting clear, well-conceived plans, the town will be in a stronger position to attract investment, secure disaster recovery funds, and implement projects that provide the greatest benefit to the community. This strategic approach to planning and resource allocation is critical for maximizing the impact of limited resources and ensuring that recovery efforts are both efficient and equitable.

In conclusion, the devastation wrought by Hurricane Ian has brought into sharp focus the critical need for updated comprehensive planning and the integration of long-term recovery strategies for Fort Myers Beach. These planning activities are not merely administrative tasks but are fundamental to building a resilient, sustainable, and thriving community that is prepared to face the challenges of the future. Through thoughtful, intentional recovery and development efforts, Fort Myers Beach can emerge from this disaster stronger and more resilient than ever before.



**Explain your agency's experience completing plans of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the plan and oversee all compliance requirements**

The Town of Fort Myers Beach staff members who will be directly engaged in this project are listed below:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will partner with Hendry County to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG

Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

**Describe how the proposed plan integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines.**

Natural hazard risks, including climate-related risks, are of critical concern to the Town of Fort Myers Beach. In updating the Town's comprehensive plan and developing a long-term recovery strategy, the Town has established "Sustainability and Resiliency Measures" as a foundational consideration. (See Phase II of the Town's approach to plan completion.) The Town's planning consultant will be directed to address considerations such as: mitigation measures and strategies to reduce natural hazard risks, including climate-related risks; reduction of risks to people and property; mitigation measures and strategies to reduce the risk of public service interruption for the community, especially those members of the community who are most vulnerable to natural and climate-related risks; and resiliency of community lifelines. This may include activities such as review of building codes, land-use regulations, and floodplain management strategies, strategies to preserve natural barriers such as wetlands and coastal barriers, and resilient infrastructure considerations, such as minimum elevations and reinforced buildings and materials. The Town of Fort Myers Beach is acutely aware of the heightened vulnerability its community faces in light of natural and climate-related hazards. In response, our proposed plan for updating the Town's comprehensive plan and crafting a long-term recovery strategy places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life. This comprehensive approach to mitigation and resilience is encapsulated in the "Sustainability and Resiliency Measures" phase of our planning process, demonstrating our commitment to a future where Fort Myers Beach thrives in harmony with its natural environment and is prepared for the challenges posed by climate change.

The Town's methodology involves a multi-faceted approach to identifying and addressing natural hazard risks. Initially, the Town's planning consultant will conduct a thorough review of existing building codes, land-use regulations, and floodplain management strategies to identify current gaps and areas for improvement. This review will inform the development of revised policies that not only comply with but exceed current standards for resilience, incorporating the latest science and best practices in disaster risk reduction. For instance, strategies to preserve and restore natural barriers, such as wetlands and coastal dunes, will be prioritized for their dual role in protecting against storm surge and providing valuable ecosystems.

Moreover, our approach advocates for the implementation of resilient infrastructure designs, including the adoption of minimum building elevation standards, the use of reinforced construction materials, and the integration of green infrastructure to manage stormwater and reduce flood risk. These measures are aimed at minimizing damage during disasters, ensuring rapid recovery, and reducing long-term costs for rebuilding and insurance.

Planning efforts will include targeted strategies to address the specific vulnerabilities of our most at-risk populations, including those with disabilities, the elderly, low- to moderate-income (LMI) households, neighborhoods, and non-native English speakers. These strategies encompass enhanced communication and emergency preparedness training, the development of accessible evacuation plans, and the establishment of



resilient community centers that can serve as hubs of support during and after disasters.

The plan's intent to reduce targeted risks will be articulated through a clear narrative supported by quantifiable projections. This will involve the use of risk modeling and vulnerability assessments to quantify potential impacts of natural and climate-related hazards under current and future scenarios. By comparing these projections with the anticipated benefits of proposed mitigation measures, the plan will offer a compelling, data-driven rationale for its strategies, demonstrating how they will concretely reduce the community's risk profile.

Ultimately, the Town's plan (or plans) will be designed to enhance the long-term resilience of Fort Myers Beach by embedding sustainability and resilience into the fabric of our community. Through the adoption of new and enhanced data-driven approaches to understanding and mitigating risk, coupled with a commitment to ongoing evaluation and adaptation of our strategies, our plan will lay the groundwork for a Fort Myers Beach that not only survives but thrives in the face of natural disasters and climate change. This forward-thinking approach ensures that our community's recovery and development are built on a foundation of resilience, protecting our people, our economy, and our unique way of life for generations to come.

## Identify the risks or hazards being reduced and the impacts that those hazards have on people and property

Future hurricane/weather impacts and risks associated with climate change, such as sea level rise, are the most apparent risks that will be addressed and reduced by planning efforts to be undertaken by the Town. The town of Fort Myers Beach was one of the most impacted areas of Lee County. Fort Myers Beach suffered catastrophic flooding and storm surge, resulting in widespread destruction of vertical construction and infrastructure. While many areas of Lee County were able to reopen and begin rebuilding in the days and weeks following Ian, Fort Myers Beach is still devastated in many critical respects. Peak storm surge inundation levels of 10 to 15 feet above ground level (AGL) occurred in Fort Myers Beach and Estero Island, with a United States Geological Survey (USGS) water level sensor measured a wave-filtered water level of 12.70 ft above the mean higher high water (MHHW) level at Fort Myers Beach Pier, which was the highest water level measurement from this network.

Lee County's Action Plan for Hurricane Ian CDBG-DR funding accurately indicates that the Town of Fort Myers Beach fell within the highest possible bracket for each damage perspective considered: Fort Myers Beach had greater than \$50,000,000 in Real Property FEMA Verified Losses (RPFVL), greater than \$8,000 in average RPFVL, more than 800 FEMA Applicants with Real Property Damages. Further, the Action Plan also indicates that the Town of Fort Myers Beach ranks High/Medium or High/High in both RPFVL and Social Vulnerability.

The devastation caused by Hurricane Ian in 2022 impacted nearly every resident and property in the Town of Fort Myers Beach; this planning effort will identify effective mitigation measures for Town adoption, thereby mitigating the risk of future devastation and destruction similar to that experienced in the aftermath of Hurricane Ian.

Planning efforts to be undertaken by the Town of Fort Myers Beach are focused on a multi-dimensional approach to risk reduction, targeting not just the physical impacts of

hurricanes and climate change but also the broader social and economic vulnerabilities exposed by such disasters. The identified risks and hazards, notably future hurricane impacts, storm surge, sea level rise, and the resulting effects on the community, necessitate a nuanced understanding of how these factors interplay to exacerbate the town's vulnerability.

The physical impacts of these hazards are stark, with catastrophic flooding, storm surge, and the destruction of buildings and infrastructure laying bare the urgent need for robust mitigation strategies. However, beyond the immediate physical damage, these events have profound implications for the social fabric and economic stability of Fort Myers Beach. The community's experience following Hurricane Ian illustrates the cascading effects of such disasters, where the immediate challenge of physical rebuilding is compounded by longer-term issues such as displacement, loss of livelihoods, and the psychological toll on affected populations.

To address these risks comprehensively, the planning efforts will incorporate advanced modeling and risk assessment tools to predict the impacts of future weather events and climate change phenomena with greater accuracy. This includes detailed mapping of flood zones, understanding the potential for future sea level rise, and modeling storm surge impacts under various scenarios. By identifying the specific areas and populations at greatest risk, the town can prioritize mitigation measures that offer the most significant protective benefits.

Furthermore, the planning process will explore innovative mitigation strategies that go beyond traditional infrastructure solutions. These may include nature-based solutions such as the restoration of mangroves and dunes that act as natural barriers against storm surge, the implementation of green infrastructure to manage floodwaters, and the design of buildings and communities that are both resilient and adaptable to changing environmental conditions.

Economic and social resilience measures are also a critical component of the planning efforts. Initiatives to strengthen local economies, support displaced workers, and provide mental health resources in the aftermath of disasters are vital for the community's long-term recovery and resilience. By integrating these measures into the comprehensive planning process, Fort Myers Beach can ensure that its approach to risk reduction is holistic, addressing not only the physical impacts of hazards but also the social and economic challenges that accompany them.

In conclusion, the planning efforts by the Town of Fort Myers Beach to reduce the risks and impacts of hurricanes and climate-related hazards are comprehensive and forward-looking. By combining detailed risk assessments with innovative mitigation and resilience strategies, the town is laying the groundwork for a future where its people, property, and way of life are better protected against the inevitable challenges posed by natural disasters and climate change. This approach not only aims to mitigate the risk of future devastation but also to enhance the overall resilience of Fort Myers Beach, ensuring its ability to thrive in the face of adversity.

**Describe the value of the proposed plan to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the plan will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data**

Comprehensive plan updates and long-term recovery planning efforts hold incalculable value for the Town of Fort Myers Beach. Through thoughtful community engagement, these plans will reflect the community's needs and values and provide direction for future planning and development decisions. The Town anticipates plans that will provide short-term recommendations and suggestions that can be adopted immediately to promote thoughtful short-term growth and development consistent with the community's vision. Plans will also address long-term resiliency planning and mitigation strategies that can be adopted to guide future growth and development in ways that will better equip the Town, its residents, and businesses to deal with future extreme weather events. Phase II of the Town's approach to plan completion specifically addresses "Sustainability and Resiliency Measures" as a foundational component of planning activities that will be funded through this project.

The proposed comprehensive plan updates and long-term recovery planning efforts represent a pivotal investment in the future of Fort Myers Beach, offering both immediate and enduring benefits to the community. In the short term, these planning initiatives promise to lay the groundwork for strategic growth and development that aligns closely with the community's vision and values. By engaging residents and stakeholders in the planning process, the Town ensures that the resulting recommendations and guidelines are deeply rooted in the community's collective aspirations, thereby fostering a sense of ownership and commitment to the plan's implementation.

Short-term impacts of the proposed plan include the rapid adoption of recommendations that address current challenges and opportunities. For instance, improvements in zoning and land use, enhancements to public spaces, and initiatives aimed at boosting local economic development can be swiftly implemented, leading to immediate improvements in community livability and economic vitality. These actions, grounded in the principles of sustainability and resilience, also set the stage for long-term benefits by establishing a framework for decision-making that prioritizes the community's long-term health and prosperity.

Quantitatively, the value of these planning efforts can be measured in several ways, such as increased economic activity, enhanced property values, and improved public safety metrics. Qualitatively, the benefits include a stronger sense of community identity, greater civic engagement, and a heightened collective capacity to envision and work towards a shared future.

In the long-term, the comprehensive plan and recovery strategy will serve as a blueprint for resilience in the face of extreme weather events and climate change. By incorporating "Sustainability and Resiliency Measures" as a core element, the plan will guide the Town in implementing mitigation strategies designed to reduce vulnerability to natural disasters. This includes, but is not limited to, infrastructure improvements, adoption of resilient building codes, and the preservation and restoration of natural barriers. These measures not only protect against immediate hazards but also contribute to the overall sustainability of the community, ensuring that Fort Myers Beach remains a vibrant and attractive place to live, work, and visit for generations to come.

The long-term value of these planning efforts is also reflected in the enhanced resilience of the community during extreme events. By proactively addressing vulnerabilities and implementing targeted mitigation strategies, the Town will be better prepared to withstand and recover from future disasters. This resilience translates to reduced recovery costs, minimized economic disruption, and a quicker return to normalcy for residents and businesses alike.

In conclusion, the proposed comprehensive plan updates and long-term recovery

planning efforts are of immense value to the Town of Fort Myers Beach. They offer a strategic path forward that balances immediate needs and long-term goals, with a clear focus on community engagement, sustainability, and resilience. Through these efforts, the Town is not only addressing current challenges but also laying the foundation for a future where Fort Myers Beach is better prepared, more resilient, and thriving in the face of whatever challenges may come.

**Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities**

## Phase I - Procurement: Award + 4 months

The Town of Fort Myers Beach will develop solicitation documents in the form of a Request for Proposals (RFP) to solicit proposals from qualified planning consultants with proven experience in comprehensive planning and post-disaster long-term recovery planning. Careful consideration will be given to the scope of the RFP to ensure selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town's approach to plan completion further details considerations of RFP compilation.

The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327.

Dependencies or actions that must occur before this phase can begin: Execution of an award for planning activities.

Phase Deliverable: Execution of a contract for planning services.

## Phase II – Define Detailed Objectives and Deliverables: Award + 6 Months

Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of the planning effort. The Town's foundational considerations of "Community Impact and Community Engagement", "Sustainability and Resiliency Measures", and "Local Coordination and Avoidance of Redundancy" will be critical components of establishing plan objectives, as further described in the Town's approach to plan completion.

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

Dependencies or actions that must occur before this phase can begin: Completion of Phase I Procurement activities and execution of a contract for planning services.

Phase Deliverable: A detailed implementation plan and timeline for all planning activities.

## Phase III – Plan Development: Award + 12 Months

The planning consultant will be responsible for all activities necessary to update the Town's comprehensive plan and develop the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, a draft

comprehensive recovery plan will be presented for Town review, consideration, and feedback.

Dependencies or actions that must occur before this phase can begin: Finalization of a detailed implementation plan and timeline for all planning activities.

Phase Deliverable: Draft comprehensive plan updates and long-term recovery plan documents for Town review.

Phase IV - Plan Refinement: Award + 15 Months

Based on feedback provided in Phase III, the planning consultant will modify and refine the plans to ensure that the Town's detailed objectives have been addressed.

Dependencies or actions that must occur before this phase can begin: Submission of draft plans for Town review; Town comments returned to the planning consultant for edits / revisions to the draft plans.

Phase Deliverable: A final, updated comprehensive plan and a final long-term recovery plan for Town adoption.

Phase V – Plan Adoption: Award + 18 Months

The planning consultant will publicly present the final plans, after which the Town can adopt the final plans for implementation.

Dependencies or actions that must occur before this phase can begin: Submission of the final plans for Town adoption completed and submitted to the town.

Phase Deliverable: Adoption of comprehensive plan updates and adoption of a long-term recovery plan.

## Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 18-month period of performance for completion of planning activities.

This schedule has been estimated assuming consistent monthly spending / draws for compliance and oversight of \$4,833.33 for the entire period of performance and consistent monthly draws for indirect funding of \$8,816.67 throughout the entire 18 month period of performance. Beginning with Phase II activities, consistent monthly spending / draws for planning activities of \$107,142.86 are estimated throughout the remainder of the period of performance (Months 5 – 18).

Estimated project spending and draw downs total \$1,745,700.00.

Phase I – Procurement (Award + 4 months)

Month 1: \$13,650.00 Month 2: \$13,650.00 Month 3: \$13,650.00 Month 4: \$13,650.00



Phase II – Define Detailed Objectives and Deliverables (Award + 6 Months) Month 5: \$120,792.86 Month 6: \$120,792.86

Phase III – Plan Development (Award + 12 Months) Month 7: \$120,792.86 Month 8: \$120,792.86 Month 9: \$120,792.86 Month 10: \$120,792.86 Month 11: \$120,792.86 Month 12: \$120,792.86

Phase IV - Plan Refinement (Award + 15 Months) Month 13: \$120,792.86 Month 14: \$120,792.86 Month 15: \$120,792.86

Phase V – Plan Adoption (Award + 18 Months) Month 16: \$120,792.86 Month 17: \$120,792.86 Month 18: : \$120,792.86

## Reporting schedule for outcomes achieved

The Town will hold regularly scheduled status meetings with the planning consultant to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Exhibit A – Scope, Budget, Performance, and Reporting Requirements of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Exhibit A.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the comprehensive plan updates and long-term recovery planning efforts is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the planning process on track, adaptable, and transparent to all stakeholders involved.

Regularly scheduled status meetings with the planning consultant are a critical component of the Town's approach to planning activities. These meetings serve multiple purposes. They provide a forum for continuous progress monitoring, enabling the Town and the consultant to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the planning efforts remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Exhibit A of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also

ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the planning consultant are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the planning efforts continue to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a comprehensive and resilient plan for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the planning process is conducted with the highest levels of efficiency, transparency, and accountability. This oversight is instrumental in achieving the ultimate goal of creating a sustainable and resilient community, ready to face future challenges with confidence.



## Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its comprehensive planning and long-term recovery efforts prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed planning activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

Initially, the Town engaged in consultations with professional planning firms possessing expertise in handling projects of similar size and scope. These consultations were instrumental in gathering valuable insights into the current market rates for comprehensive planning services, including the costs associated with data collection, analysis, community engagement, and the development of planning documents. Considerations in planning cost estimates included compliance with code Florida Statute 161.3191, which requires comprehensive plan to be evaluated once every 7 years and compliance with Florida Statute 163.7132 (2)(f)1-6 "Peril of Flood" Community planning standards. Cost estimates also consider compliance with Florida Statute 380.093, which requires development of a report that prioritizes the town's critical assets and their vulnerability to specific climate hazards, including sea-level rise and storm surge, and include public outreach and stakeholder engagement, exposure and sensitivity analysis. By soliciting estimates, the Town was able to establish a benchmark for anticipated planning costs, ensuring that the budget reflected the true scope and complexity of the work required.

Furthermore, the Town calculated grant oversight and compliance fees, setting these at an industry-standard rate of 5% of the total grant award. This percentage was chosen based on common practices within the field, providing a realistic estimate for the costs associated with managing and overseeing the grant funds effectively. This includes the tasks such as monitoring project progress, financial reporting, and ensuring compliance with grant conditions.

Additionally, indirect costs were estimated based on a de minimis rate of 10% of modified total direct costs, in accordance with federal guidelines specified in 2 CFR 200.414(f). This rate encompasses expenses that are not directly attributable to a specific project activity but are necessary for the general operation of the Town and the successful execution of the project. Examples of indirect costs include administrative support, facilities maintenance, and utilities. Utilizing the de minimis rate simplifies the calculation of indirect costs, ensuring compliance with federal regulations while acknowledging the overhead expenses incurred by the Town in supporting the planning efforts.

A Detailed Project Budget reflecting SF-424A Detailed Budget Line Items for Non-Construction Programs is attached for reference. A corresponding Budget Narrative has also been attached, providing additional description and justification of proposed costs. Total estimated project costs are \$1,745,700.00.

By undertaking this thorough and informed process to determine cost estimates, the Town of Fort Myers Beach established a solid financial foundation for its application. This diligent preparation not only demonstrates the Town's pragmatic approach to project planning and budgeting but also enhances the credibility of the application by grounding it in realistic and justifiable cost projections. Such financial planning is crucial for securing the necessary funding and for the successful implementation of the comprehensive

planning and long-term recovery initiatives, ultimately contributing to the resilience and sustainable development of Fort Myers Beach.

## **Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the plan is completed on time and within budget**

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of planning activities and grant administration. Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary.

The Town will hold regularly scheduled status meetings with the planning consultant to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

## **Describe the actions that will be taken to implement the plan after completing the plan. Describe how the plan will be maintained and updated**

Once adopted, comprehensive plan updates and long-term recovery plans will be made publicly available and accessible to all residents, businesses, or other entities interested in rebuilding, redevelopment, or future development efforts.

The Town's zoning and community development departments will be provided with the plans to ensure that any policies or procedures affected by the final plans are updated accordingly.

The implementation of the comprehensive plan updates and the long-term recovery plan in the Town of Fort Myers Beach is a critical phase that will translate the vision and strategies outlined in these documents into tangible improvements and resilience for the community. The process for implementing these plans is designed to be inclusive, transparent, and adaptable to ensure that the momentum gained during the planning phase continues through to execution. This involves several key actions: Public Accessibility and Engagement: Upon adoption, both the comprehensive plan updates and the long-term recovery plan will be made publicly available. This ensures transparency and allows all community members, businesses, investors, and other stakeholders to access the plans easily. The Town will leverage multiple platforms, such as the official municipal website, public libraries, and community centers, to disseminate the plans. Additionally, informational sessions and workshops may be organized to walk stakeholders through the plans, highlighting key initiatives, and explaining how individuals and businesses can align their rebuilding and development efforts with the broader community vision.

**Policy and Regulatory Updates:** The Town's zoning and community development departments play a pivotal role in the implementation phase. These departments will be tasked with integrating the strategies and guidelines from the comprehensive plan and recovery plan into local policies, zoning codes, and development regulations. This may involve revising local zoning to encourage resilient building practices, adjusting land use plans to reduce vulnerability to natural hazards, or implementing new sustainability standards for new developments. The alignment of local policies and procedures with the updated plans ensures that all future development is consistent with the community's long-term resilience and sustainability goals.

**Ongoing Review and Maintenance:** Recognizing that resilience and recovery are dynamic processes, the Town plans to institute a regular review cycle for the plans, ideally every five years. This regular review process will allow the Town to assess the effectiveness of implemented strategies, integrate new scientific and technological advancements, and adjust to changes in the community's needs and priorities. While the commitment to this review cycle is strong, it is acknowledged that the ability to conduct these reviews is subject to the availability of future funding. To address this, the Town will actively seek diverse funding sources, including grants, public-private partnerships, and other financing mechanisms, to ensure the plans remain current and actionable.

**Capacity Building and Education:** To support the effective implementation of the plans, the Town will invest in capacity-building initiatives for local government staff, developers, and community members. This includes training programs on resilient building techniques, workshops on sustainable development practices, and educational campaigns on disaster preparedness and mitigation. By building local expertise and awareness, the Town ensures that the principles of resilience and sustainability are embedded in all aspects of community development and recovery efforts.

In summary, the actions taken to implement the comprehensive plan updates and the long-term recovery plan in Fort Myers Beach will be multifaceted and continuous. Through public accessibility, policy updates, regular reviews, community involvement, and capacity building, the Town aims to create a living framework that guides the community towards a resilient, sustainable, and prosperous future.

## **Describe how the plan is innovative, based on national best practices, and designed in accordance with an existing evidence-based program**

During proposal scoring, consideration will be given to the selection of a planning firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to comprehensive planning and long-term recovery strategies in post-disaster, coastal communities. Incorporation of this as a selection metric in the RFP will ensure that the selected planning consultant is both experienced in planning initiatives that are forward-thinking and innovative and is also capable of providing actionable plans that can be of function and utility in both short- and long-term Town development.

The commitment to innovation and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to comprehensive planning and long-term recovery strategies, particularly in the context of post-disaster and coastal community resilience. This commitment is operationalized through the selection process for planning firms, ensuring that the chosen consultant

brings a wealth of knowledge, experience, and creativity to the project.

**Innovative Planning Practices:** The innovative aspect of the plan is emphasized through the prioritization of planning firms that demonstrate a history of incorporating cutting-edge concepts and technologies into their work. This includes, but is not limited to, the use of advanced geographic information systems (GIS) for risk assessment and land-use planning, the application of smart city technologies to enhance urban resilience, and the integration of green infrastructure to address stormwater management and coastal erosion. By leveraging these innovative practices, the Town aims to develop a comprehensive plan and recovery strategy that not only addresses current challenges but also anticipates future trends and vulnerabilities.

**National Best Practices:** Alignment with national best practices ensures that the planning efforts are grounded in proven strategies that have been successful in similar contexts across the country. This includes adherence to the guidelines and recommendations set forth by leading organizations such as the American Planning Association (APA), the National Institute of Standards and Technology (NIST), and the Federal Emergency Management Agency (FEMA). By drawing on these resources, the planning process will benefit from a wealth of expertise in areas such as disaster recovery, community engagement, sustainable development, and climate adaptation. The incorporation of these best practices into the planning process ensures that the strategies developed are not only innovative but also reliable and effective.

**Evidence-Based Programs:** The emphasis on evidence-based programs underscores the Town's commitment to implementing strategies that are supported by empirical research and have demonstrated positive outcomes in similar settings. This approach ensures that the planning initiatives are not based on theoretical models, but on practical solutions that have been tested and validated in real-world scenarios. For example, the plan might incorporate resilience measures that have been shown to effectively reduce flood risk in coastal communities or economic development strategies that have successfully revitalized post-disaster towns.

By making innovation, national best practices, and evidence-based programming key selection criteria in the Request for Proposals (RFP) for planning consultants, the Town ensures that the comprehensive plan and recovery strategy will be forward-thinking, grounded in proven methodologies, and tailored to the unique needs and challenges of Fort Myers Beach. This strategic approach not only enhances the quality and effectiveness of the planning process but also ensures that the resulting plans are actionable, providing a clear and practical roadmap for the Town's development in both the short and long term.



## A description of how you will coordinate with other planning, community development, and/or recovery or resilience plans and initiatives that are underway

The of Fort Myers Beach recognizes that some aspects of future development extend beyond our local boundaries, necessitating collective action. Phase II of the Town's approach to plan completion specifically address "Local Coordination and Avoidance of Redundancy" as a foundational component of planning activities that will be funded through this project. To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning activities will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community. Specifically related to long-term recovery planning, FEMA has drafted preliminary long-term recovery planning documents for the Town's review and consideration. Through this planning project, the Town will utilize the foundational work performed by FEMA through that effort as a basis to expand and create a more comprehensive, actionable, and task-oriented long-term recovery strategy. By utilizing FEMA's plan as a starting-point, the Town will be able to ensure that CDBG-DR funds are utilized in a fiscally responsible way that builds upon existing materials and does not duplicate the effort or benefit provided by FEMA.

Phase II of the Town's approach to plan completion also addresses "Community Impact and Engagement". Planning efforts will include comprehensive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that may be impacted by comprehensive plan updates and the long-term recovery plan. These extensive outreach efforts will promote coordination with other planning, community development, and/or recovery or resilience plans and initiatives that are underway by (a) thoughtfully considering relevant outside efforts in the Town's planning activities and (b) promoting transparency for outside entities that may have a symbiotic interest in the Town's plan development.

## Are there any existing plans?

Yes



### Authorized Organization Representative

- ▶ Plan Name: DRAFT Long-Term Recovery Plan
- ▶ Plan Website URL:
- ▶ Is this plan in progress? Yes

### Plan Description

Preliminary assessment of long-term recovery needs guided by the Town's 2009 Comprehensive Plan Updates

### Interaction with Proposed Activities

The draft Long-Term Recovery Plan (LTRP) compiled by FEMA was guided by the Town's 2009 Comprehensive Plan. Through this CDBG-DR planning project, the Town's comprehensive plan will be updated to thoroughly evaluate current conditions and address key areas critical to the community's recovery and resilience. The FEMA LTRP will provide a solid foundation for long-term recovery planning efforts to be performed through this project, which will be guided by current comprehensive plan updates, which are required by state statute. The draft FEMA LTRP will be provided to the Town's procured planning consultant as a resource in planning activities to be conducted through this project.



## **A description of the area of high need that will be addressed by the plan**

The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic “area of high need”. The area of high need for this project is recognized to be the entire island – specifically Census Tracts 601 and 602. A Risk Comparison Report for the project area is attached, documenting the high priority objectives of mitigating hurricane and flood-related risks and increasing the area’s “very low” community resilience scores. FEMA Flood Insurance Rate Maps (FIRMs) are also attached, further supporting the Town’s risk of flood related impact.

## **A description of the intended impact the plan will have on the community and area of high need**

Comprehensive plan updates, in conjunction with long-term recovery planning, are intended to guide the recovery, growth, development, and overall planning of the Town of Fort Myers Beach as it rebuilds in the aftermath of Hurricane Ian. The plans will address key areas critical to the community’s recovery and resilience, such as housing, infrastructure, economic revitalization, preservation of natural and cultural assets, as well as health and social services. The plans aim to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning efforts and subsequent execution.

Given the foundational consideration of “Sustainability and Resiliency Measures”, the plans are also intended to provide strategic insight into best practices for recovery and growth across all key areas of study, with a focus on sustainability and resiliency measures that will mitigate future natural hazard risks faced by the Town. The comprehensive plan updates and long-term recovery planning for the Town of Fort Myers Beach are designed to serve as a cornerstone for the community's path forward, particularly in addressing the high needs arising from the devastating impact of Hurricane Ian. These plans are not merely documents, but blueprints for action that will shape the future of the town in profound ways. The intended impact of these efforts is multifaceted, focusing on immediate recovery needs while laying the groundwork for sustainable growth and resilience against future challenges.

**Holistic Community Recovery and Growth:** At the core of the intended impact is the holistic recovery and growth of Fort Myers Beach. The plans will be crafted to guide the reconstruction of the town, ensuring that it not only recovers from the physical damages inflicted by Hurricane Ian but also emerges stronger, more vibrant, and more resilient. This encompasses revitalizing the local economy, rebuilding and improving infrastructure to better withstand future natural disasters, and ensuring that housing is not only restored, but is made more affordable and resistant to climate impacts.

**Sustainability and Resiliency:** A significant intended impact is the incorporation of sustainability and resiliency measures across all facets of the town's recovery and development efforts. This means that the plans will advocate for and guide the implementation of green infrastructure, sustainable land use, energy efficiency, and water conservation practices. By embedding these principles into the fabric of the town's

redevelopment, Fort Myers Beach aims to reduce its environmental footprint, enhance its resilience to climate change, and safeguard the natural and cultural assets that define the community's identity.

**Community Engagement and Empowerment:** Central to the intended impact is the emphasis on community engagement and public participation. The plans recognize that the success of recovery and development efforts hinges on the active involvement of local residents, businesses, and stakeholders. Through workshops, public forums, and ongoing dialogues, the planning process will empower the community, giving voice to diverse perspectives and ensuring that the redevelopment reflects the collective vision and needs of the town's inhabitants.

**Equitable and Inclusive Recovery:** The plans are intended to address the needs of all community members, particularly those most vulnerable to the impacts of natural disasters and climate change. This includes low-income households, the elderly, individuals with disabilities, and other marginalized groups. By focusing on equitable recovery and development, the plans aim to ensure that the benefits of revitalization efforts are shared widely, reducing social disparities and promoting a more inclusive community fabric.

**Strategic Insight into Best Practices:** Comprehensive plan updates and long-term recovery planning efforts are designed to provide strategic insight into recovery and growth best practices. This includes learning from other communities that have faced similar challenges, incorporating cutting-edge research on disaster recovery and sustainability, and applying lessons learned to mitigate future risks. By doing so, the Town of Fort Myers Beach will not only address its immediate recovery needs but also position itself as a model for resilience, sustainability, and thoughtful community development.

In summary, the intended impact of the comprehensive plan updates and long-term recovery planning is to catalyze a recovery that is robust, sustainable, and inclusive, transforming the challenges posed by Hurricane Ian into opportunities for growth and resilience. Through these efforts, Fort Myers Beach will not just rebuild but will reimagine its future, creating a community that is better prepared for the challenges that lie ahead.

### **A description of the intended beneficiaries of the plan, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the plan**

The intended beneficiaries of the plans include the Town of Fort Myers Beach's residents, business-owners, and other stakeholders. Because the geographic scope of this plan will include all of Census Tracts 601 and 602, all residents of those tracts can be considered intended beneficiaries.

**Broad Community Benefit:** The primary beneficiaries of the plans encompass the entire residential and business community of Fort Myers Beach. This includes homeowners, renters, local business owners, and other stakeholders who have a vested interest in the town's recovery, sustainability, and future growth. By including the whole of Census Tracts 601 and 602 within the plan's geographic scope, the strategy ensures that all residents—without exception—are recognized as intended beneficiaries. This comprehensive coverage ensures that the planning efforts address the diverse needs





and aspirations of the entire community, fostering a unified and cohesive approach to recovery and development.

**HUD-Defined Vulnerable Populations:** In accordance with HUD guidelines, special attention is given to identifying and supporting vulnerable populations within the community. These groups include, but are not limited to, low-income households, the elderly, families with children, individuals with disabilities, and those with limited English proficiency. The plans will be crafted with the intent to provide targeted support and resources to these groups, ensuring that recovery and development efforts are equitable and inclusive. This might manifest in various forms, such as affordable housing initiatives, accessible public services and infrastructure, and programs designed to enhance economic opportunities for low-income residents.

**Communities with Increased Risk:** Acknowledging that certain communities within the town face heightened risks due to geographic location, socio-economic factors, or other determinants, the plans aim to specifically address these vulnerabilities. Strategies will be implemented to mitigate risks related to natural disasters, climate change, and social isolation, ensuring that these communities are not only protected but also empowered to actively participate in the town's recovery and growth. This targeted approach ensures that the planning efforts do not merely benefit the community as a whole but also address the specific needs of those at greatest risk.

**Engagement and Empowerment:** A key aspect of ensuring that the intended beneficiaries truly benefit from the plans is through active engagement and empowerment. The planning process will incorporate mechanisms for community input and feedback, ensuring that the voices of all residents, particularly those from vulnerable populations, are heard and considered. This participatory approach not only enriches the planning process with diverse perspectives but also fosters a sense of ownership and commitment among the beneficiaries, enhancing the effectiveness and sustainability of the implemented strategies.

In conclusion, the comprehensive plan updates and long-term recovery planning for the Town of Fort Myers Beach are designed with a deep commitment to inclusivity and equity. By identifying and addressing the needs of the entire community, with particular attention to HUD-defined vulnerable populations and communities at increased risk, the plans aim to foster a recovery and development process that is robust, sustainable, and reflective of the collective aspirations of Fort Myers Beach's diverse population. Through this approach, the plans will lay the foundation for a community that is not only resilient in the face of future challenges but also vibrant, inclusive, and thriving.

## Authorized Organization Representative

|   | Census Tract   | Block Group                 |
|---|----------------|-----------------------------|
| 1 | 601.02         | 1, 2, 3, 4, 5               |
| 2 | 602.01         | 1, 2, 3                     |
| 3 | 602.02, 602.03 | 602.02: 1, 2 / 602.03: 1, 2 |



## The types of entities benefitting from the plan

- |                                                      |                                                |
|------------------------------------------------------|------------------------------------------------|
| <input checked="" type="checkbox"/> Residents        | <input checked="" type="checkbox"/> Businesses |
| <input checked="" type="checkbox"/> Local Government | <input type="checkbox"/> Other:                |

- If “Residents” is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the plan, if it were implemented

|                                |      |
|--------------------------------|------|
| Total Number of Beneficiaries: | 6670 |
| Total LMI Beneficiaries:       | 2055 |

**The target populations from the table below who would benefit from the plan if it were implemented**

- ☒ Populations presumed by HUD to be LMI persons:
  - Abused children
  - Elderly persons (62 and older)
  - Battered spouses
  - Homeless persons
  - Severely disabled adults (as defined by the Census)
  - Illiterate adults
  - Persons living with AIDS
  - Migrant farm workers
- ☒ Protected classes (groups protected from discrimination under federal civil rights law based on the following):
  - Race
  - Color
  - National origin
  - Sex (including sexual orientation and gender identity)
  - Religion
  - Familial status
  - Disability
  - Age
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
  - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
    - Geography
    - Markets
    - Prevalent housing stock and tenure
    - History
    - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
  - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

### **A description of the method used to identify the intended beneficiaries of the plan if it were implemented**

The Town's comprehensive plan updates and long-term recovery planning efforts will benefit all current and future residents, business owners, and stakeholders of the designated "area of high need". As planning efforts evolve, beneficiaries may be further refined through methods such as those described below to promote a systematic and inclusive approach to planning activities, with the goal of ensuring that the plans are reflective of and responsive to the needs of the entire community, especially those within designated "areas of high need."

**Demographic Analysis:** A thorough demographic analysis may be conducted to gain a deep understanding of the population within the designated areas of high need. This analysis examines various factors, including income levels, age distribution, housing status, and language proficiency, among others. The objective will be to identify vulnerable populations that may require specific forms of support or targeted interventions. This data-driven approach ensures that the plans are tailored to the unique characteristics and needs of the community's diverse population.

**Stakeholder Engagement:** Engagement with stakeholders will be a critical component of the method used to refine intended beneficiaries. This may include public consultations, workshops, surveys, and meetings with community groups, business associations, and other relevant organizations. These engagements will provide valuable insights into the community's priorities, challenges, and aspirations. They will also offer an opportunity for diverse voices to be heard, ensuring that the plans are inclusive and representative of the entire community's interests.

**Integration with Existing Data and Plans:** The identification process will also involve reviewing and integrating findings from existing plans, studies, and reports related to the community's development, resilience, and sustainability. This will ensure that the comprehensive plan updates and long-term recovery plan build upon prior knowledge and efforts, avoiding duplication and leveraging existing resources to maximize benefit to the community.

In summary, the refinement of beneficiaries of the comprehensive plan updates and long-term recovery plan in the Town of Fort Myers Beach will be characterized by its thoroughness, inclusivity, and adaptability. By implementing methods such as those described, the Town will ensure that resulting plans are grounded in the realities of the community's needs and aspirations. This approach will not only facilitate effective and targeted recovery and development efforts, but will also foster a sense of ownership and commitment among the beneficiaries, enhancing the overall impact and sustainability of the plans.

### **A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement**

The Town of Fort Myers Beach notified the public of its intention to apply for planning funds through the Lee County – CDBG Recovery and Resiliency Planning program.



Notice was published in a newspaper of local circulation in block/display ad format on Tuesday, February 13, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person.

**A description of additional community outreach, engagement, and partnerships that will occur as part of the development of this plan, including the approach to engaging new stakeholders, if applicable**

Planning efforts will include comprehensive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that may be impacted by the plan. A detailed implementation plan, including specific methods of engagement (i.e., town hall meetings, surveys, digital comment submission, etc.) and timelines for engaging both existing and new stakeholders, will be established in Phase II of the Town's approach to plan completion.

### A description and justification of the proposed costs

A Detailed Project Budget reflecting SF-424A Detailed Budget Line Items for Non-Construction Programs is attached for reference. A corresponding Budget Narrative has also been attached, providing additional description and justification of proposed costs. Total estimated project costs are \$1,745,700.00.

The Town of Fort Myers Beach will implement the plan with applicant staff and contractual support to perform grant oversight and compliance.

Costs associated with Town staff oversight of project activities and grant compliance activities will be funded via Indirect Cost reimbursement; the Town has elected to utilize the de minimis cost rate (10%), with total estimated indirect cost reimbursement of \$158,700.00

Costs associated with contractual support for grant oversight and compliance are estimated at 5% of total project costs, which is consistent with industry standard rates for these services on projects of similar size and scope. Total estimated costs for contractual grant oversight and compliance are \$87,000.00.

The Town of Fort Myers Beach will procure a professional planning consultant to complete comprehensive plan updates and long term recovery planning efforts. Through consultations with professional planning firms possessing expertise in handling projects of similar size and scope, the Town estimates that total costs for contractual planning activities are \$1,500,000.00.

### A description of whether the plan will be implemented with applicant staff, vendor support and/or other

The Town of Fort Myers Beach will implement the plan with applicant staff and contractual support. Staff members who will be directly engaged in this project are listed below, along with their experience in managing projects funded with grant funds:

**Andrew Hyatt:** Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

**Frank Kropacek:** Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

**Joe Onzick:** Mr. Onzick served for 10 years as the Executive Director of Finance for Kane

County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's administrative expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manger for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will partner with Hendry County to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to administration of CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Completion of comprehensive plan updates and long term recovery planning efforts will be completed by a planning consultant, to be procured in Phase I of project activities. Upon award of planning funds, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals (RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327.

**A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable**

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

Contract A: Contractual Grant Oversight and Compliance: The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to support contractual and oversight compliance activities. An existing contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for oversight and compliance activities. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance.

Dependencies associated with Contract A: Issuance of an award for planning funds.

Contract B: Contractual Planning Activities

The Town of Fort Myers Beach will competitively procure professional planning services to complete comprehensive plan updates and long-term recovery planning activities. Upon award of planning funds, The Town will develop procurement documents and solicit these services. The Town anticipates that funding under this contract will be expended consistently from award of a contract through completion of planning services.

Timeframe associated with Contract B: Award + 4 months

Dependencies associated with Contract B: Issuance of an award for planning funds; Completion of Phase I Procurement Activities. To address and control for dependencies, the Town will ensure that procurement documents are developed promptly upon award of planning funds.





# Budget Form & Duplication of Benefits

## Budget Form & Duplication of Benefits

| Description                                                              | Total Requested       |
|--------------------------------------------------------------------------|-----------------------|
| Development of Plan (Comprehensive, Land Use, Resiliency and Mitigation) | \$1,500,000.00        |
| Mapping and Data Upgrades                                                | \$0.00                |
| Education or Outreach Programs                                           | \$0.00                |
| Building Codes                                                           | \$0.00                |
| Zoning Ordinances                                                        | \$0.00                |
| Other Eligible Costs                                                     | \$75,000.00           |
| Description: Other eligible activity delivery costs                      |                       |
| <b>Funding Requested from CDBG-DR</b>                                    | <b>\$1,745,700.00</b> |

## Sources of Leveraged Funds

| Source of Funds                                               | Amount | % of Total | Status of Funds |
|---------------------------------------------------------------|--------|------------|-----------------|
| FEMA Building Resilient Infrastructure and Communities (BRIC) | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| FEMA Hazard Mitigation Grant Program (HMGP)                   | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| FEMA Public Assistance (PA)                                   | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| Local (Municipal) Funds                                       | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| Other CDBG-DR Funds (from Florida COM)                        | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| Other State Funds                                             | \$0.00 | 0.00       | N/A             |
| Use of Funds:                                                 |        |            |                 |
| Purpose of Funds:                                             |        | N/A        |                 |
| Resilient Florida                                             | \$0.00 | 0.00       | N/A             |



## Budget Form & Duplication of Benefits

| Source of Funds                    | Amount | % of Total | Status of Funds |
|------------------------------------|--------|------------|-----------------|
| Use of Funds:                      |        |            |                 |
| Purpose of Funds:                  |        | N/A        |                 |
| US Army Corps of Engineers (USACE) | \$0.00 | 0.00       | N/A             |
| Use of Funds:                      |        |            |                 |
| Purpose of Funds:                  |        | N/A        |                 |
| US Department of Transportation    | \$0.00 | 0.00       | N/A             |
| Use of Funds:                      |        |            |                 |
| Purpose of Funds:                  |        | N/A        |                 |
| Total                              | \$0.00 |            |                 |

### Funding Summary

| Item                           | Total Amount   |
|--------------------------------|----------------|
| Other Funding Sources          | \$0.00         |
| Total Funds Available for Plan | \$1,575,000.00 |
| Remaining Unmet Need           | \$0.00         |



## Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 02/23/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 96.80.164.213

**EXHIBIT G****CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Recovery and Resiliency Planning NOFA*. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

**Certificate(s) of Insurance**

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place *{If any of the coverages below are combined under one policy, those individual items should be combined together under one item, e.g., (1) Workers' Compensation and (2) Commercial General Liability under (1) Workers' Compensation and Commercial General Liability, etc.}*:

(1) Workers' Compensation Coverage

*{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.*

(2) Commercial General Liability

*{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.*

(3) Business Auto Liability

*{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.*

(4) Directors & Officers Liability

*{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.*

(5) Fidelity Bonding

*{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.*

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>CERTIFICATE OF COVERAGE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>Certificate Holder and Loss Payee</b><br><br>LEE COUNTY<br>2440 THOMPSON STREET<br>FORT MYERS FLORIDA 33901                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | <b>Administrator</b><br><br><b>Florida League of Cities, Inc.</b><br><b>Department of Insurance Services</b><br><b>P.O. Box 538135</b><br><b>Orlando, Florida 32853-8135</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |
| Issue Date 2/23/2024                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| COVERAGES<br>THIS IS TO CERTIFY THAT THE AGREEMENT BELOW HAS BEEN ISSUED TO THE DESIGNATED MEMBER FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE AGREEMENT DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH AGREEMENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| COVERAGE PROVIDED BY: <b>FLORIDA MUNICIPAL INSURANCE TRUST</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>AGREEMENT NUMBER:</b> FMIT 0778                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | <b>COVERAGE PERIOD:</b> FROM 10/1/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | <b>COVERAGE PERIOD:</b> TO 10/1/24 12:01 AM STANDARD TIME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| <b>TYPE OF COVERAGE - LIABILITY</b><br><br><b>General Liability</b><br><br><input checked="" type="checkbox"/> Comprehensive General Liability, Bodily Injury, Property Damage, Personal Injury and Advertising Injury<br><br><input checked="" type="checkbox"/> Errors and Omissions Liability<br><br><input checked="" type="checkbox"/> Employment Practices Liability<br><br><input checked="" type="checkbox"/> Employee Benefits Program Administration Liability<br><br><input checked="" type="checkbox"/> Medical Attendants'/Medical Directors' Malpractice Liability<br><br><input checked="" type="checkbox"/> Broad Form Property Damage<br><br><input type="checkbox"/> Law Enforcement Liability<br><br><input checked="" type="checkbox"/> Underground, Explosion & Collapse Hazard<br><br><b>Limits of Liability</b><br><br>* Combined Single Limit<br><br>Deductible \$2,500<br><br><b>Automobile Liability</b><br><br><input checked="" type="checkbox"/> All owned Autos (Private Passenger)<br><br><input checked="" type="checkbox"/> All owned Autos (Other than Private Passenger)<br><br><input checked="" type="checkbox"/> Hired Autos<br><br><input checked="" type="checkbox"/> Non-Owned Autos<br><br><b>Limits of Liability</b><br><br>* Combined Single Limit<br><br>Deductible N/A |  | <b>TYPE OF COVERAGE - PROPERTY</b><br><br><input checked="" type="checkbox"/> <b>Buildings</b><br><input type="checkbox"/> Basic Form<br><input checked="" type="checkbox"/> Special Form<br><br><input checked="" type="checkbox"/> <b>Personal Property</b><br><input type="checkbox"/> Basic Form<br><input checked="" type="checkbox"/> Special Form<br><br><input checked="" type="checkbox"/> Agreed Amount<br><br><input checked="" type="checkbox"/> Deductible \$500<br><br><input checked="" type="checkbox"/> Coinsurance 100%<br><br><input checked="" type="checkbox"/> Blanket<br><input type="checkbox"/> Specific<br><br><input checked="" type="checkbox"/> Replacement Cost<br><br><input type="checkbox"/> Actual Cash Value<br><br><b>Limits of Liability on File with Administrator</b> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | <b>TYPE OF COVERAGE - WORKERS' COMPENSATION</b><br><br><input checked="" type="checkbox"/> Statutory Workers' Compensation<br><br><input checked="" type="checkbox"/> Employers Liability<br><div>\$1,000,000 Each Accident<br/>\$1,000,000 By Disease<br/>\$1,000,000 Aggregate By Disease</div><br><input type="checkbox"/> Deductible N/A<br><br><input type="checkbox"/> SIR Deductible N/A                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>Automobile/Equipment - Deductible</b><br><br><input checked="" type="checkbox"/> Physical Damage      Per Schedule - Comprehensive - Auto      Per Schedule - Collision - Auto      Per Schedule - Miscellaneous Equipment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>Other</b><br><br>* The limit of liability is \$200,000 Bodily Injury and/or Property Damage per person or \$300,000 Bodily Injury and/or Property Damage per occurrence. These specific limits of liability are increased to \$5,000,000 for General Liability and \$3,000,000 for Automobile Liability (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28 (5) Florida Statutes or liability/settlement for which no claims bill has been filed or liability imposed pursuant to Federal Law or actions outside the State of Florida.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>Description of Operations/Locations/Vehicles/Special Items</b><br><br>Events, activities, elections and functions authorized by the certificate holder involving the designated member while being held upon the premises of the certificate holder. The certificate holder is hereby added as an additional insured, except for Workers' Compensation and Employers Liability, as respects the member's liability for the above described event.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE AGREEMENT ABOVE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| <b>Designated Member</b><br><br>Town of Fort Myers Beach<br>2525 Estero Boulevard<br>Fort Myers Beach FL 33931                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | <b>Cancellations</b><br><br>SHOULD ANY PART OF THE ABOVE DESCRIBED AGREEMENT BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE PROGRAM, ITS AGENTS OR REPRESENTATIVES.<br><br><br>_____<br>AUTHORIZED REPRESENTATIVE                                                                                                                                                                                                                                                                                                  |  |

## EXHIBIT H (SIGNATURE REQUIRED)

### **CERTIFICATIONS** **CDBG-DR COMPLIANCE PROVISIONS** *Planning and Public Services*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the applicant certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

#### **1. NATIONAL OBJECTIVES**

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

#### ***Planning Exemption***

Planning activities are presumed to meet a National Objective. HUD’s Federal Register Notice (88 FR 32046) governing the CDBG-DR funds describes planning efforts as addressing the National Objectives without the limitation of any circumstances. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment, independent of the ultimate source of implementation funds.

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient

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must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

## 2. **DUPLICATION OF BENEFITS**

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

## 3. **EQUAL EMPLOYMENT OPPORTUNITY**

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.
- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability

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or age in a program or activity which does not directly benefit from such assistance.

- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities



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throughout the United States.

- k. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246:** This executive order applies to all Federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**  
(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for

Lee County CDBG-DR  
Exhibit H Compliance Provisions

specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

## 5. **ENVIRONMENTAL PROTECTION AND ACTS**

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.
- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, a non-Federal entity that is a state agency or an agency of a political subdivision of a state, and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in

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guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**6. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**7. POLITICAL ACTIVITY**

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**8. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT**

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

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Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## **9. CONFLICT OF INTEREST**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure

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or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

## **10. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

## **11. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

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## **12. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS**

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
  - 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.
  - 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
  - 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.
- c. Contractors shall:
  - 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

## **13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

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#### **14. PATENTS**

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

#### **15. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

#### **16. DRUG-FREE WORKPLACE ACT OF 1988**

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon

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employees for drug abuse violations.

- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drugfree workplace by meeting the requirements of the act.

**17. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION**

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.
- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific



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safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

## **18. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

## **19. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

## **20. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

Lee County, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County's final closeout of the grant.

## **21. INSPECTION**

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

## **22. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

BY:

Signed by:

Andy Hyatt

2F8F23CEB4A742D...

Signature

Andy Hyatt

Name (print)

7/17/2024 | 8:54 AM EDT

Date

**EXHIBIT I****CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

**1. INITIAL RISK ASSESSMENT**

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

**2. RISK ASSESSMENT**

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

**3. SPECIAL CONDITIONS**

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

Town of Fort Myers Beach  
DR10157  
*Exhibit I*  
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**A. Special Condition Regarding Adoption of Excessive Force Policy:**

- i. The Town of Fort Myers Beach hereby acknowledges its intent to adopt the Excessive Force Policy as established by Lee County. The adoption is contingent upon the approval of the resolution currently in draft form, which is scheduled for consideration by the Town Council on August 5th. The formal adoption of this policy by the Town Council on the specified date shall constitute fulfillment of the terms set forth in Exhibit I of this agreement.

**EXHIBIT J**  
**SUBRECIPIENT STAFF ORGANIZATION**

**Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates**

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

**Section 1: Subrecipient Contract Administrator**

**1. Description**

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

**2. Contact Information**

Name: Andrew Hyatt  
Title: Town Manager  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: andyhyatt@fmbgov.com  
Email: 239-765-0202

**Section 2: Project Manager**

**1. Description**

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

## **2. Contact Information**

Name: Frank Kropacek  
Title: Operations & Compliance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: fkropacek@fmbgov.com  
Email: 239-765-0202

## **Section 3: Davis Bacon and Labor Standards Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison / Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: jasonf@fmbgov.com  
Email: 239-765-0202

## **Section 4: Section 504 Coordinator**

## **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

## **2. Contact Information**

Name: Amy Baker  
Title: Town Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: amy@fmbgov.com  
Email: 239-765-0202

## **Section 5: Fair Housing Coordinator**

### **1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

### **2. Contact Information**

Name: Jason Freeman  
Title: Legislative Liaison / Deputy Clerk  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: jasonf@fmbgov.com  
Email: 239-765-0202

## **Section 6: Financial Manager**

### **1. Description**

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

### **2. Contact Information**

Name: Joe Onzick  
Title: Finance Director  
Agency: Town of Fort Myers Beach  
Address: 2731 Oak Street Fort Myers Beach, FL 33931  
Telephone: jonzick@fmbgov.com  
Email: 239-765-0202

## **Section 7: Certification of Time Allocation**

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? Yes

If so how many, and list names:



Yes, all town staff listed in this Exhibit may assist with other Town programs other than CDBG-DR

## EXHIBIT K

### **CDBG-DR PROGRAM SUBROGATION AGREEMENT**

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between **Town of Fort Myers Beach** (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's **application** for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

**Warning:** Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

**TOWN OF FORT MYERS BEACH**  
By: Andy Hyatt  
Signature:   
Title: Town Manager  
Date: 7/17/2024 | 8:54 AM EDT

**LEE COUNTY**  
By: Mike Greenwell  
Signature:   
Title: Chair  
Date: 8/7/2024 | 10:48 AM EDT

1. **Request:**

**Meeting Date:** June 16, 2025

*This agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-10.*

**ORDINANCE TITLE:**

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 18-17 FOR THE PARCEL LOCATED AT 1051 FIFTH STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00205.0060, TO ADD AND REZONE A PARCEL LOCATED AT 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00203.0150 IN FORT MYERS BEACH FROM DOWNTOWN TO CPD; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council approves and denies CPD amendment applications.

**What the action accomplishes:**

The action will allow for the addition of 55 lodging units to the Lighthouse Island Resort Development.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

The applicant, Neighborhood Company on behalf of the property owner Lighthouse Island Resort, Inc. is requesting to expand the boundary of the existing Commercial Planned Development (CPD) as approved in Resolution 18-17. The requested expansion would add the parcel located at 1060 Third Street. The applicant is also requesting to amend the Master Concept Plan, schedule of uses, deviations, and conditions for this CPD under a separate ordinance.

The two subject parcels total 1.87 acres and are located directly east of the Matanzas Pass Bridge. The property has a Future Land Use (FLU) Designation of Pedestrian Commercial. The larger parcel fronting San Carlos Boulevard and Fifth Street has a zoning designation of Commercial Planned Development (CPD) and the corner parcel at 1060 Third Street has a zoning designation of Downtown.

At the April 29<sup>th</sup> LPA meeting the LPA voted 7 to 0 to recommend approval of this application.

**Attachments:**

1. NS Ordinance 25-10 expanded CPD boundaries for 1051 Fifth Lighthouse
2. Exhibit A to Ordinance - Resolution 18-17-Lighthouse-CPD
3. Exhibit B to Ordinance - Boundary Survey
4. Staff Report expanded boundary CPD Amendment
5. Business Impact Estimate CPD expansion lighthouse

**Financial Impact:**

Unknown

6. **Alternative Action**

7. **Management Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Judith Frankel, Principal Planner

Judith Frankel, Principal Planner

Georgina Cid, Community Development Manager

Frankie Kropacek, Community Development Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

William McKannay, Town Manager

Created/Initiated - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/10/2025

Final Approval - 6/10/2025

## **ORDINANCE 25-10**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 18-17 FOR THE PARCEL LOCATED AT 1051 FIFTH STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00205.0060, TO ADD PARCEL 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00203.0150 IN FORT MYERS BEACH,; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, Lighthouse Island Resort, Inc., the owner, and The Neighborhood Company, as agents for the property located at 1051 Fifth Street and 1060 Third Street, Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0060 and 24-46-23-W3-00203.0150 in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 18-17 (1051 Fifth Street) to CPD with expanded boundaries (addition of 1060 Third Street); and

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

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on April 29th, 2025; and

**WHEREAS**, at the April 29<sup>th</sup>, 2025 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town Land Development Code; and

**WHEREAS**, at the April 29<sup>th</sup>, 2025 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC

and voted 7 to 0 to recommend **approval**; and

**WHEREAS**, on May 19<sup>th</sup>, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council public hearing on June 16, 2025; and

**WHEREAS**, at the June 16, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

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

**WHEREAS**, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides Resolution 18-17 which most recently amended the subject CPD; and

**WHEREAS**, Exhibit B demonstrates the expanded boundaries which future development shall maintain; and

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

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the



Comprehensive Plan.

- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

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

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

**WHEREAS**, the Town Council finds that this application to approve Ordinance 25-10, which is, **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 25-10 and the conditions of approval for the commercial planned development zoning, **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the requested application.

Section 3. Town Ordinance 25-10 is adopted subject to the schedule of uses and conditions of approval for the Property's existing CPD as set forth in Resolution 18-17 in Exhibit A and the inclusion of the additional parcel shown in the survey attached as Exhibit B.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

**DULY PASSED AND ADOPTED** on this \_\_\_\_ day of June 2025.

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

**FORT MYERS BEACH TOWN COUNCIL**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

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

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of \_\_\_\_\_ 2025.  
Attachments:

Exhibit A –Resolution 18-17

Exhibit B – Expanded Boundary Map

## **ORDINANCE 18-17**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE CURRENT ZONING MAP FROM DOWNTOWN ZONING DISTRICT TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND AN AMENDMENT TO THE LIGHTHOUSE ISLAND RESORT MASTER CONCEPT PLAN PREVIOUSLY AMENDED AND APPROVED BY RESOLUTION 13-29, TO INCLUDE THE TWO PARCELS CONTAINING APPROXIMATELY 4,000 SQUARE FEET, AS DEVELOPED WITH MODIFIED CONDITIONS OF APPROVAL AND DEVIATIONS; GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00203.019A AND A PORTION OF LOT 14 CONSIDERED PART OF TOWN RIGHT-OF-WAY; PETITION DCI18-0002; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.**

**WHEREAS**, Lighthouse Island Resort, Inc. filed application to rezone the property from the Downtown zoning district to CPD with amended Master Concept Plan (MCP), in order to add two developed portions of property containing 4,000+/- square feet, and increase the total rooms from 72 to 75, to the Lighthouse Island Resort development located primarily at 1051 Fifth Street in the Town of Fort Myers Beach; and

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

**WHEREAS**, the property requested to be rezoned and included with the Lighthouse Island Resort are adjacent to the Lighthouse Island Resort property; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on October 9, 2018; and

**WHEREAS**, at the October 9<sup>th</sup>, 2018 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

**WHEREAS**, at the October 9<sup>th</sup>, 2018 public hearing the LPA recommended approval based on findings and considerations as outlined in the staff report, by a 7-0 vote, subject to certain conditions and deviations; and

**WHEREAS**, on November 5<sup>th</sup>, 2018 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, a second reading of the proposed Ordinance and a public hearing on this matter legally advertised and held before the Town Council on November 19<sup>th</sup>, 2018 at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, this approval is subject to the findings and considerations beginning on packet page 21 through 24, with the exception to Policy 4-E-1, which should read the predisaster buildback policy is being utilized for this development.

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

The Town Council votes to **APPROVE** the request to rezone the subject property to CPD with MCP, subject to the deviations and conditions set for with specificity.

**CONDITIONS:**

**Condition 1.**

The development of this project must be consistent with the five (5) page Master Concept Plan entitled "Master Concept Plan (CPD) for Lighthouse Island Resort" last revised 3-12-2013, except as modified by the conditions and deviations below. Phase 1-A is not accepted. A modified MCP set shall be submitted for the record and include any conditions of approval and deviations herein.

**Condition 2.**

The following limitations apply to the project and uses:

a. **Schedule of Uses**

All uses permitted by right in the Downtown zoning district with the following limitations:

Restaurant is limited to 4,300 square feet

Retail is limited to 5,000 square feet

Office is limited to 420 square feet

Hotel/Motel units limited to a maximum of 75 lawfully existing guest units, which total includes the unit for the caretaker and the permanent transfer of all dwelling units from 2639/2641 Estero Blvd. (19-46-24-W3-0020C.0180) for the exceptional circumstance to benefit the Heart of the Island recreational, historic, environmental, and cultural resources of the Town; to be used for increased access and egress, increase public access of the parcel, increase access to public facilities, non-occupied buildings and permanent ownership by the Town.

b. **Site Development Regulations**

Building placement, size, design, and all other property development regulations shall be the same as for the CR (Commercial Resort) zoning district unless approved as deviations as part of the approved zoning resolution.

**Condition 3.**

Maximum building height may not exceed 37 feet above Base Flood Elevation. No additional building height is approved within this planned development.

**Condition 4.**

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

**Condition 5.**

The final design of the building within this planned development must be approved by the Town Manager prior to the approval of any permits. The design must be in substantial compliance with the Town of Fort Myers Beach Comprehensive Plan, the Land Development Code, and all other applicable requirements.

**Condition 6.**

The 5,000 square feet of retail uses are limited to the ground floor of the Phase 2 building as depicted on the approved Master Concept Plan. The ground floor will have to be dry flood proofed and must be constructed in compliance with Chapter 6 of the Land Development Code.

**Condition 7.**

At no time will the total number of Hotel/Motel units exceed 75 guest units.

**Condition 8.**

Prior to approval of a development order, the correct sidewalk easement must be recorded in the Public Records of Lee County, Florida.

**Condition 9.**

Prior to seeking any building permits for development on this site, the developer must combine the existing platted lots into one lot of record as part of the local development order for this CPD project not later than February 28, 2019.

**Condition 10.**

Prior to each local development order approval, the developer must provide a current tally of the square feet for each use approved in all previous local development orders.

**Condition 11.**

The total square feet of existing and proposed buildings must not exceed 58,432 square feet of total building area for buildings used as hotel/motel guest units.

**Condition 12.**

Any off-site parking, other than the existing approved 5 off-site parking spaces, must be addressed through an amendment to this CPD.

**Condition 13.**

Any outdoor seating for the restaurant and any sign that will require a deviation must be addressed through an amendment to this CPD.

**Condition 14.**

This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

**Condition 15.**

This CPD project must be constructed to build-out no later than December 31, 2025. A completed building permit and start of construction to the next phase shall occur prior to December 31, 2023.

**Condition 16.**

All signs containing commercial messages, including those shown for the proposed restaurant in Phase II-A, must be in compliance with LDC Chapter 30, except as approved herein by deviations.

**Condition 17.**

The deviation for internal illumination of signs is approved only for the existing signs. If the signage is moved, removed, or damaged beyond repair, the deviation will be null and void, and any new signage must comply with the regulations of the LDC.

**Condition 18.**

Any violation of these conditions shall be subject to a maximum \$500 per incident, per day fine.

**DEVIATIONS:**

**Deviation #1**

Deviation 1 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 83 feet from Fifth Avenue. This deviation is unchanged from the previously approved MCP and is APPROVED.

**Deviation #2**

Deviation 2 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 115 feet from Third Street. This deviation is unchanged from the previously approved MCP and is APPROVED.

**Deviation #3**

Deviation 3 was from a previous Lee County LDC requirement, and is no longer necessary. The Fort Myers Beach LDC does not regulate building separation within a project site.

**Deviation #4**

Deviation 4 requests relief from LDC Table 34-3 which requires certain setbacks for structures, buildings, and pavement from the development perimeters; to allow the reduced setbacks of 7.4', 4.5', 3', 2.6', 1.5', 1.4', & 0', from the development perimeter as depicted on the Master Concept

Plan. All of the setbacks were previously approved on the existing MCP for this project. This deviation is **APPROVED**.

#### **Deviation #5**

Deviation 5 requests relief from LDC Table 34-3 which provides the property development regulations for the Fort Myers Beach Commercial Resort (CR) zoning district; to allow street setbacks of 4.5', 2.0', and 0' along San Carlos Boulevard. All of the setbacks were previously approved on the existing MCP for this project. This deviation is **APPROVED**.

#### **Deviation #6**

Deviation 6 requests relief from LDC Section 34-2016 which requires 90 degree parking spaces to be a minimum of 18' in length; to allow 90 degree parking spaces to be 16' in length for Phase 2 parking only. This deviation is **APPROVED** as depicted on the approved Master Concept Plan and with the condition that these parking spaces will be removed at the time Phase 5 is constructed.

#### **Deviation #7**

Deviation 7 requests relief from LDC Section 34-2016(a) which requires parking aisles between parking spaces to be 22' in width to allow the parking aisles to be 20' in width for some areas for the Phase 2 parking only. This deviation is **APPROVED** as depicted on the approved Master Concept Plan and with the condition that these parking aisles will be removed at the time Phase 5 is constructed.

#### **Deviation #8**

Deviation 8 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways. This deviation is **APPROVED**.

#### **Deviation #9**

Deviation 9 requests relief from the F.A.R. requirements of LDC Section 34-953 and Table 34-3 to allow additional F.A.R. to exceed the total of 66,852 square feet of residential and commercial uses to the extent necessary to develop on-site under building parking. This deviation is **APPROVED**.

#### **Deviation #10**

Deviation 10 requests relief from LDC Section 30-153(b)(1) which allows a maximum of 32 square feet of signage; to allow 126 square feet of total signage for Lighthouse Island Resort. This deviation is **APPROVED**.

#### **Deviation #11**

Deviation 11 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign; to allow 25'6" for the Lighthouse "Sign D". This deviation is **APPROVED**.

#### **Deviation #12**

Deviation 12 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 10.4' for "Sign A" on Third Street. This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "A".



**Deviation #13**

Deviation 13 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall sign height of 9.7' for "Sign B" on Crescent Street." This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "B".

**Deviation #14**

Deviation 14 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 9.7' for "Sign C" on Fifth Street. This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "C".

**Deviation #15**

Deviation 15 requests relief from LDC Section 30-154(b) which requires that all signs be set back a minimum 3 foot from any public right-of-way; to allow a 0' setback for "Sign A" located on Third Street. This deviation is **APPROVED**.

**Deviation #16**

Deviation 16 requests relief from LDC Section 30-154(b) which requires a minimum 3 foot setback from any public right-of-way; to allow "Sign B" to remain located entirely within the right-of-way at the intersection of Crescent Street and Fifth Street. This deviation is **APPROVED**.

**Deviation #17**

Deviation 17 requests relief from LDC Sec. 34-154(a) for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face, subject to Condition #18. This deviation is **APPROVED**.

**CODIFICATION AND SCRIVENER'S ERRORS.**

The Town Council intends that this ordinance will not be made part of the Fort Myers Beach Code of Ordinances; typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing. Only the specific deviations granted by the Town Council and associated plan sheets reflecting those approvals with or without conditions are so incorporated.

**EFFECTIVE DATE.**

This ordinance becomes effective immediately upon its adoption.

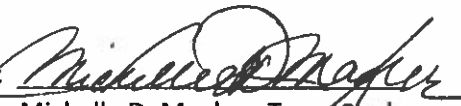
THE FOREGOING ORDINANCE was enacted by the Town Council upon a motion by Council Member Joanne Shamp and seconded by Council Member Dennis Boback and, upon being put to a roll call vote, the result was as follows:

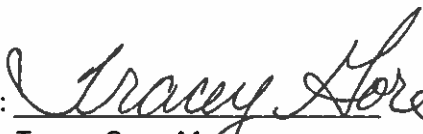
|                    |     |                          |     |
|--------------------|-----|--------------------------|-----|
| Tracey Gore, Mayor | NAY | Bruce Butcher            | AYE |
| Anita Cereceda     | AYE | Joanne Shamp, Vice Mayor | AYE |
| Dennis Boback      | AYE |                          |     |

**DULY PASSED AND ENACTED** this 19<sup>th</sup> day of November 2018.

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

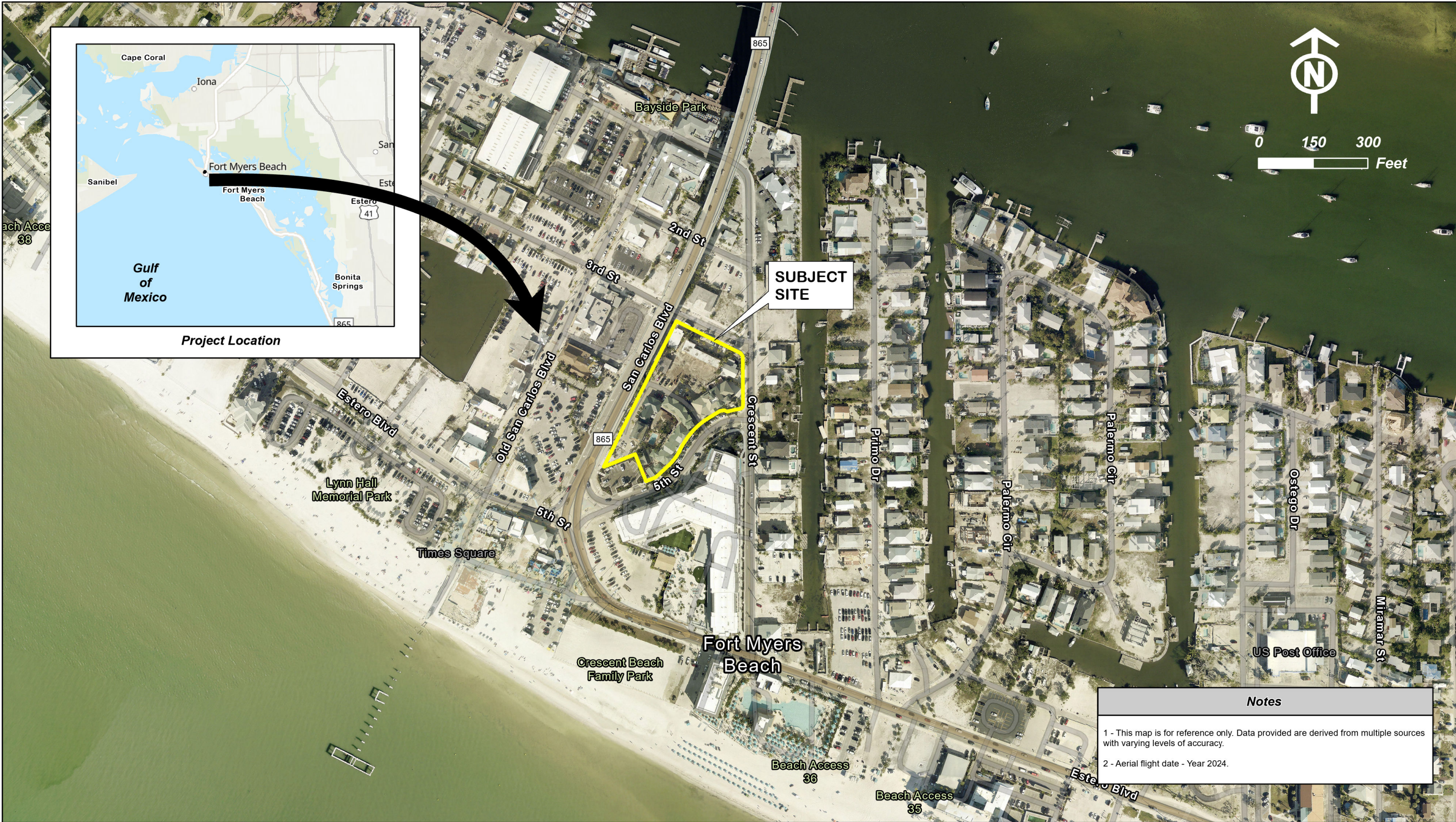
By:   
Michelle D. Mayher, Town Clerk

By:   
Tracey Gore, Mayor

Approved as to form by:

By:   
Peterson Law Group, Town Attorney





# Lighthouse Island Resort (CPD)

Project Location

**Notes**

1 - This map is for reference only. Data provided are derived from multiple sources with varying levels of accuracy.

2 - Aerial flight date - Year 2024.

|            |              |
|------------|--------------|
| FILE NO:   | 220037.01.01 |
| DRAWN BY:  | F.L.         |
| DESIGN BY: | P.V.         |
| DATE:      | January 2025 |





# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development Amendment

**CASE NUMBER:** DCI Rezoning 20250035.1

**CASE NAME:** Lighthouse Island Resort

**LPA  
HEARING DATE:** April 29<sup>th</sup>, 2025

**1<sup>st</sup> TOWN COUNCIL  
HEARING DATE:** May 19<sup>th</sup>, 2025

**2<sup>nd</sup> TOWN COUNCIL  
HEARING DATE:** June 16<sup>th</sup>, 2025

**STAFF  
RECOMMENDATION:** Approval

**PREPARED/  
SUBMITTED BY:** Judith Frankel, AICP

### **I. APPLICATION SUMMARY**

Applicant/Owner: Lighthouse Island Resort, Inc./The Neighborhood Company

Request: Amend the existing CPD RES#18-17 (See Exhibit A) to expand the boundary to include and rezone 1060 Third Street from Downtown to CPD

Subject property: See Exhibit B

Physical Address: 1051 Fifth Street and 1060 Third Street

STRAP #: 24-46-23-W3-00205.0060 and 24-46-23-W3-00203.0150)

FLU: Pedestrian Commercial

Zoning: CPD/Downtown

### **Adjacent zoning and land uses:**

North: DOWNTOWN  
Residential

South: CPD  
Margaritaville Resort

East: RESIDENTIAL MULTIFAMILY (RM)  
Residential  
West: DOWNTOWN and CPD  
Commercial, Parking and Matanzas Pass Bridge

## **II. BACKGROUND AND ANALYSIS**

The applicant, Neighborhood Company on behalf of the property owner Lighthouse Island Resort, Inc. is requesting to expand the boundary of the existing Commercial Planned Development (CPD) as approved in Resolution 18-17. The requested expansion would add the parcel located at 1060 Third Street. The applicant is also requesting to amend the Master Concept Plan, schedule of uses, deviations, and conditions for this CPD under a separate ordinance.

The two subject parcels total 1.87 acres and are located directly east of the Matanzas Pass Bridge. The property has a Future Land Use (FLU) Designation of Pedestrian Commercial. The larger parcel fronting San Carlos Boulevard and Fifth Street has a zoning designation of Commercial Planned Development (CPD) and the corner parcel at 1060 Third Street has a zoning designation of Downtown.

The Lighthouse Island Resort has been in operation for over 60 years. In 1977, approximately half an acre of the existing property was part of a larger Florida Department of Transportation taking associated with construction of the Matanzas Pass Bridge. This action reduced the property from 32 original platted lots to 20. The former Fourth Street court was vacated to the resort.

The original Lighthouse Resort CPD was approved in 1999, when the existing property was rezoned from C-1 to CPD to facilitate redevelopment. Since that time, there have been five amendments to the CPD.

At the April 29<sup>th</sup> LPA meeting the LPA voted 7 to 0 to recommend approval of this application.

### **Analysis:**

The parcel at 1060 Third Street was sold to the applicant in 2021. The inclusion of this parcel into the existing CPD will allow the entire resort to operate within one zoning district with consistent regulations. The land uses across both Third Street and Crescent Street are residential. The property previously operated as a vacation short term rental with 3 units according to the Lee County Property Appraiser records.

### **Neighborhood Compatibility:**

The parcel at 1060 Third Street abuts the existing Lighthouse Resort CPD on two sides and residential uses on the other two sides. The inclusion of this parcel in the abutting CPD is compatible with the surrounding neighborhood.

## **IV. FINDINGS AND CONCLUSIONS**

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

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

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

Staff response: No errors or ambiguities exist.

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

Staff response: The Lighthouse Resort survived Hurricane Ian but incurred significant damage. The applicant aims to continue as a resort with an increased capacity.

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

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

(4) The testimony of any applicant.

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

(6) The testimony of the public.

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

Staff response: The expanded boundary is consistent with the Town of Fort Myers Beach Comprehensive Plan. The parcels are located in the Pedestrian Commercial FLU which is intended to be up to 90% commercial.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas.

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

Staff response: The expanded boundary is compatible.

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

Staff response: The location is compatible.

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

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed expansion area for the CPD complies with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes.

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

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

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

Staff response: The uses are appropriate in this location as it is within the FLU category of Pedestrian Commercial.

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

Staff response: No special conditions are proposed.

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

Staff response: No special conditions are requested as part of this application.

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

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: No additional height is requested.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: There are no anticipated adverse traffic impacts

## **V. RECOMMENDATION**

Staff finds that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. Staff recommends **approval** of DCI20250035.1.

Exhibit A: Resolution18-17 Lighthouse Resort CPD

Exhibit B: Property Boundary Map



# **Business Impact Estimate**

*This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.*

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 18-17 FOR THE PARCEL LOCATED AT 1051 FIFTH STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00205.0060, TO ADD PARCEL 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00203.0150 IN FORT MYERS BEACH;; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.



- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing CPD zoning designation for 1051 Fifth Street to include the property located at 1061 Third Street. The Town Council approved a CPD for the property at 1051 Fifth Street in 2018 through Resolution 18-17 which currently provides the zoning regulations for the site. The applicant is seeking through this ordinance to include the parcel at 1061 Third Street in the CPD.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx.

Ordinance 25-xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

This rezoning does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

**Meeting Date:** June 16, 2025

*This agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-11 (Lighthouse).*

**ORDINANCE TITLE:**

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING AMENDMENT FOR THE PROPERTY LOCATED AT 1051 FIFTH STREET AND 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0060 AND 24-46-23-W3-00203.0150 IN FORT MYERS BEACH, TO AMEND THE EXISTING MASTER CONCEPT PLAN TO ALLOW FOR A) AN INCREASE IN THE NUMBER OF HOTEL UNITS, B) 11 DEVIATIONS: 1) MINIMUM CONNECTION SEPARATION, 2) EXCLUSION OF UNDER BUILDING PARKING FROM FAR, 3) INCREASE IN HEIGHT FOR A MONUMENT SIGN (5TH STREET), 4) INTERNAL SIGN ILLUMINATION, 5) 40 FEET HEIGHT WITH 4 STORIES, 6) REDUCTION IN STREET SETBACKS, 7) MURAL -STYLE SIGN (EAST SIDE), 8) 10 FOOT MONUMENT SIGN (CORNER), 9) MURAL STYLE SIGN (SOUTH), 10) WAYFINDING POLE SIGN, AND 11) 58% REDUCTION IN PARKING REQUIREMENTS; AND C) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council reviews requests for CPD amendments.

**What the action accomplishes:**

The action will allow for the further development of the Lighthouse Island Resort.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

The subject property is located at 1051 Fifth Street and 1061 Third Street. The Town Council approved a CPD for the property at 1051 Fifth Street in 2018 through Resolution 18-17 which currently provides the zoning regulations for the site. This request is to amend the CPD to: 1) allow an increase in lodging units from 75 to a maximum of 130 units, 2) an increase in the maximum allowed height from 37-feet above Base Floor Elevation (BFE) to 40.5-feet above BFE, and modify some of the site conditions through 11 deviations. The existing CPD contains a deviation of F.A.R. requirements to exclude ground-level parking from the F.A.R. calculation. The applicant seeks to maintain that previously approved deviation. The applicant is seeking, under a separate ordinance, to include the parcel at 1061 Third Street in the CPD.

At the April 29th, 2025 LPA meeting, the LPA voted 7 to 0 to recommend approval with condition of this application. The LPA recommended adding a condition of approval to include lighting of the western boundary pathway as a part of the project's Development Order.

**Attachments:**

1. Ordinance 25-11 Lighthouse CPD with attached Exhibit A
2. Exhibit B to Ordinance - Master Concept Plan
3. Staff Report amended MCP CPD Amendment TC

4. Exhibit A to TC Staff Report - Resolution 18-17-Lighthouse-CPD
5. Exhibit A1 to TC Staff Report - MCP for Resolution 18-17
6. Exhibit B to TC Staff Report - Boundary Survey
7. Exhibit C to TC Staff Report - Master Concept Plan
8. Applicant Project Narrative
9. Applicant Deviations and Justifications
10. Applicant Proposed Commitments
11. Applicant Proposed Conditions of Approval
12. Architectural Elevations Building 5 (Applicant Exhibit)
13. Platted Lot (Applicant Exhibit)
14. Applicant Parking Analysis
15. Business Impact Estimate CPD lighthouse

**Financial Impact:**

Unknown

**6. Alternative Action**

Approve with Conditions

**7. Management Recommendations:**

**8. Recommended Approval:**

Judith Frankel, Principal Planner  
Judith Frankel, Principal Planner  
Georgina Cid, Community Development Manager  
Frankie Kropacek, Community Development Director  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Final Approval - 6/10/2025

## ORDINANCE 25-11

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/PROVING WITH CONDITIONS/DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING AMENDMENT FOR THE PROPERTY LOCATED AT 1051 FIFTH STREET AND 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0060 AND 24-46-23-W3-00203.0150 IN FORT MYERS BEACH, TO AMEND THE EXISTING MASTER CONCEPT PLAN TO ALLOW FOR A) AN INCREASE IN THE NUMBER OF HOTEL UNITS, B) 11 DEVIATIONS: 1) MINIMUM CONNECTION SEPARATION, 2) EXCLUSION OF UNDER BUILDING PARKING FROM FAR, 3) INCREASE IN HEIGHT FOR A MONUMENT SIGN (5<sup>TH</sup> STREET), 4) INTERNAL SIGN ILLUMINATION, 5) 40 FEET HEIGHT WITH 4 STORIES, 6) REDUCTION IN STREET SETBACKS, 7) MURAL -STYLE SIGN (EAST SIDE), 8) 10 FOOT MONUMENT SIGN (CORNER), 9) MURAL STYLE SIGN (SOUTH), 10) WAYFINDING POLE SIGN, AND 11) 58% REDUCTION IN PARKING REQUIREMENTS; AND C) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, Lighthouse Island Resort, Inc., the owner, and The Neighborhood Company, as agents for the property located at 1051 Fifth Street and 1060 Third Street, Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0060 and 24-46-23-W3-00203.0150 in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 18-17 (1051 Fifth Street) to CPD with expanded boundaries (addition of 1060 Third Street); and a CPD amendment to revise the schedule of uses, density, height and the corresponding Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) for a hotel resort and

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

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on April 29<sup>th</sup>, 2025; and

**WHEREAS**, on May 19<sup>th</sup>, 2025 the Town Council held a first reading of the proposed

Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council public hearing on June 16, 2025; and

**WHEREAS**, at the June 16, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the Applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

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

**WHEREAS**, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the conditions of approval to be used during the permitting process; and

**WHEREAS**, Exhibit B provides the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

**WHEREAS**, the Town Council approved Ordinance 25-10 to extend the boundary of the CPD adopted in Resolution 18-17 to include 1060 Third Street; and

**WHEREAS**, the Town Council finds that this request to rezone the property from the CPD adopted in Resolution 18-17 and amended in Ord. 25-10, to CPD with Master Concept Plan with eleven deviations to the LDC in order to increase the size of a hotel resort; and

**WHEREAS**, the requested deviations from the LDC include:

**Deviation #1**

Deviation 1 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways.

**Deviation #2**

Deviation 2 requests relief from the F.A.R. requirements of LDC Sec. 34-633, which includes covered parking in the FAR calculation to exclude the under-building parking from this resort's FAR calculation.

**Deviation #3**

Deviation 3 requests relief from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 9.7' for "Sign C" on Fifth Street.

**Deviation #4**

Deviation 4 requests relief from LDC Sec. 30-5(a)(1)b.1 for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face.

**Deviation #5**

A deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 40 feet 5 inches above base flood elevation and a maximum of four (4) stories consisting of three (3) stories above one (1) level of parking.

**Deviation #6**

A deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 0' and 6.75' feet along San Carlos Boulevard, Third Street, and Fifth Street.

**Deviation #7**

A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the east elevation of Building 5 of 104 square feet, as depicted on the MCP.

**Deviation #8**

A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the south elevation of Building 5 of 100 square feet, as depicted on the MCP.

**Deviation #9**

A deviation from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 10 feet for a monument sign at the corner of Crescent Street and Fifth Street, as depicted on the MCP.

**Deviation #10**

A deviation from LDC Section 30-8(16) which prohibits pole signs to allow a decorative wayfinding pole sign on the corner of Third Street and San Carlos Boulevard, as depicted on the MCP.

**Deviation #11**

A deviation from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow a 58% reduction in parking requirements for a total of 82 on-site parking spaces.

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

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.

- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

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

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

**WHEREAS**, the Town Council finds that this application to approve Ordinance 25-11 which is, **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and



adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach’s Ordinance 25-11 and the conditions of approval for the commercial planned development zoning, **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested application.

Section 3. Town Ordinance 25-11 is adopted and the Conditions of Approval for the Property’s CPD set forth in Exhibit A and the attached Master Concept Plan with renderings in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

**DULY PASSED AND ADOPTED** on this \_\_\_\_ day of June 2025.

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

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

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

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.

Exhibits:

A- Conditions of Approval

B - Master Concept Plan (MCP) with renderings

## **Exhibit A: Conditions of Approval**

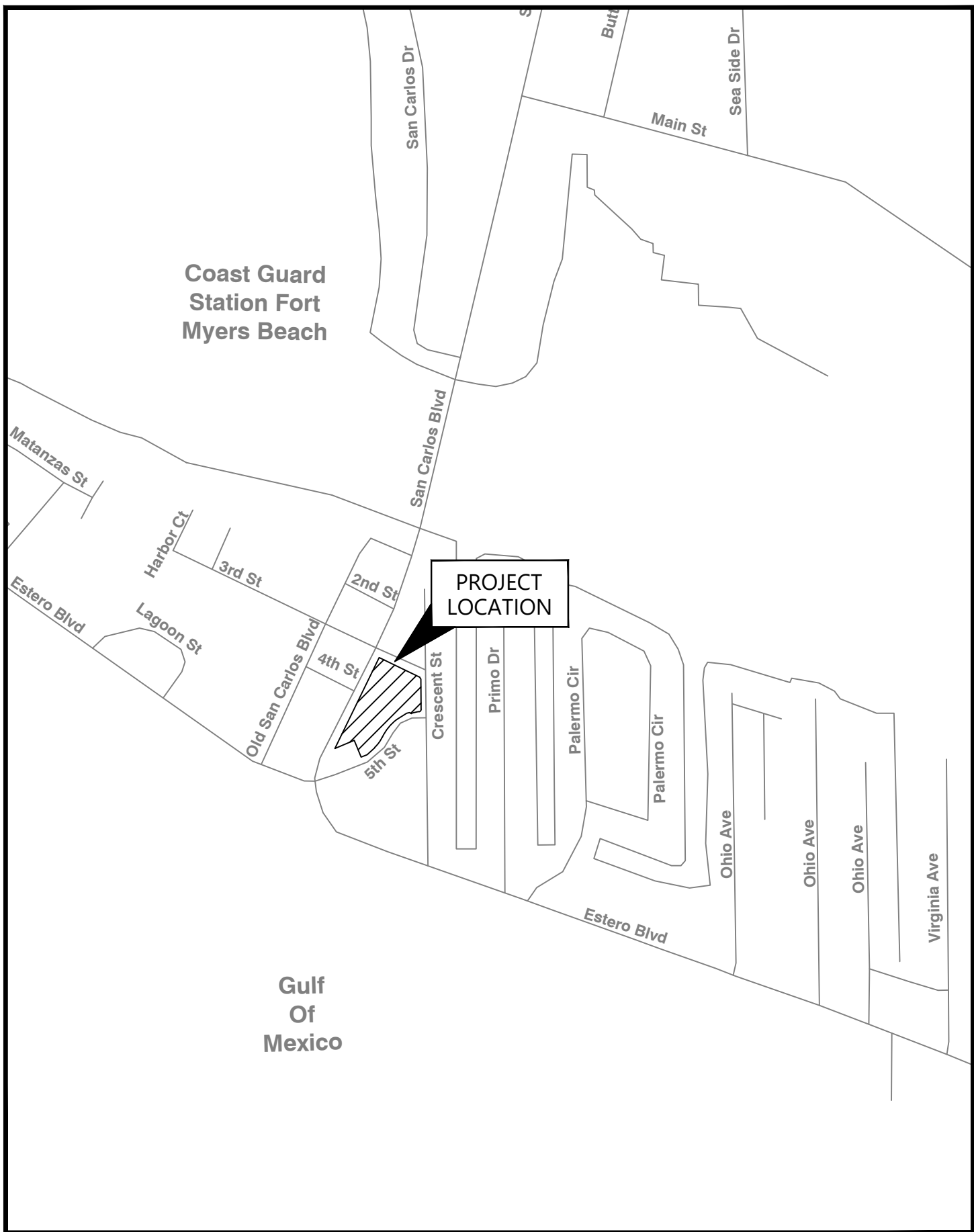
1. Final architectural design must be generally consistent with renderings provided in addition to the Master Concept Plan.
2. Prior approval of a development orders the MCP must be revised to reflect the conditions of approval as determined by the ordinance.
3. Applicant must receive approval from the Town Manager for “back out” parking along Third Street per LDC Sec. 34-2015.
4. The installation and use of the proposed “pedestrian pathway” is subject to approval by FDOT. Within six months of zoning approval by the town council, the property owner will coordinate with FDOT regarding enhancements to the San Carlos Boulevard/Matanzas Pass Bridge right-of-way.
5. Lighting of the pedestrian walkway that runs along the San Carlos Blvd/Sky Bridge must be lighted for safety. Lighting must emanate from the subject property and be included in the photometric plan to be approved at the time of D.O.
6. All signs in or near the ROW will require sight-triangle analysis per Sec. 30(a)(4).
7. Access through and along the resort pathway connecting the existing sidewalk arcade on Fifth Street to San Carlos Boulevard, must be open to the general public during the resort’s restaurant operational hours to encourage pedestrian movement between the east and west sides of the resort.
8. All landscaping materials will be native varieties/Florida friendly species.
9. At the time of Development Order on the property boundary survey, the LIMWA (Limit of moderate wave action) Boundary line (Coastal A Zone) must be demonstrated.
10. At the time of Development Order the architectural elevation sheets 5 through 7 must have the lowest horizontal member added on the cross-section details.
11. Applicant must provide at least 1 bike rack.
12. Consumption of Premises (COP) Service of alcohol for on-premises consumption is approved at the locations depicted on the Master Concept Plan, subject to these limitations:
  - a. For Building 5 COP will be located on the elevated pool deck.
  - b. For the tiki bar and pool deck on the south end of the property between Buildings 3 and 5, limited to the areas depicted on the Master Concept Plan.
  - c. For the tiki bar and pool deck on the north end of the property between Buildings 2 and 6, limited to the areas depicted on the Master Concept Plan.
13. Hours of operation for outdoor areas will be limited to the following unless otherwise temporarily altered by the Town’s special event use regulations in LDC Section 34-1264. All other hours of operation will be regulated by the LDC.
  - a. Pool deck (Building 5): 9:00am to 12:00am
  - b. Pool deck and tiki bar (south end between Buildings 3 and 5): 9:00am to 2:00am
  - c. Pool deck and tiki bar (north end between Buildings 2 and 6): 9:00am to 10:00pm



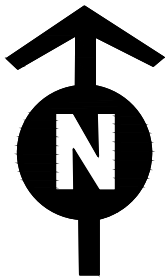
MASTER CONCEPT PLAN FOR

# LIGHTHOUSE ISLAND RESORT CPD

SECTION 24, TOWNSHIP 46S, RANGE 23E,  
FORT MYERS BEACH, FLORIDA



VICINITY MAP  
N.T.S.



SITE LOCATION MAP  
N.T.S.

PROJECT TEAM:



PREPARED FOR:

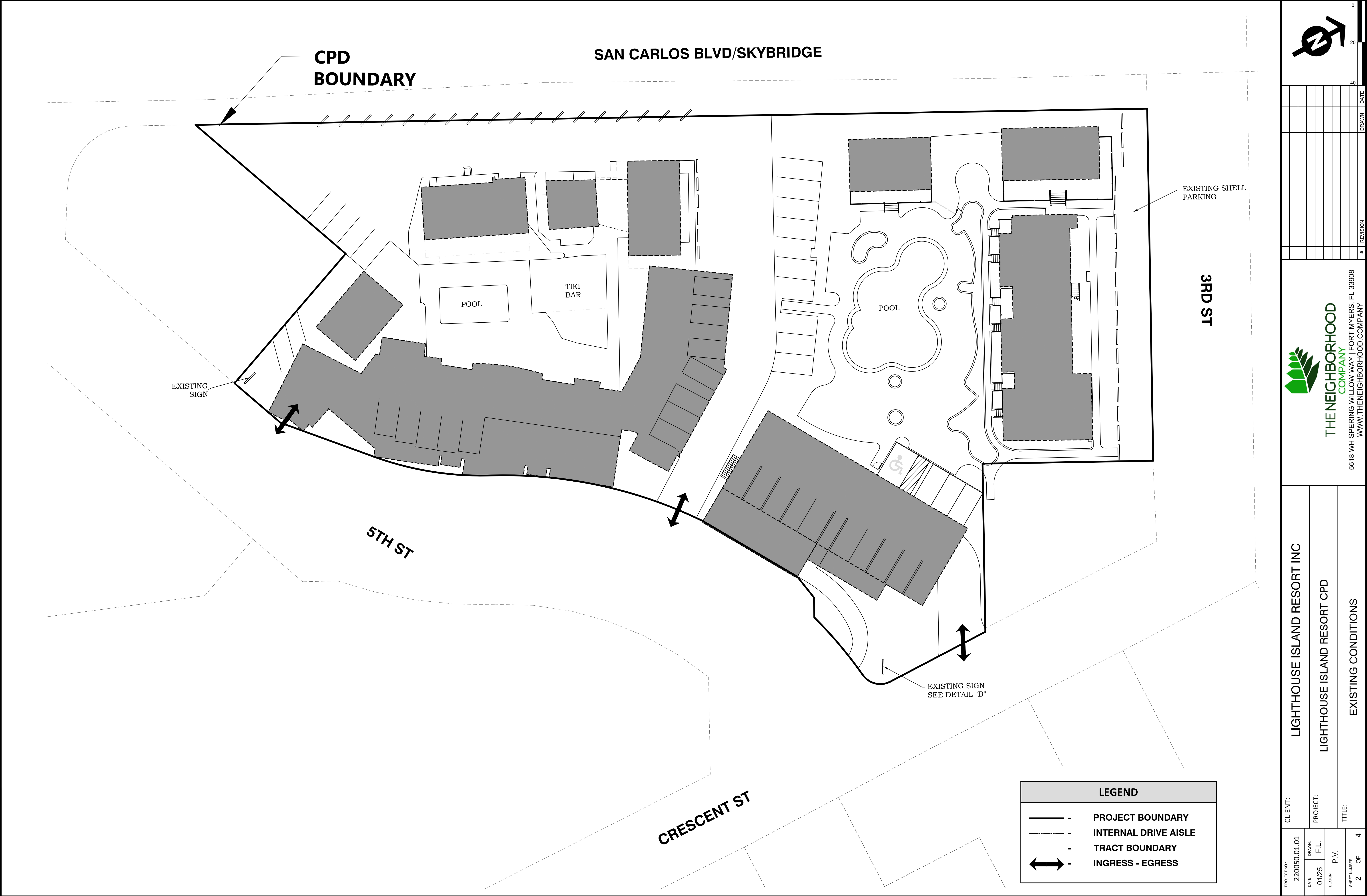
LIGHTHOUSE ISLAND RESORT INC

1051 FIFTH ST  
FORT MYERS BEACH, FL 33931

## CONTENTS

| SHEET NUMBER | SHEET DESCRIPTION   |
|--------------|---------------------|
| 1            | COVER SHEET         |
| 2            | EXISTING CONDITIONS |
| 3            | MASTER CONCEPT PLAN |
| 4            | NOTES               |
|              |                     |
| DATE:        | January, 2025       |
| PROJECT No.: | 240050.01.01        |
| SHEET No.:   | 1 OF 4              |





PROJECT NO.: 220050.01.01

DATE: 01/25

DESIGN: P.V.

SHEET NUMBER: 2

DRAWN: F.L.

P.V.

OF 4

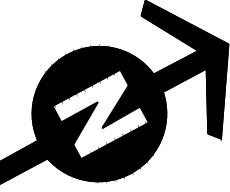
CUSTOMER: LIGHTHOUSE ISLAND RESORT INC

PROJECT: LIGHTHOUSE ISLAND RESORT CPD

TITLE: EXISTING CONDITIONS

**THE NEIGHBORHOOD COMPANY**

5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908  
WWW.THENEIGHBORHOOD.COM/PANY



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20

40

DRAWN

REVISION

#

DATE





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20

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DATE

REVISION

#

PROJECT NO. 220050.01.01

DATE 01/25

DESIGN P.V.

SHEET NUMBER 3 OF 4

CLIENT: LIGHTHOUSE ISLAND RESORT INC

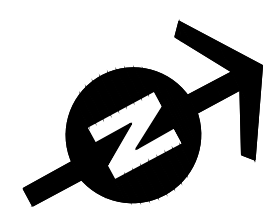
PROJECT: LIGHTHOUSE ISLAND RESORT CPD

TITLE: MASTER CONCEPT PLAN (MCP)



THE NEIGHBORHOOD  
COMPANY

5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908  
WWW.THENEIGHBORHOOD.COM/COMPANY



DATE

REVISION

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# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development Amendment

**CASE NUMBER:** DCI Rezoning 20250035.2

**CASE NAME:** Lighthouse Island Resort

**LPA  
HEARING DATE:** April 29<sup>th</sup>, 2025

**1<sup>st</sup> TOWN COUNCIL  
HEARING DATE:** May 19<sup>th</sup>, 2025

**2<sup>nd</sup> TOWN COUNCIL  
HEARING DATE:** June 16<sup>th</sup>, 2025

**STAFF  
RECOMMENDATION:** Approval with Conditions

**PREPARED/  
SUBMITTED BY:** Judith Frankel, AICP

### **I. APPLICATION SUMMARY**

Applicant/Owner: Lighthouse Island Resort, Inc./The Neighborhood Company

Request: Amend the existing CPD RES#18-17 to 1) increase hotel density from 75 units to 130 units, 2) increase maximum height from 37' above BFE to 40.5' above BFE, 3) provide a revised MCP without phasing, and 4) modifications of existing conditions and deviations.

Subject property: See Exhibit B

Physical Address: 1051 Fifth Street and 1060 Third Street

STRAP #: 24-46-23-W3-00205.0060 and 24-46-23-W3-00203.0150)

FLU: Pedestrian Commercial  
Zoning: CPD/Downtown

### **Adjacent zoning and land uses:**

North: DOWNTOWN  
Residential

South: CPD



East: Margaritaville Resort  
RESIDENTIAL MULTIFAMILY (RM)  
Residential  
West: DOWNTOWN and CPD  
Commercial, Parking and Matanzas Pass Bridge

## **II. BACKGROUND AND ANALYSIS**

The applicant, The Neighborhood Company, on behalf of the property owner Lighthouse Island Resort, Inc., is requesting to amend the CPD approved in Resolution 18-17. The requested amendment will alter the Master Concept Plan, schedule of uses, deviations, and conditions for this CPD. The applicant is requesting to amend the CPD boundary under a separate ordinance.

The property totals 1.87 acres and is located directly east of the Matanzas Pass Bridge. The property has a Future Land Use (FLU) Designation of Pedestrian Commercial. The larger parcel fronting San Carlos Boulevard and Fifth Street has a zoning designation of Commercial Planned Development (CPD) and the corner parcel at 1060 Third Street has a zoning designation of Downtown.

The Lighthouse Island Resort has been in operation in its present location for over 60 years. There have been several changes to the site during this time. The most notable occurred in 1977 when approximately half an acre of property was utilized by the Florida Department of Transportation (FDOT) for the construction of the Matanzas Pass Bridge. This action reduced the property from 32 original platted lots to 20. (*See the applicant provided document titled Platted Lot Exhibit.*) The former Fourth Street court was vacated to the resort at that time.

The original Lighthouse Resort CPD was approved in 1999, when the existing property was rezoned from C-1 to CPD to facilitate redevelopment. At the time of rezoning, the resort consisted of 72 hotel units spread over multiple one- and two-story wood frame buildings, a tiki bar, and basic resort amenities. Since that time, there have been five amendments to the CPD. An amendment in 2003 added additional permitted uses, expanded restaurant square footage, and added deviations including perimeter setbacks and parking space dimensions; an amendment in 2013 created a five phase Master Concept Plan (MCP) and added additional deviations for floor area ratio (FAR) relief and signage size and placement; a second amendment in 2013 added a deviation for sign illumination; an amendment in 2018 increased the total hotel units from 72 to 75 through a density transfer; and an administrative amendment in 2024 made minor adjustments to the MCP for the pool deck.

At the April 29th, 2025 LPA meeting, the LPA voted 7 to 0 to recommend approval with condition of this application. The LPA recommended adding a condition of approval to include lighting of the western boundary pathway as a part of the project's Development Order.

### **Analysis:**

The Lighthouse Island Resort has been a longstanding feature and community-member of Fort Myers Beach. The resort has grown over the last 60 years to evolve with the Town. The current proposal aims to continue that growth. Per the applicant:

*Like many hotels on Fort Myers Beach, the Lighthouse Island Resort suffered significant damage as a result of Hurricane Ian. Although the resort was able to reopen, it is currently operating at approximately 60% of its pre-Ian capacity as a direct result of damage from the storm. A combination of current economic*

*conditions and a desire to create a more family-friendly destination resort has led the property owners to request additional hotel units and height, as well as incorporating the parcel at the corner of Crescent Street and Third Street into the CPD.*

The proposed increased density will potentially add more visitors to the Town's downtown core, adding to the revitalization of Times Square and the business district on Old San Carlos Boulevard. Staff are concerned about the sufficiency of the parking for the increased density and the LPA should determine if Deviation #11 is appropriate for the proposed amendment.

#### Parking

POLICY 7-A-2 PARKING: *"Even though existing parking lots are not used to capacity; parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking."* This will potentially be true of this resort and staff are concerned that sufficient parking will not be available for hotel guests. The applicant provides golf cart parking spaces and bicycle racks although these may be utilized during a guest's stay it is not feasible for visitors to travel from off-island by these methods. Staff agree with the applicant that once at the resort the guests can travel to many destinations on foot, by bicycle or public transit.

The MCP from the 2018 CPD amendment notes 7 off-site parking spaces to be available in the 5<sup>th</sup> phase of the development. These spaces are not mentioned in the resolution itself, and their location is not noted on the MCP. The resolution does not contain any deviations for parking. However, the development was allowed to use the 7 off-site parking spaces towards their required 100 spaces.

The parking calculations below are taken from the approved MCP for Resolution 18-17.

PARKING CALCS:

75 UNITS

29 UNITS ABOVE 450 S.F.

46 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.

$46 \times 1.2 \times 0.666 = 37 \text{ SPACES REQUIRED}$

1.5 P.S. PER UNIT ABOVE 450 S.F.

$29 \times 1.5 \times 0.666 = 29 \text{ SPACES REQUIRED}$

TOTAL SPACES REQUIRED FOR THE RESORT:

$37 + 29 = 66 \text{ SPACES}$

RESTAURANT: 4,300 S.F.

8 P.S. PER 1,000 S.F.

$4,300 / 1,000 \times 8 \times .666 = 23 \text{ SPACES REQUIRED}$

GENERAL OFFICE (RESORT): 420 S.F.

2 SPACES PER 1,000 S.F.

$420 / 1,000 \times 2 = 1 \text{ SPACE}$

RETAIL:

3 P.S. PER 1,000 S.F.

$5,000 / 1,000 \times 3 \times .666 = 10 \text{ SPACES REQUIRED}$

TOTAL PARKING REQUIRED:

100 SPACES

TOTAL PARKING PROVIDED:

100 SPACES

ON-SITE: 93 SPACES

OFF-SITE: 7 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

SIGN  
L "A"  
12

Equivalency Factor

As stated by the applicant in their narrative and noted in Condition 2 of the existing CPD resolution 18-17, the hotel units were limited to 75. These units included a caretaker unit and the transfer of development rights for 3 dwelling units from 2639/2641 Estero Blvd. which is owned by the Town of Fort Myers Beach. It seems that at the time of this resolution in 2018 staff and the applicant had determined that the transfer of these rights was necessary to increase number of units at the resort.

Staff determination of necessary equivalency factor for 130 lodging units on 1.87 acres is 11.59. The FLU is Pedestrian Commercial which allows 6 DUs per acre for 11.22 DUs/acre at this site. 11.22 multiplied by a factor of 11.59 equals 130 units. The first table comparison provided on page 12 of the applicant's Narrative provides an equivalency factor based on the original platting of the land. The applicant provided Platted Lots exhibit demonstrates the original platting of the site for many small single-family lots. The justification provided by the applicant for a density calculation based on the original platting is not false, but is not full representation of the number of proposed units per acre. The second table shown on page 12 of the applicant provided Narrative is a clearer view of the density as compared to other nearby properties.

The original Lighthouse Resort CPD was approved for 72 units on a total of ±1.673 acres, or a density of 43 units per acre. A CPD amendment in 2018 added three units for a total of 75, or a density of 40 units per acre (net density decreased because of additional acreage added to the CPD in 2013 and 2018). The current request is for 130 units on 1.87 acres for a density of 69.5 units per acre. Per LDC Section 34-1803(a)(2) equivalency factors exceeding the allowances in the table (see above) can be requested under exceptional circumstances and through the provision of public benefits.

The proposal amendment does further several Comprehensive Plan goals, including the revitalization of the downtown core (Objective 3-D) and the provision of pedestrian-oriented commercial uses (Policy 4-B-6). Staff advise the LPA to consider if the proposed public benefits are balanced with this proposed increase in density.

#### Neighborhood Compatibility:

The Lighthouse Island Resort is in the downtown area of Fort Myers Beach, which is intended as the commercial center for the Town. The site is neighboring the Margaritaville Resort and Times Squares, both are attractions for visitors and residents. This is an appropriate location for the proposed uses.

#### Schedule of Uses

All uses permitted by right in the downtown zoning district with the following limitations:

- Restaurant use is limited to 4,300 square feet
- Retail is limited to 500 square feet accessory to the primary resort use
- Office is limited to 420 square feet accessory to the primary resort use
- Hotel/motel units limited to a maximum of 130 lawfully existing guest units

#### Proposed Deviations:

See applicant document titled Deviations and Justifications for an analysis by the applicant.

#### **Deviation #1**

Deviation 1 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways. (existing Deviation in Resolution 18-17)

*This deviation is necessary to maintain the current driveway access points for the property.*

#### **Deviation #2**

Deviation 2 requests relief from the F.A.R. requirements of LDC Sec. 34-633, which includes covered parking in the FAR calculation to exclude the under-building parking from this resort's FAR calculation. (existing Deviation in Resolution 18-17)

*This deviation adjusts the language used in Resolution 18-17 which listed the exact square forage to be excluded from the FAR calculation. This re-write allows all ground level parking areas to be excluded.*

### **Deviation #3**

Deviation 3 requests relief from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 9.7' for "Sign C" on Fifth Street. (existing Deviation in Resolution 18-17)

*This deviation was previously approved and there are no proposed changes to the existing sign. The amendments to the deviation language are consistent with the Town's amended sign code (Ord. 23-01), which no longer specifies a maximum height for the base of a monument sign.*

### **Deviation #4**

Deviation 4 requests relief from LDC Sec. 30-5(a)(1)b.1 for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face. (existing Deviation in Resolution 18-17)

*This deviation was previously approved and there are no proposed changes to existing illuminated signage. The amendments to the deviation language simply update the LDC reference consistent with the Town's amended sign code (Ord. 23-01).*

### **Deviation #5**

A deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 40 feet 5 inches above base flood elevation and a maximum of four (4) stories consisting of three (3) stories above one (1) level of parking.

*This deviation will allow for an increase from a maximum height above BFE of 37-feet to a maximum height above BFE to 40.5-feet as measured to the mean roof height. The applicant is proposing a range of building heights for the resort however these heights are not marked on the MCP. Building 5 is located closest to the Matanzas Pass bridge and is the structure to be mainly impacted by this increase in height. The infill development (Building 1) on the Crescent Street parcel proposed to be added to the CPD will be under 30 feet, providing a transition from residential uses on the east side of Crescent Street. 3.5-feet in this locate will not be injurious to the surrounding neighborhood.*

### **Deviation #6**

A deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 0' and 6.75' feet along San Carlos Boulevard, Third Street, and Fifth Street.

*The existing CPD had approved deviations for perimeter and street setbacks, ranging from 0' to 7.4'. The requested deviation reflects the existing conditions and proposed buildings fronting Third Street, Fifth Street, and San Carlos Boulevard. Relief from the required 10' street setback promotes pedestrian access to the Downtown district by bringing buildings closer to the "public realm" and is consistent with the vision of the Pedestrian Commercial future land use designation, which emphasizes a pedestrian-friendly downtown.*

#### **Deviation #7**

A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the **east elevation of Building 5** of 104 square feet, as depicted on the MCP.

*The Lighthouse Island Resort comprises ±1.87 acres, which is a significantly larger area than the average parcel containing one or two business establishments. Due to the scale of the resort and the situation of the resort as surrounded by roadways, it is reasonable to permit multiple signs totaling more than the LDC maximum of 32 square feet. See the applicant provided rendering for greater detail on the signs.*

#### **Deviation #8**

A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the **south elevation of Building 5** of 100 square feet, as depicted on the MCP.

*The Lighthouse Island Resort comprises ±1.87 acres, which is a significantly larger area than the average parcel containing one or two business establishments. Due to the scale of the resort and the situation of the resort as surrounded by roadways, it is reasonable to permit multiple signs totaling more than the LDC maximum of 32 square feet. See the applicant provided rendering for greater detail on the signs.*

#### **Deviation #9**

A deviation from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 10 feet for a monument sign at the **corner of Crescent Street and Fifth Street**, as depicted on the MCP.

*A deviation was previously approved for a 9.7' monument sign in this location. This deviation proposes a replacement monument sign with an architectural embellishment that is 10' and an actual sign height of 3'4". The proposed sign is consistent with the architectural style of the resort. See the applicant document title Deviations and Justifications for a depiction of this sign.*

#### **Deviation #10**

A deviation from LDC Section 30-8(16) which prohibits pole signs to allow a decorative wayfinding pole sign on the corner of **Third Street and San Carlos Boulevard**, as depicted on the MCP.

*This deviation is for an artistic wayfinding sign intended to both direct pedestrians and add color to the public realm.*

#### **Deviation #11**

A deviation from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow a 58% reduction in parking requirements for a total of 82 on-site parking spaces.

*The existing CPD was approved with 100 parking spaces for Phase V at buildout, which included parking for 75 hotel units, 4,300 SF of restaurant, 420 SF of office space, and 5,000 SF of retail uses. Of the 100 approved spaces, 93 were on-site and 7 were off-site. The previously approved parking calculations utilized the 33% parking reduction applicable to specific areas within the Downtown zoning district.*

*The current CPD amendment proposes 82 on-site LDC-compliant parking spaces. This is a reduction from the previously required 93 on-site spaces for 75 hotel units and accessory retail and restaurant uses. The present amendment proposes 130 hotel units and minimal retail and reduces the on-site parking count to 82 spaces. The applicant notes that there are 7 street parking spaces adjacent to the resort, but these are public parking spots regulated by the Town. If the applicant would like to restrict their use for only hotel guests, the spots must be leased from the Town through an agreement. The applicant is also noting that they are providing 8 golf cart spaces and 2 bicycle parking spaces. It is unlikely that hotel guests will travel to the resort by golf cart or bicycle. although they may utilize them while visiting. Staff advise the LPA to consider if this reduction is appropriate.*

*See the applicant provide document titled Parking Analysis.*

#### **IV. FINDINGS AND CONCLUSIONS**

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

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

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

Staff response: No errors or ambiguities exist.

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

Staff response: The resort was partially damaged by Hurricane Ian.

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

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

(4) The testimony of any applicant.

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

(6) The testimony of the public.

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

Staff response: The requests, including but not limited to the increased density and height requests, are consistent with the Town of Fort Myers Beach Comprehensive Plan.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas.

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

Staff response: The requested uses are compatible.

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

Staff response: The location is compatible.

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

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

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

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes except for the requested deviations and the proposed equivalency factor.

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



LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

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

Staff response: The proposed uses are appropriate.

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

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

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

Staff response: The special conditions are related to the impact on the public's interest.

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

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: Additional height is requested. The Town's Comprehensive Plan allows for additional height through this policy for parcels that are contiguous from taller buildings. The Lighthouse Island Resort CPD currently allows a maximum height of 37 feet above base flood elevation. Margaritaville is directly south of the subject property, allowing a maximum of four stories or 40 feet. The proposed amendment is requesting a zoned height of 40'5" above base flood elevation, which is consistent with the neighboring Margaritaville

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: There are no additional anticipated adverse traffic impacts. The submitted TIS is under review with comments to be provided at the time of Town Council hearing.

#### Findings for Deviation Requests:

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

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

Staff response: The requested deviations are related to an efficient functioning of the MCP except for deviation #11.

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

Staff response: The proposed deviations preserve public health.

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

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

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

Staff response: The deviations are consistent with the comprehensive plan

## **V. RECOMMENDATION**

Prior to this application being heard by the Town Council the applicant must add the following items to the MCP:

- Define where trash/solid waste will be collected and removed from the site on the MCP.
- The MCP must note the height of each building.
- Demonstrate COP areas on MCP to reflect the condition of approval

Staff recommend that the LPA consider the parking space reduction request in deviation #11 and determine if that is appropriate for the site or if the request should be altered. A minimum of one parking space per room (130) would better accommodate guests and employees. The applicant is offering programmatic alternatives to driving for both guests and employees, but staff is not able to evaluate the effectiveness of those policies. (See applicant provided document Proposed Condition and Commitments for program details.)

Staff find that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. If the LPA determines that deviation #11 is appropriate, staff recommends **approval with conditions** of DCI20250035.2. The recommended conditions are listed below and are intended to reduce the potential for nuisance to the neighboring residential parcels.

### Proposed Conditions of Approval

1. Final architectural design must be generally consistent with renderings provided in addition to the Master Concept Plan.
2. Prior approval of a development order the MCP must be revised to reflect the conditions of approval as determined by the ordinance.
3. Applicant must receive approval from the Town Manager for “back out” parking along Third Street per LDC Sec. 34-2015.
4. The installation and use of the proposed “pedestrian pathway” is subject to approval by FDOT. Within six months of zoning approval by the town council, the property owner will coordinate with FDOT regarding enhancements to the San Carlos Boulevard/Matanzas Pass Bridge right-of-way.
5. All signs in or near the ROW will require sight-triangle analysis per Sec. 30(a)(4).
6. Access through and along the resort pathway connecting the existing sidewalk arcade on Fifth Street to San Carlos Boulevard, must be open to the public during the resort’s restaurant operational hours to encourage pedestrian movement between the east and west sides of the resort.
7. All landscaping materials will be native varieties/Florida friendly species.
8. At the time of Development Order on the property boundary survey, the LIMWA (Limit of moderate wave action) Boundary line (Coastal A Zone) must be demonstrated.
9. At the time of Development Order the architectural elevation sheets 5 through 7 must have the lowest horizontal member added on the cross-section details.

10. The applicant must provide at least 1 bike rack.
11. Consumption of Premises (COP) Service of alcohol for on-premises consumption is approved at the location depicted on the Master Concept Plan, subject to these limitations:
  - a. For Building 5, on the elevated pool deck.
  - b. For the tiki bar and pool deck on the south end of the property between Buildings 3 and 5, limited to the areas depicted on the Master Concept Plan.
  - c. For the tiki bar and pool deck on the north end of the property between Buildings 2 and 6, limited to the areas depicted on the Master Concept Plan.
12. Hours of operation for outdoor areas will be limited to the following unless otherwise temporarily altered by the Town's special event use regulations in LDC Section 34-1264. All other hours of operation will be regulated by the LDC.
  - a. Pool deck (Building 5): 9:00am to 12:00am
  - b. Pool deck and tiki bar (south end between Buildings 3 and 5): 9:00am to 2:00am
  - c. Pool deck and tiki bar (north end between Buildings 2 and 6): 9:00am to 10:00pm

## **ORDINANCE 18-17**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE CURRENT ZONING MAP FROM DOWNTOWN ZONING DISTRICT TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND AN AMENDMENT TO THE LIGHTHOUSE ISLAND RESORT MASTER CONCEPT PLAN PREVIOUSLY AMENDED AND APPROVED BY RESOLUTION 13-29, TO INCLUDE THE TWO PARCELS CONTAINING APPROXIMATELY 4,000 SQUARE FEET, AS DEVELOPED WITH MODIFIED CONDITIONS OF APPROVAL AND DEVIATIONS; GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00203.019A AND A PORTION OF LOT 14 CONSIDERED PART OF TOWN RIGHT-OF-WAY; PETITION DCI18-0002; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.**

**WHEREAS**, Lighthouse Island Resort, Inc. filed application to rezone the property from the Downtown zoning district to CPD with amended Master Concept Plan (MCP), in order to add two developed portions of property containing 4,000+/- square feet, and increase the total rooms from 72 to 75, to the Lighthouse Island Resort development located primarily at 1051 Fifth Street in the Town of Fort Myers Beach; and

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

**WHEREAS**, the property requested to be rezoned and included with the Lighthouse Island Resort are adjacent to the Lighthouse Island Resort property; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on October 9, 2018; and

**WHEREAS**, at the October 9<sup>th</sup>, 2018 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

**WHEREAS**, at the October 9<sup>th</sup>, 2018 public hearing the LPA recommended approval based on findings and considerations as outlined in the staff report, by a 7-0 vote, subject to certain conditions and deviations; and

**WHEREAS**, on November 5<sup>th</sup>, 2018 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, a second reading of the proposed Ordinance and a public hearing on this matter legally advertised and held before the Town Council on November 19<sup>th</sup>, 2018 at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, this approval is subject to the findings and considerations beginning on packet page 21 through 24, with the exception to Policy 4-E-1, which should read the predisaster buildback policy is being utilized for this development.

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

The Town Council votes to **APPROVE** the request to rezone the subject property to CPD with MCP, subject to the deviations and conditions set for with specificity.

**CONDITIONS:**

**Condition 1.**

The development of this project must be consistent with the five (5) page Master Concept Plan entitled "Master Concept Plan (CPD) for Lighthouse Island Resort" last revised 3-12-2013, except as modified by the conditions and deviations below. Phase 1-A is not accepted. A modified MCP set shall be submitted for the record and include any conditions of approval and deviations herein.

**Condition 2.**

The following limitations apply to the project and uses:

a. **Schedule of Uses**

All uses permitted by right in the Downtown zoning district with the following limitations:

Restaurant is limited to 4,300 square feet

Retail is limited to 5,000 square feet

Office is limited to 420 square feet

Hotel/Motel units limited to a maximum of 75 lawfully existing guest units, which total includes the unit for the caretaker and the permanent transfer of all dwelling units from 2639/2641 Estero Blvd. (19-46-24-W3-0020C.0180) for the exceptional circumstance to benefit the Heart of the Island recreational, historic, environmental, and cultural resources of the Town; to be used for increased access and egress, increase public access of the parcel, increase access to public facilities, non-occupied buildings and permanent ownership by the Town.

b. **Site Development Regulations**

Building placement, size, design, and all other property development regulations shall be the same as for the CR (Commercial Resort) zoning district unless approved as deviations as part of the approved zoning resolution.

**Condition 3.**

Maximum building height may not exceed 37 feet above Base Flood Elevation. No additional building height is approved within this planned development.

**Condition 4.**

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

**Condition 5.**

The final design of the building within this planned development must be approved by the Town Manager prior to the approval of any permits. The design must be in substantial compliance with the Town of Fort Myers Beach Comprehensive Plan, the Land Development Code, and all other applicable requirements.

**Condition 6.**

The 5,000 square feet of retail uses are limited to the ground floor of the Phase 2 building as depicted on the approved Master Concept Plan. The ground floor will have to be dry flood proofed and must be constructed in compliance with Chapter 6 of the Land Development Code.

**Condition 7.**

At no time will the total number of Hotel/Motel units exceed 75 guest units.

**Condition 8.**

Prior to approval of a development order, the correct sidewalk easement must be recorded in the Public Records of Lee County, Florida.

**Condition 9.**

Prior to seeking any building permits for development on this site, the developer must combine the existing platted lots into one lot of record as part of the local development order for this CPD project not later than February 28, 2019.

**Condition 10.**

Prior to each local development order approval, the developer must provide a current tally of the square feet for each use approved in all previous local development orders.

**Condition 11.**

The total square feet of existing and proposed buildings must not exceed 58,432 square feet of total building area for buildings used as hotel/motel guest units.

**Condition 12.**

Any off-site parking, other than the existing approved 5 off-site parking spaces, must be addressed through an amendment to this CPD.

**Condition 13.**

Any outdoor seating for the restaurant and any sign that will require a deviation must be addressed through an amendment to this CPD.

**Condition 14.**

This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

**Condition 15.**

This CPD project must be constructed to build-out no later than December 31, 2025. A completed building permit and start of construction to the next phase shall occur prior to December 31, 2023.

**Condition 16.**

All signs containing commercial messages, including those shown for the proposed restaurant in Phase II-A, must be in compliance with LDC Chapter 30, except as approved herein by deviations.

**Condition 17.**

The deviation for internal illumination of signs is approved only for the existing signs. If the signage is moved, removed, or damaged beyond repair, the deviation will be null and void, and any new signage must comply with the regulations of the LDC.

**Condition 18.**

Any violation of these conditions shall be subject to a maximum \$500 per incident, per day fine.

**DEVIATIONS:**

**Deviation #1**

Deviation 1 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 83 feet from Fifth Avenue. This deviation is unchanged from the previously approved MCP and is APPROVED.

**Deviation #2**

Deviation 2 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 115 feet from Third Street. This deviation is unchanged from the previously approved MCP and is APPROVED.

**Deviation #3**

Deviation 3 was from a previous Lee County LDC requirement, and is no longer necessary. The Fort Myers Beach LDC does not regulate building separation within a project site.

**Deviation #4**

Deviation 4 requests relief from LDC Table 34-3 which requires certain setbacks for structures, buildings, and pavement from the development perimeters; to allow the reduced setbacks of 7.4', 4.5', 3', 2.6', 1.5', 1.4', & 0', from the development perimeter as depicted on the Master Concept

Plan. All of the setbacks were previously approved on the existing MCP for this project. This deviation is **APPROVED**.

#### **Deviation #5**

Deviation 5 requests relief from LDC Table 34-3 which provides the property development regulations for the Fort Myers Beach Commercial Resort (CR) zoning district; to allow street setbacks of 4.5', 2.0', and 0' along San Carlos Boulevard. All of the setbacks were previously approved on the existing MCP for this project. This deviation is **APPROVED**.

#### **Deviation #6**

Deviation 6 requests relief from LDC Section 34-2016 which requires 90 degree parking spaces to be a minimum of 18' in length; to allow 90 degree parking spaces to be 16' in length for Phase 2 parking only. This deviation is **APPROVED** as depicted on the approved Master Concept Plan and with the condition that these parking spaces will be removed at the time Phase 5 is constructed.

#### **Deviation #7**

Deviation 7 requests relief from LDC Section 34-2016(a) which requires parking aisles between parking spaces to be 22' in width to allow the parking aisles to be 20' in width for some areas for the Phase 2 parking only. This deviation is **APPROVED** as depicted on the approved Master Concept Plan and with the condition that these parking aisles will be removed at the time Phase 5 is constructed.

#### **Deviation #8**

Deviation 8 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways. This deviation is **APPROVED**.

#### **Deviation #9**

Deviation 9 requests relief from the F.A.R. requirements of LDC Section 34-953 and Table 34-3 to allow additional F.A.R. to exceed the total of 66,852 square feet of residential and commercial uses to the extent necessary to develop on-site under building parking. This deviation is **APPROVED**.

#### **Deviation #10**

Deviation 10 requests relief from LDC Section 30-153(b)(1) which allows a maximum of 32 square feet of signage; to allow 126 square feet of total signage for Lighthouse Island Resort. This deviation is **APPROVED**.

#### **Deviation #11**

Deviation 11 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign; to allow 25'6" for the Lighthouse "Sign D". This deviation is **APPROVED**.

#### **Deviation #12**

Deviation 12 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 10.4' for "Sign A" on Third Street. This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "A".



**Deviation #13**

Deviation 13 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall sign height of 9.7' for "Sign B" on Crescent Street." This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "B".

**Deviation #14**

Deviation 14 requests relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18 inches for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 9.7' for "Sign C" on Fifth Street. This deviation is **APPROVED**, provided that the top of the sign face shall not exceed 8.1', as depicted in Sign Detail "C".

**Deviation #15**

Deviation 15 requests relief from LDC Section 30-154(b) which requires that all signs be set back a minimum 3 foot from any public right-of-way; to allow a 0' setback for "Sign A" located on Third Street. This deviation is **APPROVED**.

**Deviation #16**

Deviation 16 requests relief from LDC Section 30-154(b) which requires a minimum 3 foot setback from any public right-of-way; to allow "Sign B" to remain located entirely within the right-of-way at the intersection of Crescent Street and Fifth Street. This deviation is **APPROVED**.

**Deviation #17**

Deviation 17 requests relief from LDC Sec. 34-154(a) for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face, subject to Condition #18. This deviation is **APPROVED**.

**CODIFICATION AND SCRIVENER'S ERRORS.**

The Town Council intends that this ordinance will not be made part of the Fort Myers Beach Code of Ordinances; typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing. Only the specific deviations granted by the Town Council and associated plan sheets reflecting those approvals with or without conditions are so incorporated.

**EFFECTIVE DATE.**

This ordinance becomes effective immediately upon its adoption.

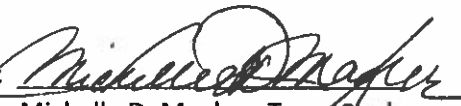
THE FOREGOING ORDINANCE was enacted by the Town Council upon a motion by Council Member Joanne Shamp and seconded by Council Member Dennis Boback and, upon being put to a roll call vote, the result was as follows:

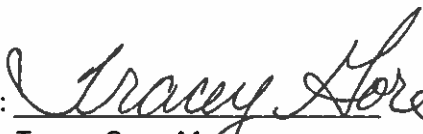
|                    |     |                          |     |
|--------------------|-----|--------------------------|-----|
| Tracey Gore, Mayor | NAY | Bruce Butcher            | AYE |
| Anita Cereceda     | AYE | Joanne Shamp, Vice Mayor | AYE |
| Dennis Boback      | AYE |                          |     |

**DULY PASSED AND ENACTED** this 19<sup>th</sup> day of November 2018.

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By:   
Michelle D. Mayher, Town Clerk

By:   
Tracey Gore, Mayor

Approved as to form by:

By:   
Peterson Law Group, Town Attorney

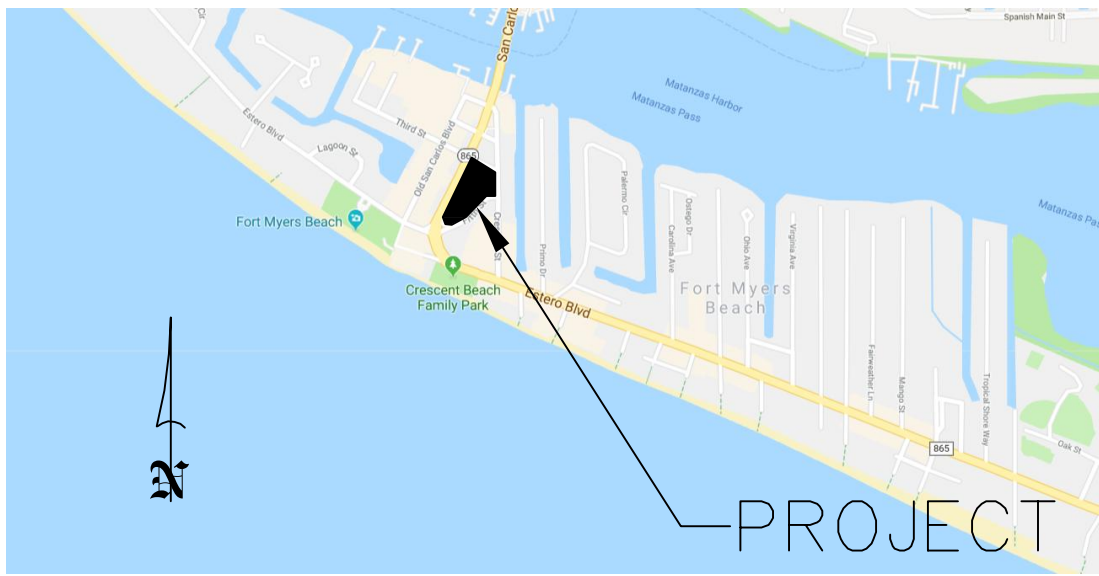


# MASTER CONCEPT PLAN (CPD) FOR LIGHTHOUSE ISLAND RESORT PHASE 1 (REVISED)

SOILS#  
26

FLUCC #  
147

SOIL & SITE F.L.U.C.C.



LOCATION MAP  
NOT TO SCALE

LOCATION MAP  
NOT TO SCALE

PARKING CALCS:

75 UNITS  
14 UNITS ABOVE 450 S.F.  
61 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.  
61 x 1.2 x 0.666 = 49 SPACES REQUIRED

1.5 P.S. PER UNIT ABOVE 450 S.F.  
14 x 1.5 x 0.666 = 14 SPACES REQUIRED

TOTAL SPACES REQUIRED FOR THE RESORT:  
49 + 14 = 63 SPACES

TOTAL PARKING REQUIRED:  
63 SPACES

TOTAL PARKING PROVIDED:  
89 SPACES  
ON-SITE: 85 SPACES  
OFF-SITE: 4 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

PHASING:

THE PROPOSED PHASES ARE LISTED I THROUGH V.  
THE PHASES MAY BE CONSTRUCTED IN ANY SEQUENCE,  
SO LONG AS SUFFICIENT PARKING IS PROVIDED.  
THE PHASES ARE ANTICIPATED TO BE CONSTRUCTED  
WITHIN A THREE YEAR TIME PERIOD FOR EACH PHASE.  
THIS REQUEST IS FOR APPROVAL TO PERMIT UP TO SIX  
YEARS FOR EACH PHASE. AT NO TIME WILL THE TOTAL  
NUMBER OF HOTEL UNITS EXCEED 75 UNITS.  
(INCLUDING CARETAKER UNIT)

SCHEDULE OF USES:

ALL USES PERMITTED BY RIGHT IN THE DOWNTOWN ZONING DISTRICT  
RESTAURANT LIMITED TO 4,300 S.F.  
RETAIL LIMITED TO 5,000 S.F.  
OFFICE LIMITED TO 420 S.F.  
BAR AND COCKTAIL LOUNGE (LIMITED TO TIKI BAR AND RESTAURANT  
SHOWN ON MASTER CONCEPT PLAN AND NO SPECIAL EXCEPTION  
REQUIRED AS LOCATION ARE APPROVED WITH THIS APPLICATION)  
C.O.P. LIMITED TO INDOOR SEATING & EXISTING TIKI BAR  
SIGNS IN ACCORDANCE WITH LDC CHAPTER 30

SCHEDULE OF DEVIATIONS FROM LAND DEVELOPMENT CODE:

- DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 83' FROM FIFTH AVE., A LOCAL STREET
- DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 115' FROM THIRD STREET, A LOCAL STREET.
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 19.1', 4.25', 2.6', 1.4' & 0.0'
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 7.4', 4.5', 2.6', 1.4', & 0.0'
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 4.5', 2.0' & 0.0'
- DEVIATION FROM SECTION 34-2016(2) FROM THE REQUIRED 18' PARKING SPACE TO ALLOW 16'. (SEE PHASING PLAN)
- DEVIATION FROM SECTION 34-2016(1) FROM THE REQUIRED 22' ISLE WIDTH TO ALLOW 20'. (SEE PHASING PLAN)
- DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 42.4' & 99.6' FROM ADJACENT DRIVEWAYS.
- DEVIATION FROM SECTION 34-953 & TABLE 34-4 FROM THE F.A.R. REQUIREMENTS TO ALLOW ADDITIONAL F.A.R. TO EXCEED THE TOTAL 66,852 SQ FT OF RESIDENTIAL & COMMERCIAL USES TO THE EXTENT NECESSARY TO DEVELOP ON-SITE UNDER BUILDING PARKING (PER PLAN PROVIDED)
- DEVIATION FROM LDC 30-152(b) FOR COMMERCIAL SIGNAGE TO PERMIT THE FOLLOWING SIGN ON EACH STREET FRONTAGE TO REMAIN THE LIGHTHOUSE ISLAND RESORT: SEE ADDENDUM TO NARRATIVE
- DEVIATION FROM LDC 30-154(c) WHICH ALLOWS A MAXIMUM HEIGHT OF FIVE (5) FEET FOR MONUMENT SIGNS PROVIDED THAT THE BOTTOM OF THE SIGN IS NO MORE THAN EIGHTEEN (18) INCHES ABOVE GRADE TO ALLOW 4.1' FOR SIGNS "A" "B" & "C" AND 1.5' FOR SIGN "D" WITH A MAXIMUM HEIGHT OF 8.1' FOR SIGNS "A" "B" & "C" AND 21.2' FOR SIGN "D"
- DEVIATION FROM LDC 30-93(b) WHICH REQUIRES THREE (3) FOOT SETBACK FROM ANY SIDEWALK, BIKE PATH OR STREET RIGHT-OF-WAY TO ALLOW 0.0' FOR SIGN "A", 0.0' FOR SIGN "B" & 1.16' FOR SIGN "C"

SCALE: 1" = 20'

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SURVEY LICENSE # LB 6690  
WWW.BANKSENG.COM

REVISED: 10-24-18  
EXHIBIT IV-K

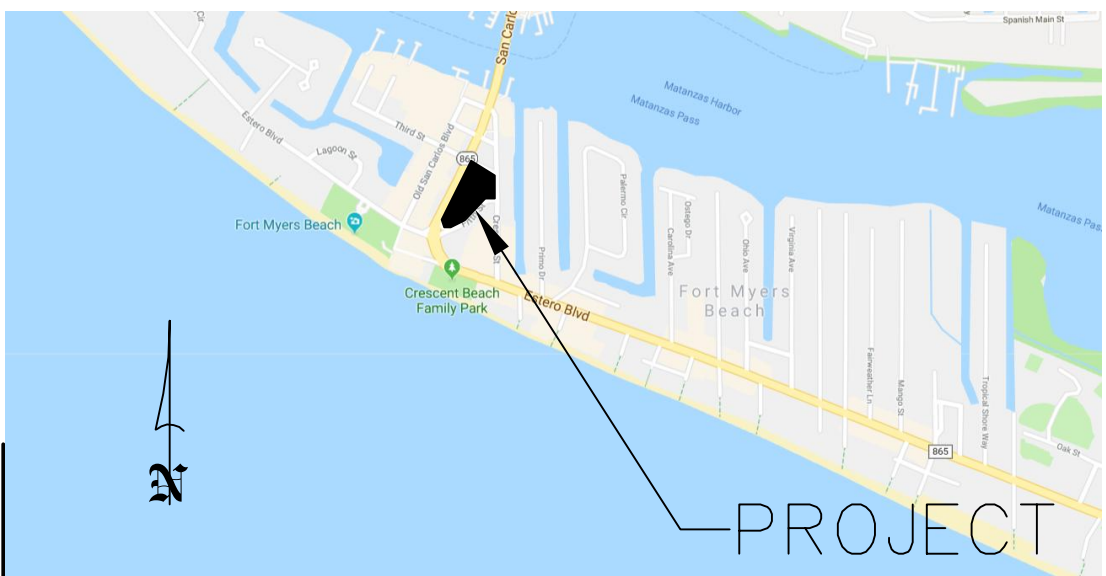


# MASTER CONCEPT PLAN (CPD) FOR Lighthouse Island Resort PHASE 2 (REVISED)

SOILS#  
26

FLUCC #  
147

SOIL & SITE F.L.U.C.C.



LOCATION MAP  
NOT TO SCALE

LOCATION MAP  
NOT TO SCALE

## PARKING CALCS: PHASE 2

75 UNITS  
19 UNITS ABOVE 450 S.F.  
56 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.  
56 x 1.2 x 0.666 = 45 SPACES REQUIRED

1.5 P.S. PER UNIT ABOVE 450 S.F.  
19 x 1.5 x 0.666 = 19 SPACES REQUIRED

TOTAL SPACES REQUIRED FOR THE RESORT:  
45 + 19 = 64 SPACES

GENERAL OFFICE (RESORT): 420 S.F.  
2 SPACES PER 1,000 S.F.  
420 / 1,000 x 2 = 1 SPACE

TOTAL PARKING REQUIRED:  
65 SPACES

TOTAL PARKING PROVIDED:  
91 SPACES  
ON-SITE: 89 SPACES  
OFF-SITE: 2 SPACES

## PARKING CALCS: PHASE 2-A

64 SPACES REQUIRED FOR PHASE 2 UNITS  
1 SPACE REQUIRED FOR PHASE 2 OFFICE

RESTAURANT: 4,300 S.F.  
8 P.S. PER 1,000 S.F.  
4,300 / 1,000 x 8 x .666 = 23 SPACES  
REQUIRED

TOTAL PARKING REQUIRED:  
65 SPACES FROM PHASE 2  
23 SPACES FROM PHASE 2-A  
65 + 23 = 88 SPACES REQUIRED

TOTAL PARKING PROVIDED:  
93 SPACES  
ON-SITE: 89 SPACES  
OFF-SITE: 4 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

## PHASING:

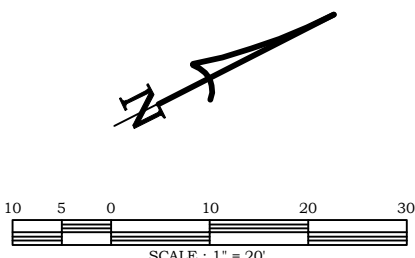
THE PROPOSED PHASES ARE LISTED I THROUGH V.  
THE PHASES MAY BE CONSTRUCTED IN ANY SEQUENCE  
SO LONG AS SUFFICIENT PARKING IS PROVIDED. THE  
PHASES ARE ANTICIPATED TO BE CONSTRUCTED  
WITHIN A THREE YEAR TIME PERIOD FOR EACH PHASE.  
THIS REQUEST IS FOR APPROVAL TO PERMIT UP TO SIX  
YEARS FOR EACH PHASE. AT NO TIME WILL THE TOTAL  
NUMBER OF HOTEL UNITS EXCEED 75 UNITS.  
(INCLUDING CARETAKER UNIT)

## SCHEDULE OF USES:

ALL USES PERMITTED BY RIGHT IN THE DOWNTOWN ZONING DISTRICT  
RESTAURANT LIMITED TO 4,300 S.F.  
RETAIL LIMITED TO 5,000 S.F.  
OFFICE LIMITED TO 420 S.F.  
BAR AND COCKTAIL LOUNGE (LIMITED TO TIKI BAR AND RESTAURANT  
SHOWN ON MASTER CONCEPT PLAN AND NO SPECIAL EXCEPTION  
REQUIRED AS LOCATION ARE APPROVED WITH THIS APPLICATION)  
C.O.P. LIMITED TO INDOOR SEATING & EXISTING TIKI BAR  
SIGNS IN ACCORDANCE WITH LDC CHAPTER 30

## SCHEDULE OF DEVIATIONS FROM LAND DEVELOPMENT CODE:

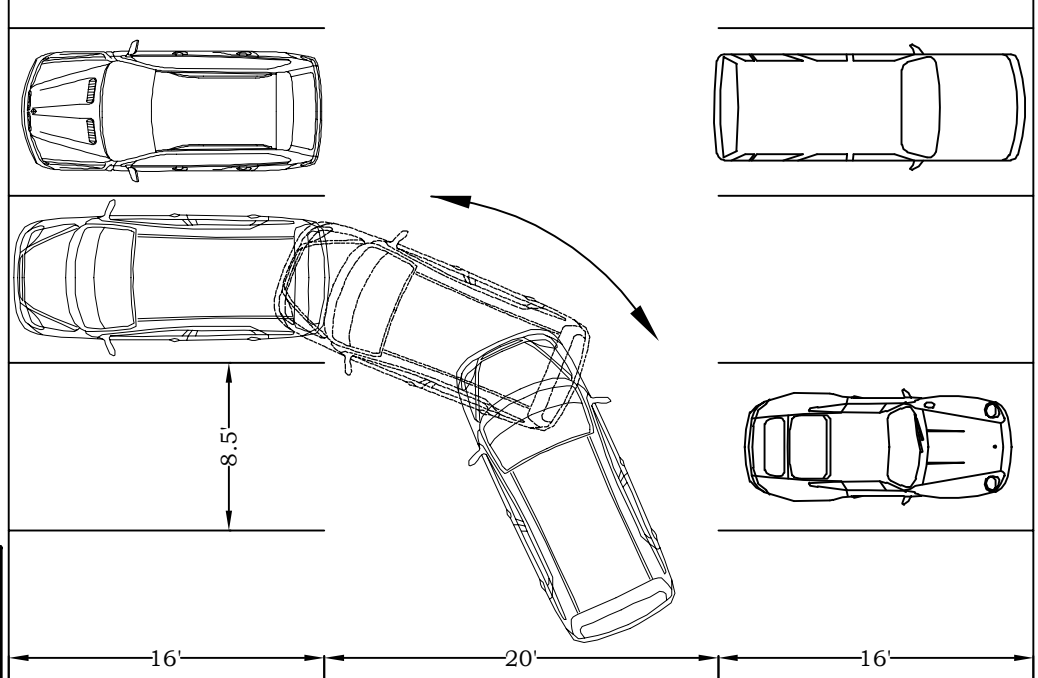
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- DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 115' FROM THIRD STREET, A LOCAL STREET.
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 19.1', 4.25', 2.6', 1.4' & 0.0'
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 7.4', 4.5', 2.6', 1.4', & 0.0'
- DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 4.5', 2.0' & 0.0'
- DEVIATION FROM SECTION 34-2016(2) FROM THE REQUIRED 18' PARKING SPACE TO ALLOW 16'. (SEE PHASING PLAN)
- DEVIATION FROM SECTION 34-2016(1) FROM THE REQUIRED 22' ISLE WIDTH TO ALLOW 20'. (SEE PHASING PLAN)
- DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 42.4' & 99.6' FROM ADJACENT DRIVEWAYS.
- DEVIATION FROM SECTION 34-953 & TABLE 34-4 FROM THE F.A.R. REQUIREMENTS TO ALLOW ADDITIONAL F.A.R. TO EXCEED THE TOTAL 66,852 SQ FT OF RESIDENTIAL & COMMERCIAL USES TO THE EXTENT NECESSARY TO DEVELOP ON-SITE UNDER BUILDING PARKING (PER PLAN PROVIDED)
- DEVIATION FROM LDC 30-152(b) FOR COMMERCIAL SIGNAGE TO PERMIT THE FOLLOWING SIGN ON EACH STREET FRONTAGE TO REMAIN THE LIGHTHOUSE ISLAND RESORT: SEE ADDENDUM TO NARRATIVE
- DEVIATION FROM LDC 30-154(c) WHICH ALLOWS A MAXIMUM HEIGHT OF FIVE (5) FEET FOR MONUMENT SIGNS PROVIDED THAT THE BOTTOM OF THE SIGN IS NO MORE THAN EIGHTEEN (18) INCHES ABOVE GRADE TO ALLOW 4.1' FOR SIGNS "A" "B" & "C" AND 1.5' FOR SIGN "D" WITH A MAXIMUM HEIGHT OF 8.1' FOR SIGNS "A" "B" & "C" AND 21.2' FOR SIGN "D"
- DEVIATION FROM LDC 30-93(b) WHICH REQUIRES THREE (3) FOOT SETBACK FROM ANY SIDEWALK, BIKE PATH OR STREET RIGHT-OF-WAY TO ALLOW 0.0' FOR SIGN "A", 0.0' FOR SIGN "B" & 1.16' FOR SIGN "C"



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SURVEY LICENSE # LB 6690  
WWW.BANKSENG.COM

## PARKING MANEUVERABILITY DETAIL



REVISED: 10-24-2018  
EXHIBIT IV-K

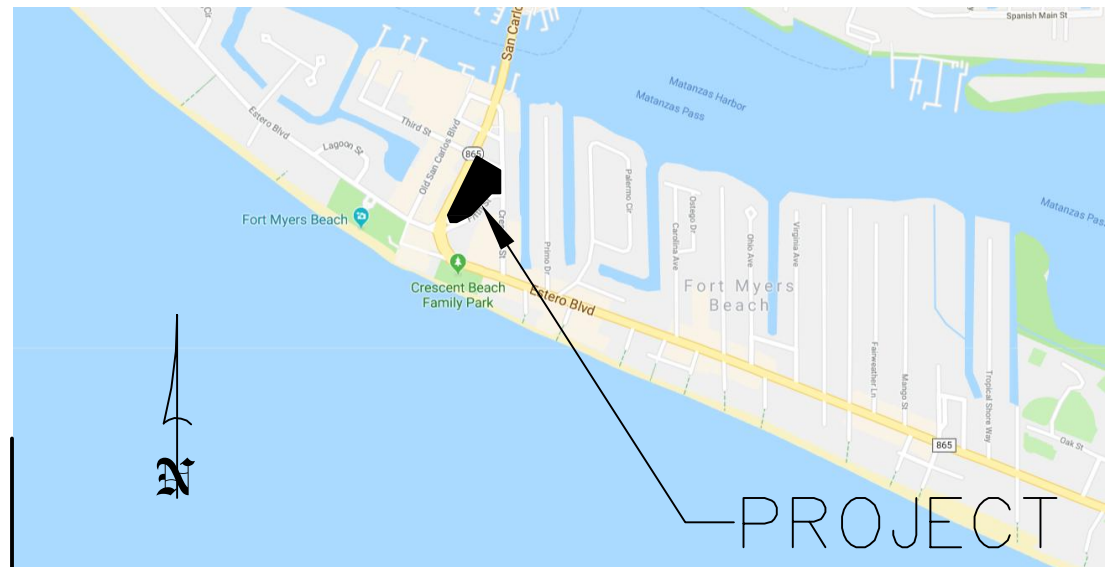


# MASTER CONCEPT PLAN (CPD) FOR Lighthouse Island Resort PHASE 3 (REVISED)

SOILS#  
26

FLUCC #  
147

SOIL & SITE F.L.U.C.C.



LOCATION MAP  
NOT TO SCALE

LOCATION MAP  
NOT TO SCALE

## PARKING CALCS:

75 UNITS  
29 UNITS ABOVE 450 S.F.  
46 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.  
46 x 1.2 x 0.666 = 37 SPACES REQUIRED

1.5 P.S. PER UNIT ABOVE 450 S.F.  
29 x 1.5 x 0.666 = 29 SPACES REQUIRED

TOTAL SPACES REQUIRED FOR THE RESORT:  
37+29 = 66 SPACES

GENERAL OFFICE (RESORT): 420 S.F.  
2 SPACES PER 1,00 S.F.  
420 / 1,000 x 2 = 1 SPACE

RESTAURANT: 4,300 S.F.  
8 P.S. PER 1,000 S.F.  
4,300 / 1,000 x 8 x .666 = 23 SPACES REQUIRED

TOTAL PARKING REQUIRED:  
90 SPACES

TOTAL PARKING PROVIDED:  
91 SPACES  
ON-SITE: 89 SPACES  
OFF-SITE: 2 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

## PHASING:

THE PROPOSED PHASES ARE LISTED I THROUGH V.  
THE PHASES MAY BE CONSTRUCTED IN ANY SEQUENCE,  
SO LONG AS SUFFICIENT PARKING IS PROVIDED. THE  
PHASES ARE ANTICIPATED TO BE CONSTRUCTED WITHIN  
A THREE YEAR TIME PERIOD FOR EACH PHASE. THIS  
REQUEST IS FOR APPROVAL TO PERMIT UP TO SIX  
YEARS FOR EACH PHASE.

AT NO TIME WILL THE TOTAL NUMBER OF HOTEL UNITS  
EXCEED 75 UNITS. (INCLUDING CARETAKER UNIT)

## SCHEDULE OF USES:

ALL USES PERMITTED BY RIGHT IN THE DOWNTOWN ZONING DISTRICT  
RESTAURANT LIMITED TO 4,300 S.F.  
RETAIL LIMITED TO 5,000 S.F.  
OFFICE LIMITED TO 420 S.F.  
BAR AND COCKTAIL LOUNGE (LIMITED TO TIKI BAR AND RESTAURANT  
SHOWN ON MASTER CONCEPT PLAN AND NO SPECIAL EXCEPTION  
REQUIRED AS LOCATION ARE APPROVED WITH THIS APPLICATION)  
C.O.P. LIMITED TO INDOOR SEATING & EXISTING TIKI BAR  
SIGNS IN ACCORDANCE WITH LDC CHAPTER 30

## SCHEDULE OF DEVIATIONS FROM LAND DEVELOPMENT CODE:

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- ② DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 115' FROM THIRD STREET, A LOCAL STREET.
- ③ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 19.1', 4.25', 2.6', 1.4' & 0.0'
- ④ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 7.4', 4.5', 2.6', 1.4', & 0.0'
- ⑤ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 4.5', 2.0' & 0.0'
- ⑥ DEVIATION FROM SECTION 34-2016(2) FROM THE REQUIRED 18' PARKING SPACE TO ALLOW 16'. (SEE PHASING PLAN)
- ⑦ DEVIATION FROM SECTION 34-2016(1) FROM THE REQUIRED 22' ISLE WIDTH TO ALLOW 20'. (SEE PHASING PLAN)
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- ⑩ DEVIATION FROM LDC 30-152(b) FOR COMMERCIAL SIGNAGE TO PERMIT THE FOLLOWING SIGN ON EACH STREET FRONTAGE TO REMAIN THE LIGHTHOUSE ISLAND RESORT: SEE ADDENDUM TO NARRATIVE
- ⑪ DEVIATION FROM LDC 30-154(c) WHICH ALLOWS A MAXIMUM HEIGHT OF FIVE (5) FEET FOR MONUMENT SIGNS PROVIDED THAT THE BOTTOM OF THE SIGN IS NO MORE THAN EIGHTEEN (18) INCHES ABOVE GRADE TO ALLOW 4.1' FOR SIGNS "A" "B" & "C" AND 1.5' FOR SIGN "D" WITH A MAXIMUM HEIGHT OF 8.1' FOR SIGNS "A" "B" & "C" AND 21.2' FOR SIGN "D"
- ⑫ DEVIATION FROM LDC 30-93(b) WHICH REQUIRES THREE (3) FOOT SETBACK FROM ANY SIDEWALK, BIKE PATH OR STREET RIGHT-OF-WAY TO ALLOW 0.0' FOR SIGN "A", 0.0' FOR SIGN "B" & 1.16' FOR SIGN "C"

EXISTING SIGN  
SEE DETAIL "D"  
SIGN TO BE RELOCATED  
ADMINISTRATIVELY  
DURING PHASE 11-A

PHASE II-A RESTAURANT  
1ST FLOOR = 2,600 SF.  
2ND FLOOR = 1,700 S.F.  
MAX. BLDG HGT. =  
37' ABOVE BASE FLOOD

EXISTING  
BUILDING "F"  
5 UNITS  
(2,547.4 S.F.)

PHASE III BUILDING  
3 STORIES, 2 ABOVE PARKING  
9 UNITS (15,248 S.F.)  
MAX. BLDG HEIGHT:  
37' ABOVE FLOOD ELEV.

EXISTING BUILDING "M"  
3 UNITS

EXISTING BUILDING "N"  
8 UNITS

EXISTING SIGN  
SEE DETAIL "E"

PHASE II BUILDING  
3 STORIES, 2 ABOVE PARKING  
29 UNITS (14,874.9 S.F.)  
MAX. BLDG HEIGHT:  
37' ABOVE FLOOD ELEV.

EXISTING BUILDING "K"  
11 UNITS (4,949.8 S.F.)

EXISTING SIGN  
SEE DETAIL "A"

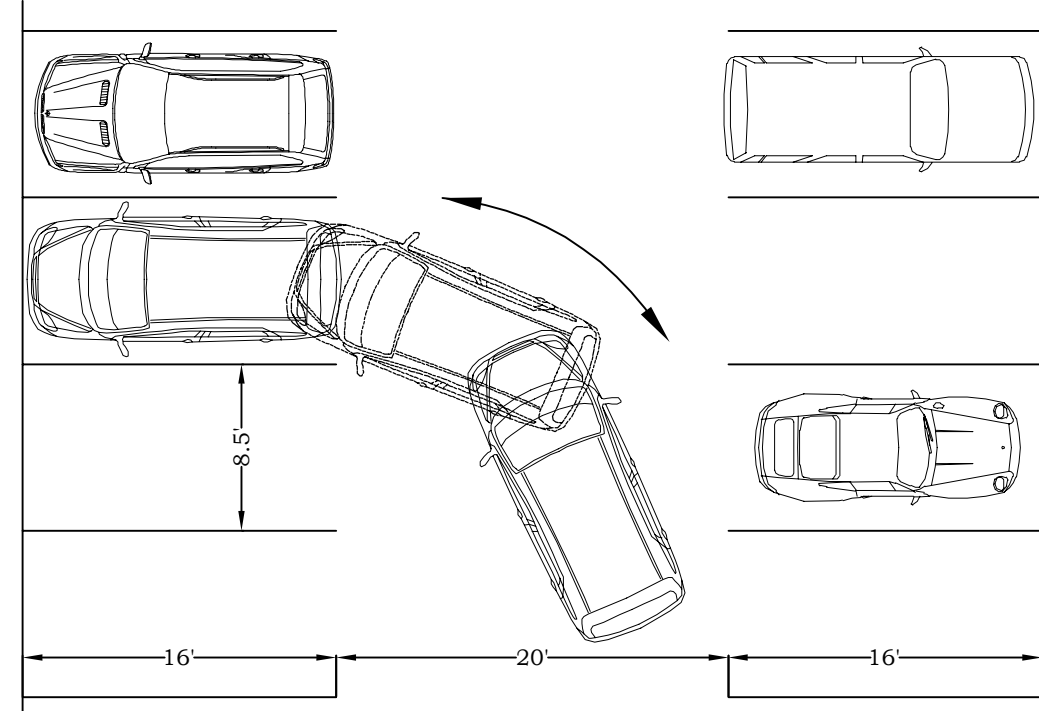
EXISTING SIGN  
SEE DETAIL "B"

①

②

②

## PARKING MANEUVERABILITY DETAIL SCALE: 1"=10'



REVISED: 10-24-18  
EXHIBIT IV-K

**BANKS**  
ENGINEERING  
Professional Engineers, Planners, & Land Surveyors  
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10511 SIX MILE CYPRESS PARKWAY  
FORT MYERS, FLORIDA 33966  
PHONE: (239) 939-5490 FAX: (239) 939-2523  
ENGINEERING LICENSE # EB 6469  
SURVEY LICENSE # LB 6690  
WWW.BANKSENG.COM

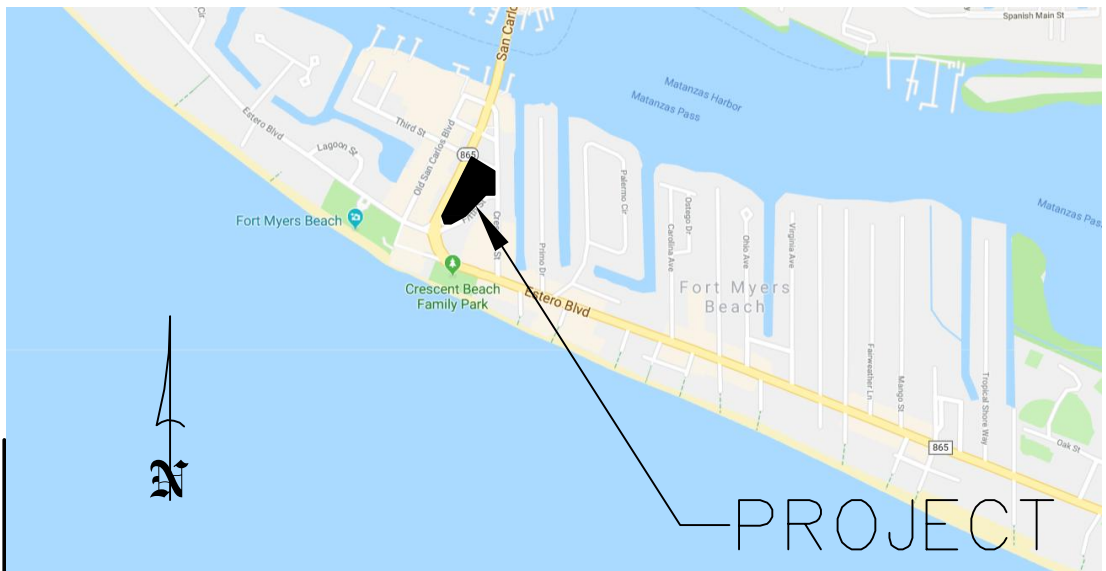


# MASTER CONCEPT PLAN (CPD) FOR Lighthouse Island Resort PHASE 4

SOILS#  
26

FLUCC #  
147

SOIL & SITE F.L.U.C.C.



LOCATION MAP  
NOT TO SCALE

LOCATION MAP  
NOT TO SCALE

**PARKING CALCS:**

75 UNITS  
29 UNITS ABOVE 450 S.F.  
46 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.  
46 x 1.2 x 0.666 = 37 SPACES REQUIRED

1.5 P.S. PER UNIT ABOVE 450 S.F.  
29 x 1.5 x 0.666 = 29 SPACES REQUIRED

TOTAL SPACES REQUIRED FOR THE RESORT:  
37+ 29 = 66 SPACES

GENERAL OFFICE (RESORT): 420 S.F.  
2 SPACES PER 1,00 S.F.  
420 / 1,000 x 2 = 1 SPACE

RESTAURANT: 4,300 S.F.  
8 P.S. PER 1,000 S.F.  
4,300 / 1,000 x 8 x .666 = 23 SPACES REQUIRED

RETAIL:  
3 P.S. PER 1,000 S.F.  
5,000 / 1,000 x 3 x .666 = 10 SPACES REQUIRED

TOTAL PARKING REQUIRED:  
100 SPACES

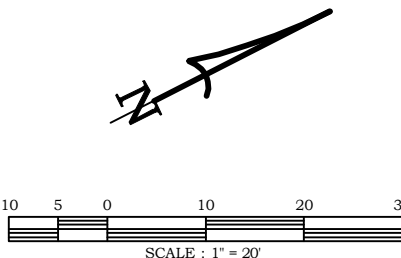
TOTAL PARKING PROVIDED:  
100 SPACES  
ON-SITE: 96 SPACES  
OFF-SITE: 4 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

**PHASING:**  
THE PROPOSED PHASES ARE LISTED I THROUGH V.  
THE PHASES MAY BE CONSTRUCTED IN ANY SEQUENCE,  
SO LONG AS SUFFICIENT PARKING IS PROVIDED.  
THE PHASES ARE ANTICIPATED TO BE CONSTRUCTED WITHIN  
A THREE YEAR TIME PERIOD FOR EACH PHASE. THIS  
REQUEST IS FOR APPROVAL TO PERMIT UP TO SIX YEARS FOR  
EACH PHASE.  
AT NO TIME WILL THE TOTAL NUMBER OF HOTEL UNITS  
EXCEED 75 UNITS. (INCLUDING CARETAKER UNIT)

**SCHEDULE OF USES:**  
ALL USES PERMITTED BY RIGHT IN THE DOWNTOWN ZONING DISTRICT  
RESTAURANT LIMITED TO 4,300 S.F.  
RETAIL LIMITED TO 5,000 S.F.  
OFFICE LIMITED TO 420 S.F.  
BAR AND COCKTAIL LOUNGE (LIMITED TO TIKI BAR AND RESTAURANT  
SHOWN ON MASTER CONCEPT PLAN AND NO SPECIAL EXCEPTION  
REQUIRED AS LOCATION ARE APPROVED WITH THIS APPLICATION)  
C.O.P. LIMITED TO INDOOR SEATING & EXISTING TIKI BAR  
SIGNS IN ACCORDANCE WITH LDC CHAPTER 30

- SCHEDULE OF DEVIATIONS FROM LAND DEVELOPMENT CODE:**
- ① DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 83' FROM FIFTH AVE., A LOCAL STREET
  - ② DEVIATION FROM SECTION 10-285(a) FROM THE REQUIRED INTERSECTION SEPARATION OF 125' TO 115' FROM THIRD STREET, A LOCAL STREET.
  - ③ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 19.1', 4.25', 2.6', 1.4' & 0.0'
  - ④ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 7.4', 4.5', 2.6', 1.4', & 0.0'
  - ⑤ DEVIATION FROM TABLE 34-3 FROM THE REQUIRED SETBACK OF 20' TO 4.5', 2.0' & 0.0'
  - ⑥ DEVIATION FROM SECTION 34-2016(2) FROM THE REQUIRED 18' PARKING SPACE TO ALLOW 16'. (SEE PHASING PLAN)
  - ⑦ DEVIATION FROM SECTION 34-2016(1) FROM THE REQUIRED 22' ISLE WIDTH TO ALLOW 20'. (SEE PHASING PLAN)
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  - ⑨ DEVIATION FROM SECTION 34-953 & TABLE 34-4 FROM THE F.A.R. REQUIREMENTS TO ALLOW ADDITIONAL F.A.R. TO EXCEED THE TOTAL 66,852 SQ FT OF RESIDENTIAL & COMMERCIAL USES TO THE EXTENT NECESSARY TO DEVELOP ON-SITE UNDER BUILDING PARKING (PER PLAN PROVIDED)
  - ⑩ DEVIATION FROM LDC 30-152(b) FOR COMMERCIAL SIGNAGE TO PERMIT THE FOLLOWING SIGN ON EACH STREET FRONTAGE TO REMAIN THE LIGHTHOUSE ISLAND RESORT: SEE ADDENDUM TO NARRATIVE
  - ⑪ DEVIATION FROM LDC 30-154(c) WHICH ALLOWS A MAXIMUM HEIGHT OF FIVE (5) FEET FOR MONUMENT SIGNS PROVIDED THAT THE BOTTOM OF THE SIGN IS NO MORE THAN EIGHTEEN (18) INCHES ABOVE GRADE TO ALLOW 4.1' FOR SIGNS "A" "B" & "C" AND 1.5' FOR SIGN "D" WITH A MAXIMUM HEIGHT OF 8.1' FOR SIGNS "A" "B" & "C" AND 21.2' FOR SIGN "D"
  - ⑫ DEVIATION FROM LDC 30-93(b) WHICH REQUIRES THREE (3) FOOT SETBACK FROM ANY SIDEWALK, BIKE PATH OR STREET RIGHT-OF-WAY TO ALLOW 0.0' FOR SIGN "A", 0.0' FOR SIGN "B" & 1.16' FOR SIGN "C"

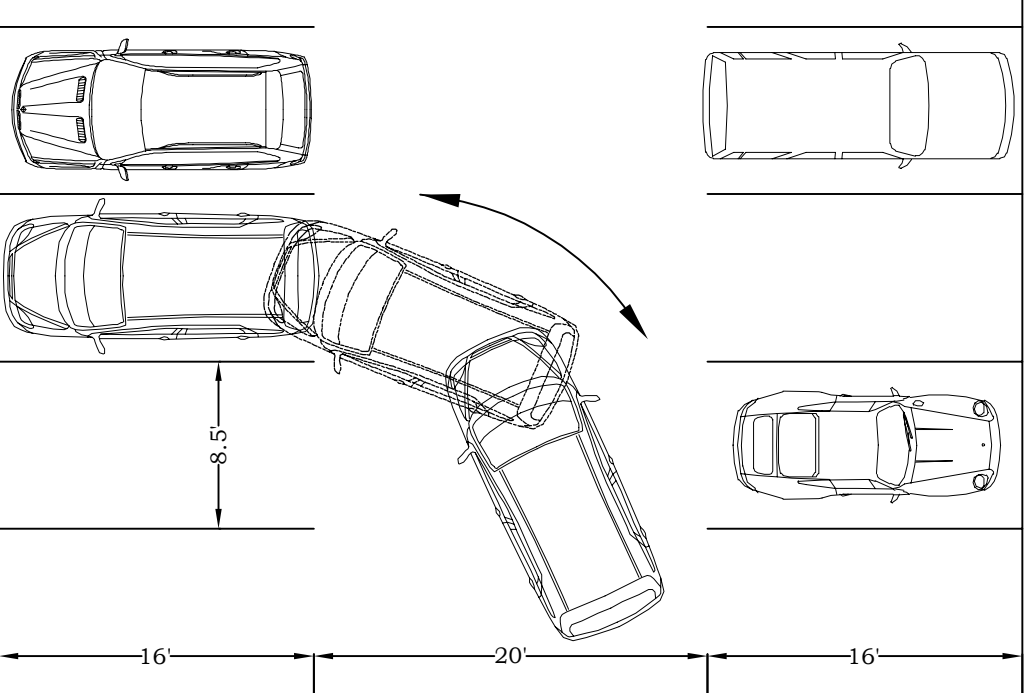


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REVISED: 10-24-2018  
EXHIBIT IV-K

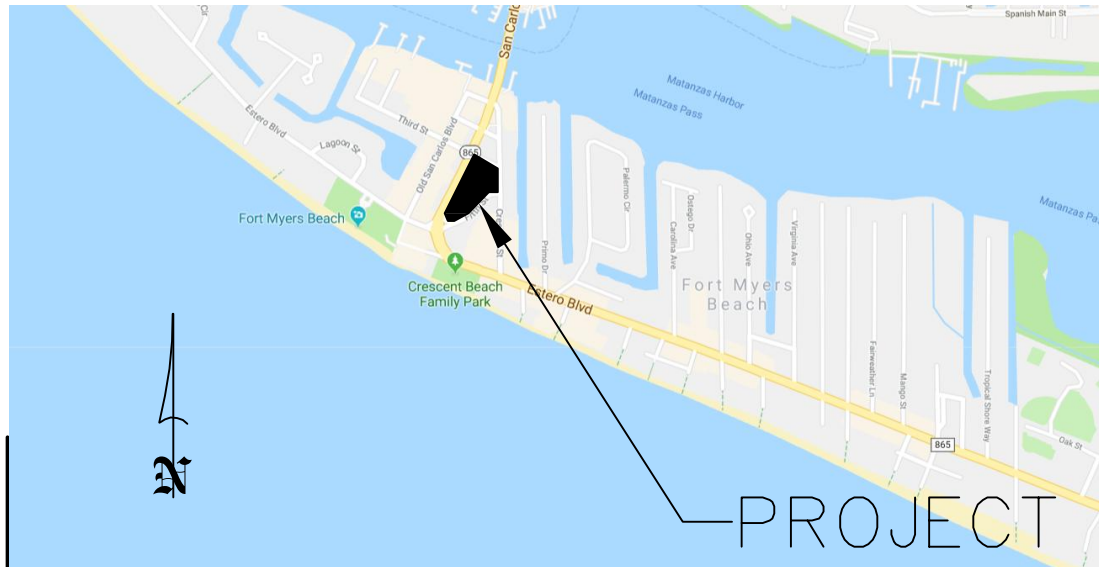
**PARKING MANEUVERABILITY DETAIL**  
SCALE: 1"=10'





MASTER CONCEPT PLAN (CPD)  
FOR  
Lighthouse Island Resort  
FINAL (PHASE 5) REVISED

SOILS#  
26  
FLUCC #  
147  
SOIL & SITE F.L.U.C.C.



LOCATION MAP  
NOT TO SCALE

LOCATION MAP  
NOT TO SCALE

PARKING CALCS:

75 UNITS  
29 UNITS ABOVE 450 S.F.  
46 UNITS BELOW 450 S.F.

1.2 P.S. PER UNIT BELOW 450 S.F.  
46 x 1.2 x 0.666 = 37 SPACES REQUIRED

1.5 P.S. PER UNIT ABOVE 450 S.F.  
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TOTAL SPACES REQUIRED FOR THE RESORT:  
37 + 29 = 66 SPACES

RESTAURANT: 4,300 S.F.  
8 P.S. PER 1,000 S.F.  
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GENERAL OFFICE (RESORT): 420 S.F.  
2 SPACES PER 1,000 S.F.  
420 / 1,000 x 2 = 1 SPACE

RETAIL:  
3 P.S. PER 1,000 S.F.  
5,000 / 1,000 x 3 x .666 = 10 SPACES REQUIRED

TOTAL PARKING REQUIRED:  
100 SPACES

TOTAL PARKING PROVIDED:  
100 SPACES  
ON-SITE: 93 SPACES  
OFF-SITE: 7 SPACES

NOTE: THE TOTAL NUMBER OF UNITS IN ANY  
PHASE MAY NOT EXCEED 75 UNITS  
INCLUDING CARETAKER UNIT

PROPOSED TREES:

COCONUT PALM / QUEEN PALM ..... 67

NOTE: THE EXISTING PALMS WILL BE RELOCATED AND NEW ONES ADDED.

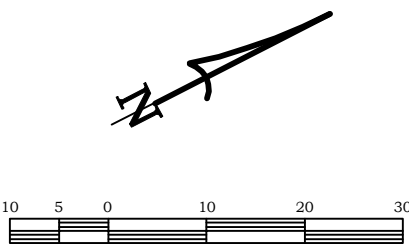
NOTE: THIS SITE IS COMPLETELY DEVELOPED LAND AND THERE ARE NO  
ENVIRONMENTALLY SENSITIVE LANDS. EXHIBIT II-F-1

NOTE: THE NEAREST PUBLIC TRANSIT STOP  
IS BEACH TROLLEY STOP #2 IN  
TIMES SQUARE.

PHASING:  
THE PROPOSED PHASES ARE LISTED I THROUGH V.  
THE PHASES MAY BE CONSTRUCTED IN ANY SEQUENCE,  
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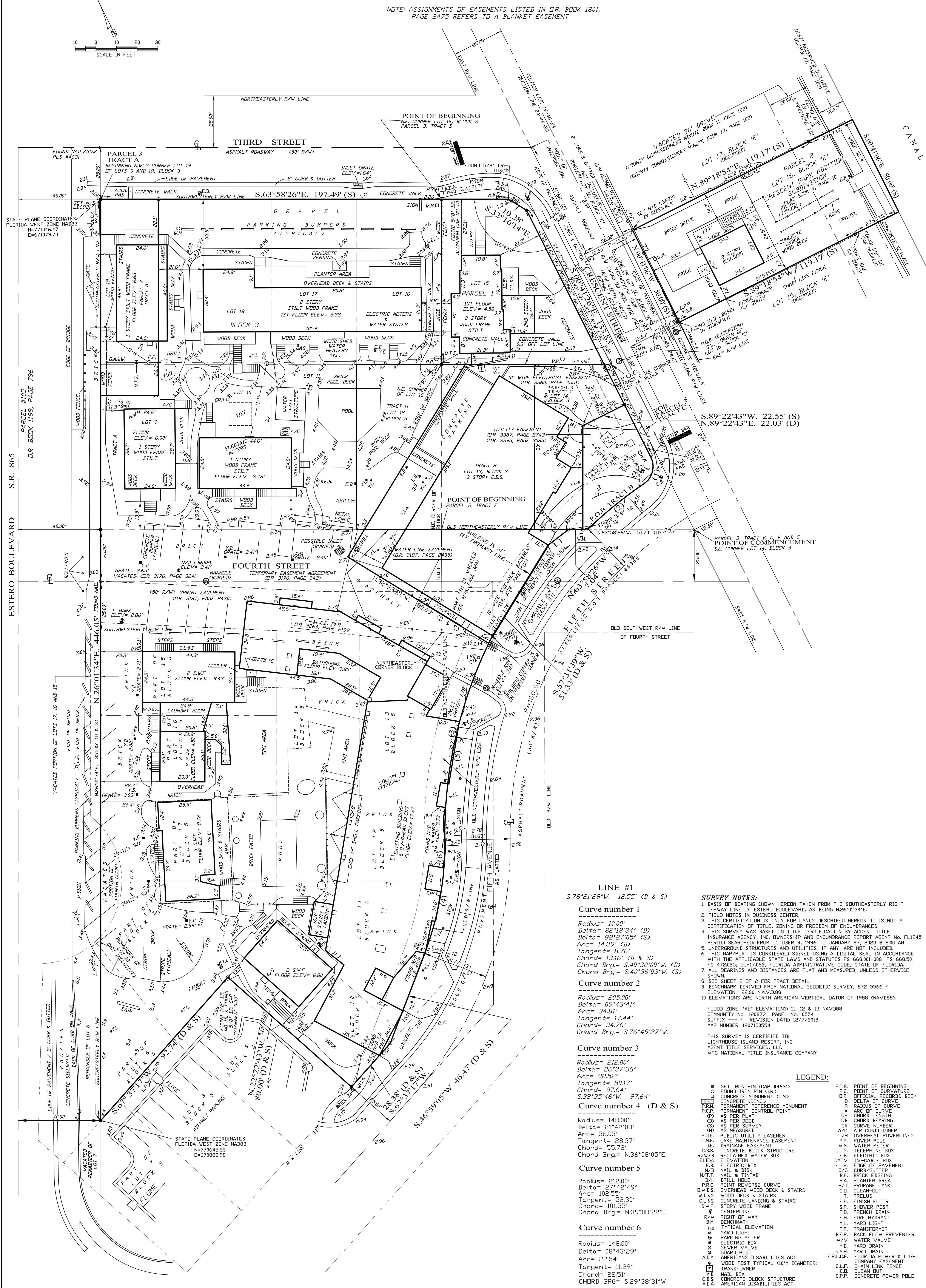
10511 SIX MILE CYPRESS PARKWAY  
FORT MYERS, FLORIDA 33966  
PHONE: (239) 939-5490 FAX: (239) 939-2523  
ENGINEERING LICENSE # EB 6469  
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WWW.BANKSENG.COM



*LOT 16, BLOCK "E"  
CRESCENT PARK ADDITION  
SUBDIVISION*

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST  
(PLAT BOOK 9, PAGE 10)  
LEE COUNTY, FLORIDA

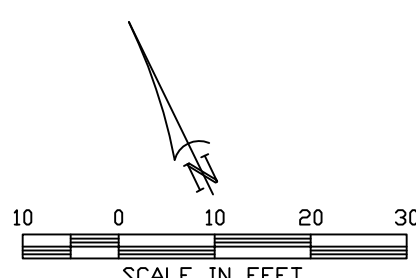
|                                            |             |            |                                                                                                                                         |
|--------------------------------------------|-------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| REVISED                                    | DESCRIPTION | BY:        | Phillip M Mould, Digitally signed by Phillip M.<br>P.M. 6515 State of Florida<br>State of Florida<br>Date: 2013.06.16 19:43:41<br>-0400 |
| DATE OF LAST FIELD WORK: 2/22/23           |             |            | PHILLIP M. MOULD<br>PROFESSIONAL SURVEYOR AND MAPPER<br>156515 - STATE OF FLORIDA                                                       |
| DRAWN                                      | CHECK:      | SCALE      | PROJ. #                                                                                                                                 |
| RLB                                        | MM          | 1"=20' LHR | 26-13-23                                                                                                                                |
| SURVEY                                     | DATE        | FILE NO    | SHEET -                                                                                                                                 |
| 2/22/23                                    | DATE        | 46-23-24   | DF - 2                                                                                                                                  |
| FLORIDA CERTIFICATE OF AUTHORIZATION 18691 |             |            | HARRIS-JORGENSEN, LILL<br>3048 S.W. 10TH AVE., SUITE 100<br>CALE CORAL, FLORIDA 33904<br>PHONE (239) 257-2642<br>FAX (239) 257-2951     |





AS BUILT SURVEY OF  
**PART OF BLOCK 3 & 5  
 BUSINESS CENTER  
 SUBDIVISION  
 &  
 LOT 16, BLOCK "E"  
 ESCENT PARK ADDITION  
 SUBDIVISION**

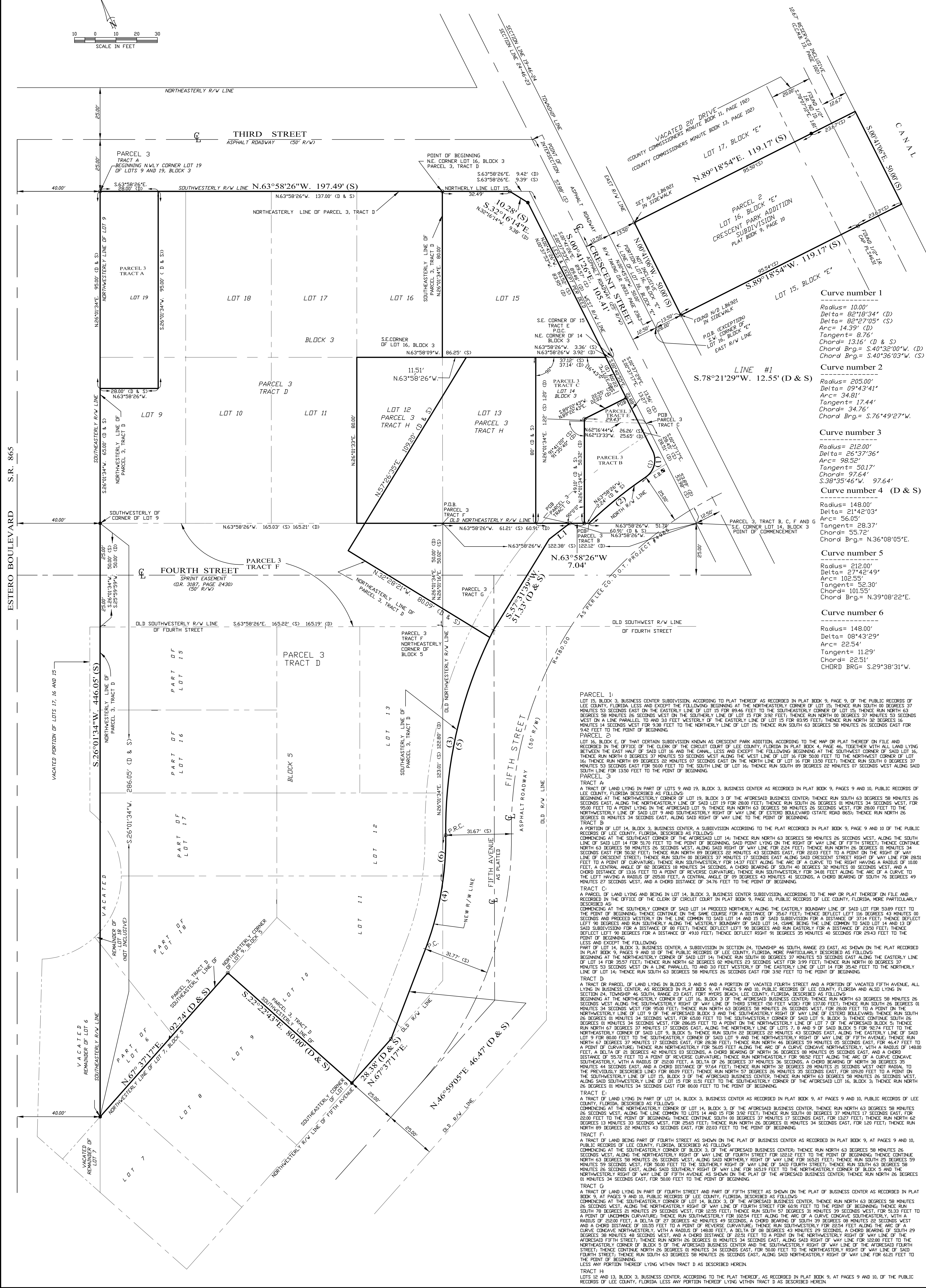
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST  
(PLAT BOOK 9, PAGE 10)  
LEE COUNTY, FLORIDA



## LEGEND:

|        |                              |        |                       |          |                                   |        |                                      |
|--------|------------------------------|--------|-----------------------|----------|-----------------------------------|--------|--------------------------------------|
| ●      | SET IRON PIN (CAP #4631)     | P.D.B. | POINT OF BEGINNING    | D.W.D.S. | OVERHEAD WOOD DECK & STAIRS       | P/T    | PROPANE TANK                         |
| ○      | FOUND IRON PIN (I.R.)        | P.C.   | POINT OF CURVATURE    | W.D.S.S. | WOOD DECK & STAIRS                | C.D.   | CLEAN-OUT                            |
| □      | CONCRETE MONUMENT (C.M.)     | P.R.   | OFFICIAL RECORDS BOOK | C.L.S.G. | CONCRETE LANDING & STAIRS         | T.     | TRELLIS                              |
| △      | CONCRETE                     | P.B.T. | BELTA OF CURVE        | S.W.     | STORY WOOD FRAME                  | F.F.   | FINISH FLOOR                         |
| P.R.M. | PERMANENT REFERENCE MONUMENT | R.     | RADIUS OF CURVE       | C.       | CENTERLINE                        | S.P.   | SHOWER POST                          |
| P.C.M. | PERMANENT CONTROL POINT      | C.V.   | CURVE NUMBER          | R/W      | RIGHT-OF-WAY                      | F.D.   | FIRE DRAIN                           |
| (P)    | AS PER PLAT                  | CH     | CHORD LENGTH          | B.M.     | BENCHMARK                         | F.H.   | FIRE HYDRANT                         |
| (D)    | AS PER DEED                  | CB     | CHORD BEARING         | 0.0      | TYPICAL ELEVATION                 | Y.L.   | YARD LIGHT                           |
| (S)    | AS PER SURVEY                | C#     | CURVE NUMBER          | 0.0      | YARD LIGHT                        | T.     | TRANSFORMER                          |
| (M)    | AS MEASURED                  | A/C    | AIR CONDITIONER       | 0.0      | PARKING TIE                       | B.F.P. | BACK FLOW PREVENTER                  |
| P.U.E. | PUBLIC UTILITY EASEMENT      | D/H    | OVERHEAD POWER LINES  | 0.0      | ELECTRIC BOX                      | W/V    | WATER VALVE                          |
| I.M.E. | INTERFERENCE EASEMENT        | W/M    | WATER METER           | 0.0      | SEWER VALVE                       | Y.D.   | YARD DRAIN                           |
| D.E.   | DRAINAGE EASEMENT            | P.F.   | POWER POLE            | A.D.A.   | AMERICANS DISABILITIES ACT        | S.M.H. | SEWER MAIN                           |
| C.C.E. | CONCRETE BLOCK STRUCTURE     | E      | ELECTRIC              | W.D.D    | WOOD POST (TYPICAL 10"± DIAMETER) | F.P.L. | FLOOR POWER & LIGHT COMPANY EASEMENT |
| R/V.B. | RECLAIMED WATER BOX          | E.B.   | ELECTRIC BOX          | M.B.     | MAIL BOX                          | C.L.F. | CHAIN LINK FENCE                     |
| E.L.V. | ELEVATION                    | CATV   | TV-CABLE BOX          | C.B.S.   | CONCRETE BLOCK STRUCTURE          | C.P.P. | CONCRETE POWER POLE                  |
| E.B.   | ELECTRIC BOX                 | E.O.P. | EDGE OF PAVEMENT      |          |                                   |        |                                      |
| N/A    | MAIL & DISK                  | C/B    | CURB/GUTTER           |          |                                   |        |                                      |
| N/D    | MAIL & TINTAB                | B.G.   | BURK EDGEING          |          |                                   |        |                                      |
| D/H    | DRILL HOLE                   | A.A.   | PLANTER AREA          |          |                                   |        |                                      |

|                                                                                                                                          |               |                      |                        |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|------------------------|
| HARRIS-JORGENSEN, LLC<br>3048 DEL PRADO BLVD. S., SUITE 100<br>CAPE CORAL, FLORIDA 33904<br>PHONE: (239) 257-2624<br>FAX: (239) 257-2921 |               |                      |                        |
| DATE OF LAST FIELD WORK: 9/10/22                                                                                                         |               |                      |                        |
| DRAWN:<br>RLB                                                                                                                            | CHECK:<br>PMM | SCALE<br>1"=20'      | PROJ. #<br>LHR 2-16-23 |
| SURVEY DATE<br>9/10/22                                                                                                                   |               | FILE NO.<br>46-23-24 | SHT. - 2<br>OF - 2     |
| FLORIDA CERTIFICATE OF AUTHORIZATION LB6921                                                                                              |               |                      |                        |

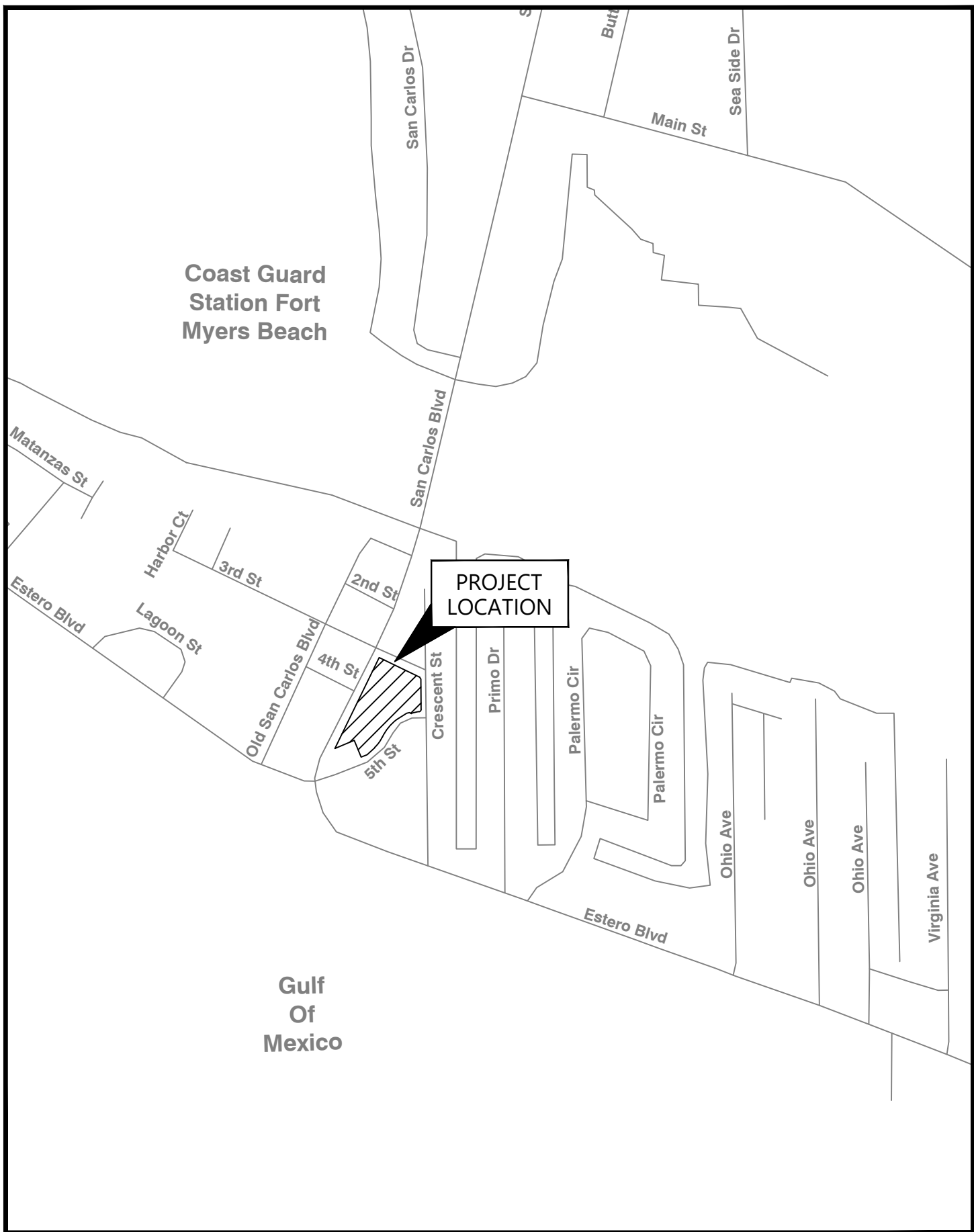




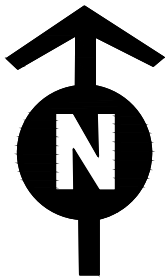
MASTER CONCEPT PLAN FOR

# LIGHTHOUSE ISLAND RESORT CPD

SECTION 24, TOWNSHIP 46S, RANGE 23E,  
FORT MYERS BEACH, FLORIDA



VICINITY MAP  
N.T.S.



SITE LOCATION MAP  
N.T.S.

PROJECT TEAM:



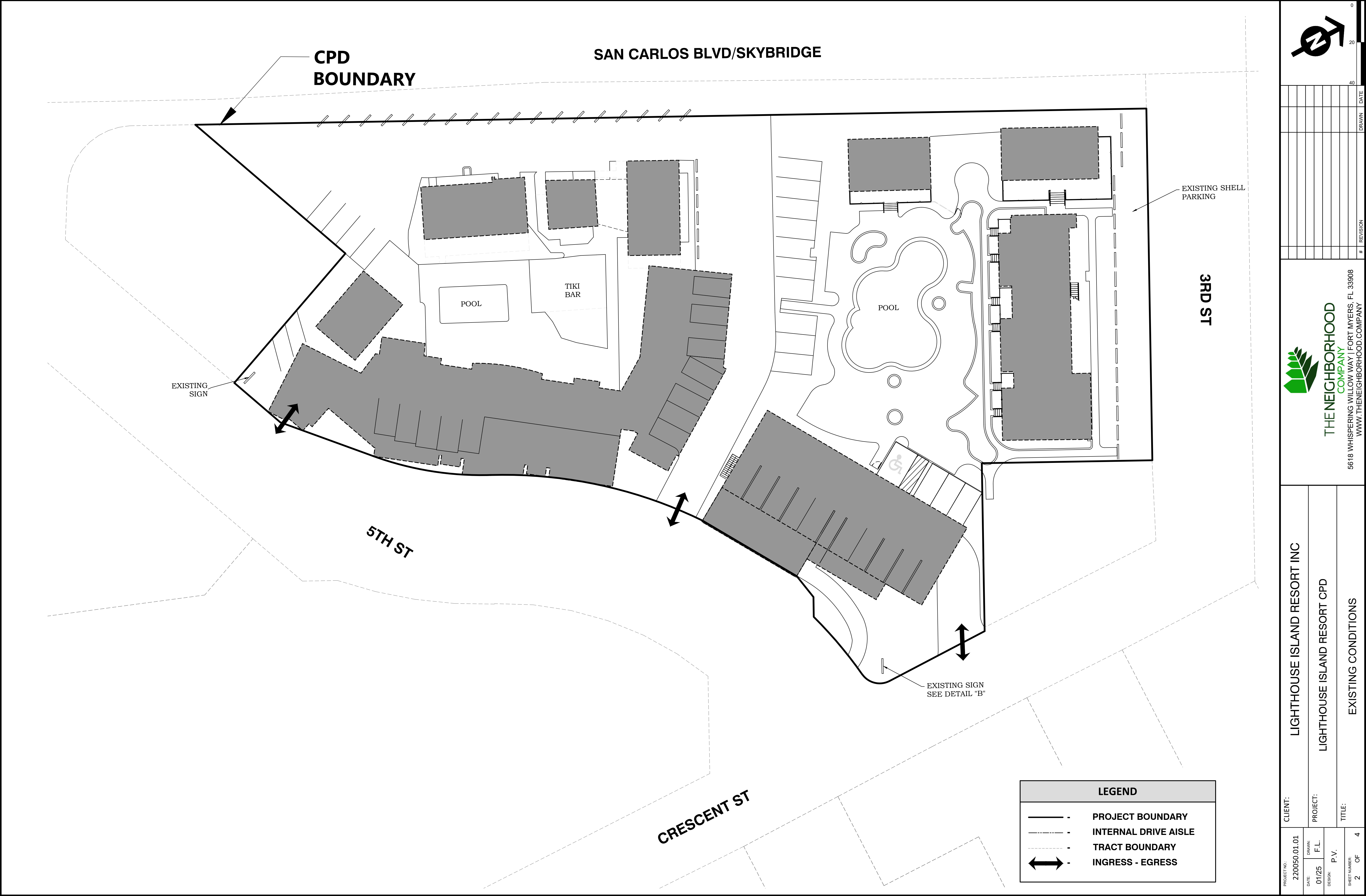
PREPARED FOR:

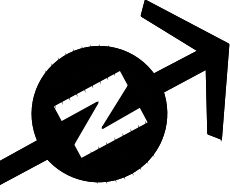
LIGHTHOUSE ISLAND RESORT INC

1051 FIFTH ST  
FORT MYERS BEACH, FL 33931

| CONTENTS      |                     |              |            |
|---------------|---------------------|--------------|------------|
| SHEET NUMBER  | SHEET DESCRIPTION   |              |            |
| 1             | COVER SHEET         |              |            |
| 2             | EXISTING CONDITIONS |              |            |
| 3             | MASTER CONCEPT PLAN |              |            |
| 4             | NOTES               |              |            |
| DATE:         |                     | PROJECT No.: | SHEET No.: |
| January, 2025 |                     | 240050.01.01 | 1 OF 4     |





|                              |                |                |                 |                    |         |                                         |                                          |                               |                                                                                                                                                                                                         |                                                                                                             |               |       |      |
|------------------------------|----------------|----------------|-----------------|--------------------|---------|-----------------------------------------|------------------------------------------|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|---------------|-------|------|
| PROJECT NO.:<br>220050.01.01 | DATE:<br>01/25 | DRAWN:<br>F.L. | DESIGN:<br>P.V. | SHEET NUMBER:<br>2 | OF<br>4 | CLIENT:<br>LIGHTHOUSE ISLAND RESORT INC | PROJECT:<br>LIGHTHOUSE ISLAND RESORT CPD | TITLE:<br>EXISTING CONDITIONS | <br>THE NEIGHBORHOOD<br>COMPANY<br>5618 WHISPERING WILLOW WAY   FORT MYERS, FL 33908<br>WWW.THENEIGHBORHOOD.COM/PANY | <br>0<br>20<br>40<br>FEET | REVISION<br># | DRAWN | DATE |
|                              |                |                |                 |                    |         |                                         |                                          |                               |                                                                                                                                                                                                         |                                                                                                             |               |       |      |













## THE NEIGHBORHOOD COMPANY

### LIGHTHOUSE ISLAND RESORT COMMERCIAL PLANNED DEVELOPMENT (CDP) AMENDMENT

#### NARRATIVE & JUSTIFICATION

##### **BACKGROUND & REQUEST**

The subject property is located at 1051 Fifth Street/1060 Third Street, Fort Myers Beach, FL 33931. The property consists of 2 parcels (24-46-23-W3-00205.0060 and 24-46-23-W3-00203.0150) totaling  $\pm 1.87$  acres, situated on the east side of the base of the Matanzas Pass Bridge, between Third and Fifth Street (See Figure 1). The property has a Future Land Use (FLU) Designation of Pedestrian Commercial. The larger parcel fronting San Carlos Boulevard and Fifth Street has a zoning designation of Commercial Planned Development (CPD) and the corner parcel at 1060 Third Street has a zoning designation of Downtown. Lighthouse Island Resort Inc is the property owner and applicant for this CPD amendment request.



Figure 1. Project Location



The Neighborhood Company, on behalf of Lighthouse Island Resort, Inc, is submitting this Planned Development Amendment Application to request the following:

- Modification of CPD boundary to include STRAP # 24-46-23-W3-00203.0150.
- Increase the maximum number of hotel units from 75 to 130.
- Increase the maximum height of Building 5 from 37 feet above base flood elevation to a zoned height of 40 feet 5 inches above base flood elevation.
- Cleanup of the original five phase MCP.

### **HISTORY OF THE RESORT AND CPD**

The Lighthouse Island Resort is an iconic Fort Myers Beach landmark that has been in operation for over 60 years. Four generations of the Kolar family have owned and operated the resort since 1954, when it was known as Memory Lane Motel Cottages & Apartments. In 1977, approximately half an acre of the existing property was part of a larger Florida Department of Transportation taking associated with construction of the Matanzas Pass Bridge. The taking reduced the Kolar family's property from 32 original platted lots to 20, with the former Fourth Street court vacated to the resort.



The original Lighthouse Resort CPD was approved in 1999, when the existing property was rezoned from C-1 to CPD to facilitate redevelopment. At the time of rezoning, the resort consisted of 72 hotel units spread over multiple one- and two-story wood frame buildings, a tiki bar, and basic resort amenities. As part of the



original CPD approval, the owners conveyed four parcels and a sidewalk easement along Third Street to the Town in order to promote pedestrian-oriented access to the Downtown district. At the core of the original CPD rezone was a desire to redevelop the property consistent with the vision of the Town's newly adopted Comprehensive Plan and the Pedestrian Commercial land use designation, which emphasized a vibrant mix of uses within a walkable, pedestrian-friendly downtown. The redevelopment also led to more resilient buildings, as the new structures were built above the base flood elevation and to the more stringent building code at the time.

Since its original approval, there have been five amendments to the CPD. An amendment in 2003 added additional permitted uses, expanded restaurant square footage, and added deviations including perimeter setbacks and parking space dimensions; the first amendment in 2013 created a five phase Master Concept Plan (MCP) and added additional deviations for floor area ratio (FAR) relief and signage size and placement; the second amendment in 2013 added a deviation for sign illumination; an amendment in 2018 increased the total hotel units from 72 to 75 through a density transfer; and an administrative amendment in 2024 made minor adjustments to the MCP for the pool deck.

### **PROPOSED AMENDMENT**

Like many hotels on Fort Myers Beach, the Lighthouse Island Resort suffered significant damage as a result of Hurricane Ian. Although the resort was able to reopen, it is currently operating at approximately 60% of its pre-Ian capacity as a direct result of damage from the storm. A combination of current economic conditions and a desire to create a more family-friendly destination resort has led the property owners to request additional hotel units and height, as well as incorporating the parcel at the corner of Crescent Street and Third Street into the CPD.

The proposed amendment and redevelopment of the Lighthouse Island Resort includes the following:

- A luxury, family-friendly hotel with a maximum of 130 units.
- A cohesive, unified CPD that encompasses the entirety of the Lighthouse Island Resort properties.
- Cleanup of the original five-phase MCP including:
  - Condensing the five sheet MCP into one sheet for clarity.
  - Reductions of the permitted 5,000 SF of retail uses to 500 SF accessory to the resort and relocation of the proposed restaurant from the south end of the property to the corner of Crescent Street and Fifth Street.
- A pedestrian path that will enhance the walkability of the Downtown district.





The Kolar family are multi-generational island business owners who are committed to the Fort Myers Beach community. They want to add to their existing resort in a way that will help the redevelopment of the island and the creation of a cohesive, walkable downtown that will connect Old San Carlos Boulevard and Crescent Street and complement Times Square and Margaritaville.

### **Redevelopment, Resiliency and Economic Feasibility**

Hurricane Ian had a significant impact on the Lighthouse Island Resort, as it did to many hotels and resorts on the island. The Town of Fort Myers Beach, its residents, and businesses remain strong and are working tirelessly on the recovery and reconstruction of their island and its economy.

Prior to Hurricane Ian, Fort Myers Beach had a significant hotel inventory of approximately 2,156 rooms, which was below the peak inventory that existed prior to Hurricane Charley in 2004. Post Ian, the Lee County Visitor and Convention Bureau estimates that only 1,152 rooms are currently available for occupancy as of January 2025, representing a decline of over 46% in available rooms. This significant reduction in hotel room supply significantly impacts the Town's economy and impedes the road to recovery. Tourism affects all facets of the local economy - it creates jobs and small business opportunities for local residents. Tourism and visitors to the island support local bars, restaurants and entertainment venues, contribute to the Town and County's tax base, and these visitors help provide the critical mass needed for certain business such as grocery stores and pharmacies to be viable and for services to thrive. As such, it is vital that we rebuild the hotel stock and that we promote a strong tourism economy. Redevelopment and reconstruction of hotels and resorts will bring visitors back to the island, which in turn will help reopen and keep restaurants, bars, and retail stores thriving. In combination, all these key commercial uses will provide a strong economic engine for the Town.

Fort Myers Beach will once again be the robust tourist destination it was before Hurricane Ian, but challenges such as new FEMA and Florida Building Code regulations, the need to harden and construct resilient structures, and insurance changes will seriously affect the ability to rebuild. The high cost of construction, limited availability of labor, the need for modern amenities that meet today's consumer expectations, high interest rates, overall inflation, and the significant risks associated with local tourism (i.e., red tide, COVID, major storms) seriously affect investment decisions and what type of hotel can be rebuilt. In order to offset these high costs and to hedge against unforeseen risks, hotels will need to be bigger than they once were.

The Kolar family have evaluated these challenges, along with the desire to create a more family-oriented destination that will continue to be an asset to the Town of Fort Myers Beach. The requested resort improvements seek to strike a balance between the need to address today's economic and regulatory



realities and delivering a design that respects the surrounding context and community character. The redeveloped Lighthouse Island Resort will not only provide additional hotel rooms to bolster the economy and replenish units lost since Hurricane Charley and Ian, but will also provide the following additional public benefits and amenities:

- Enhancement and improvements to the right-of-way which include:
  - Landscaping and open space features
  - Wayfinding that will identify nearby destinations such as restaurants, retail, and beach access
- Bicycle parking.
- Bicycles for guests to reduce vehicular traffic.
- Participation in the Don't Rent a Car (DRaC) program.
- Golf cart parking.
- Promotion of the Fort Myers Beach Elementary School, including flexible work schedules for employees whose children attend the Beach School.
- Support the Town's vision as a family-oriented destination by providing a family-friendly resort that honors its longstanding heritage on this island.

## **LOCATION, SITE DEVELOPMENT/DESIGN & COMPATIBILITY**

### **Location**

The Lighthouse Island Resort is located in the heart of the Downtown district, which has always been identified as a redevelopment area and the preferred location for the Town's most dense and intense development. With its location directly abutting the Matanzas Pass Bridge, it serves as an important connection between the Old San Carlos Boulevard commercial corridor and the Crescent Street corridor.

The property begins at the northeast corner of San Carlos Boulevard and Fifth Street and extends north to Third Street, between the Matanzas Pass Bridge and Crescent Street (see Fig. 1 Project Location). Along with Margaritaville to the south and Times Square to the southwest, the Lighthouse Island Resort creates a distinct "bookend" for the Downtown district.

As envisioned in the Comprehensive Plan and in the 1999 "Old San Carlos Boulevard – Crescent Master Plan", the desire for this area of the island is to "expand the Times Square pedestrian-friendly zone along Old San Carlos Boulevard from Times Square to Matanzas Pass, connecting the beach to the bay." The plan emphasized infill activity as a way to "improve economic opportunities and create a sense of place without further interfering with traffic flow on busy Estero Boulevard." The Lighthouse is ideally situated to connect pedestrians to both Crescent Street and Old San Carlos Boulevard; the proposed redevelopment



features a pedestrian pathway that cuts through the middle of the resort to connect the existing sidewalk arcade on Fifth Street to San Carlos Boulevard (see “Shared Lane” as depicted on the MCP).

The development supports the Town’s “Park-Once” strategy by providing sufficient parking for resort guests and reducing the need for guests to utilize a car during their stay. A major component of the “Park-Once” concept, as described in the Old San Carlos Plan, is connecting “popular destinations in such a way that the walk is part of the attraction, not a hurdle to overcome.” The proposed pedestrian path will feature lush landscaping and wayfinding, creating both an attraction and useful expansion of the pedestrian network. The connection between the Old San Carlos and Crescent Street corridors creates a walkable district, thereby reducing the need for vehicle travel. The typical “pedestrian shed”, or distance the average person can comfortably walk, is a quarter mile (1,320 feet) or a 5-minute walk. There are numerous destinations within comfortable walking distance from the Lighthouse Resort, including restaurants, retail, and beach access – most within 500 feet or less. In addition to the enhanced pathway that will provide pedestrian connection under the Matanzas Pass Bridge, the Lighthouse will provide dedicated bicycle and golf cart parking onsite and will participate in the Don’t Rent a Car (DRAC) program, supporting multi-model transportation options.

### **Surrounding Uses**

The future land use category, zoning districts, and existing land uses surrounding the property are as follows:

|              | <b>FUTURE LAND USE</b>                     | <b>ZONING DISTRICT</b>           | <b>EXISTING LAND USES</b>                                                |
|--------------|--------------------------------------------|----------------------------------|--------------------------------------------------------------------------|
| <b>NORTH</b> | Pedestrian Commercial                      | Downtown                         | Vacant                                                                   |
| <b>SOUTH</b> | Pedestrian Commercial                      | Downtown and Bigelow Plaza CPD   | Public parking lot and Margaritaville Resort                             |
| <b>EAST</b>  | Pedestrian Commercial with Platted Overlay | ROW and Residential Multi-Family | Crescent Blvd. and residential                                           |
| <b>WEST</b>  | Pedestrian Commercial                      | ROW, Shipwreck CPD, and Downtown | San Carlos Blvd. bridge, public parking lot, and various commercial uses |

The subject property is located on the east side of the base of the Matanzas Pass Bridge with vacant commercial property to the north, the bridge right-of-way and a mix of commercial uses to the west, the Crescent Street corridor and residential uses to the east, and Margaritaville to the south. As mentioned previously, the resort is in the heart of the Downtown district and the Pedestrian Commercial future land use designation. The majority of the surrounding properties are developed to a similar intensity as the Lighthouse, consistent with the vision of both the zoning district and the future land use designation. Having been in operation at the same location since 1960, it’s clear that the resort has been able to exist harmoniously with the surrounding uses. The proposed increase in density and height will be limited to two



buildings within the greater Lighthouse Resort and will therefore have little impact on the surrounding properties.



Figure 2. Surrounding Zoning





Figure 3. Proposed MCP





### **Site Design**

The existing resort consists of eight buildings, a tiki bar and restaurant area, pool and pool deck area, and associated parking. The site was intentionally designed with the majority of the buildings fronting Fifth Street and Crescent Street, with the buildings on Fifth Street cantilevered over the sidewalk to provide a pedestrian-friendly arcade consistent with the “Old San Carlos Boulevard – Crescent Master Plan”. The five phases of the original MCP allowed for a transition from older, one- and two-story structures with fewer units to larger, more modern buildings. The proposed increase in height and density is consistent with the existing final phase of the MCP, which proposed the resort’s largest and most intense building adjacent to the Matanzas Pass Bridge. The proposed building at the corner of Crescent Street and Fifth Street replaces the restaurant originally proposed in Phase II of the MCP.

### **Height**

The Town’s Comprehensive Plan allows for additional height through Policy 4-C-4 for parcels that are contiguous (or directly across a street) from taller buildings. The Lighthouse Island Resort currently allows a maximum height of 37 feet above base flood elevation. The resort buildings vary in height from single-story, cottage-style units to the current maximum of three stories. Margaritaville is directly south of the subject property, allowing a maximum of four stories or 40 feet. The proposed amendment is requesting a maximum height of four stories (three stories over parking) or a zoned height of 40’5” above base flood elevation, which is consistent with Margaritaville (see Figure 3). The increase in maximum height of 3.5 feet will allow for Building 5 to add roughly one additional foot of height per story of hotel rooms and allows for a sloped roof with attractive architectural embellishments. The infill development (Building 1) on the Crescent Street parcel proposed to be added to the CPD will be under 30 feet, providing a transition from residential uses on the east side of Crescent Street.

The resort’s existing buildings are already varied in height and intensity, allowing for building massing that is well-integrated into the core of the Downtown district. Rather than a single, monolithic building, the Lighthouse has a village-style design that fits with the character of downtown Fort Myers Beach. The requested amendment for additional height will only be applicable to Building 5, which is located on the western edge of the property, closest to the main Downtown commercial corridors and directly abutting the Matanzas Pass Bridge.



## EXTERIOR ELEVATION - WEST

SCALE: 3/32" = 1'-0"

Figure 3: Building Height Exhibit

### Density/Intensity

The subject property consists of  $\pm 1.87$  acres and has a future land use designation of Pedestrian Commercial. The Pedestrian Commercial future land use category allows a maximum density of 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan), with equivalency factors for hotel units of various sizes.

| Comprehensive Plan land-use category: | Equivalency factors for guest units of various sizes <sup>1</sup> (in square feet): |            |              |
|---------------------------------------|-------------------------------------------------------------------------------------|------------|--------------|
|                                       | < 450                                                                               | 450 to 750 | 750 to 1,000 |
| Mixed Residential                     | 2.0                                                                                 | 1.5        | 1.0          |
| Boulevard                             | 2.5                                                                                 | 2.0        | 1.5          |
| Pedestrian Comm. <sup>2</sup>         | 3.0                                                                                 | 2.5        | 2.0          |
| (all others)                          | 0.0                                                                                 | 0.0        | 0.0          |
| <sup>1</sup> see § 34-1802            |                                                                                     |            |              |
| <sup>2</sup> see also § 34-1803(b)    |                                                                                     |            |              |



The original Lighthouse Resort CPD was approved for 72 units on a total of  $\pm 1.673$  acres, or a density of 43 units per acre. A CPD amendment in 2018 added three units for a total of 75, or a density of 40 units per acre (net density decreased as a result of additional acreage added to the CPD in 2013 and 2018).

Per LDC Section 34-1803(a)(2) equivalency factors exceeding the allowances in the table (see above) can be requested under exceptional circumstances and through the provision of public benefits. As supported throughout this narrative and evidenced by the damage caused by Hurricane Ian, the proposed redevelopment meets the exceptional circumstance requirement and provides numerous public benefits as outlined in the section below.

When considering density, it is important to analyze the requested increase in the context of not only surrounding development, but also in relation to recently approved projects which were approved for density above the base permitted by the LDC. Margaritaville is often used as a reference point when discussing lodging density increases and is a particularly appropriate comparison given its proximity to the Lighthouse Resort. Comparisons are also provided for The Neptune Resort and The Myerside, both of which were approved for increased density for redevelopment and feature similar resort amenities. Additionally, the same density comparison methodology was utilized for The Neptune and The Myerside. It is important to note that, unlike the three comparison redevelopment projects, the Lighthouse Resort is proposing strictly infill development rather than a ground-up rebuild of an entire site.

To achieve 130 units, the requested density will require an equivalency ratio of 6.5. This is based on the Lighthouse property being comprised of 20 platted lots within the Business Center Subdivision, with each platted lot permitted 1 unit by right:

- $130 \text{ units} / 20 \text{ platted lots} = 6.5 \text{ equivalency ratio}$

By comparison, Margaritaville utilized an equivalency ratio of 9.1 to achieve 254 units. It's important to note that Margaritaville did not utilize platted lots as a base density, but rather the base of 6 dwelling units/acre that is permitted in the Pedestrian Commercial future land use designation.

- Margaritaville:  $4.78 \text{ ac (Dev. Area)} \times 6 \text{ du/ac (Base Density)} = 28 \text{ units (by right units rounded down)}$ 
  - $28 \times 9.1 \text{ (equivalency ratio/multiplier)} = 254$

The table below compares the percentage increase in equivalency ratio for the Lighthouse in comparison to similar projects. The 117% increase in equivalency ratio represents the lowest increase of the comparison projects.





| PROJECT           | MAX EQUIVALENCY RATIO<br>PER LDC | REQUESTED/APPROVED<br>EQUIVALENCY RATIO | PERCENT<br>INCREASE |
|-------------------|----------------------------------|-----------------------------------------|---------------------|
| <i>Lighthouse</i> | 3.0                              | 6.5                                     | 117%                |
| Margaritaville    | 3.0                              | 9.1                                     | 203%                |
| Neptune           | 2.5                              | 6.2                                     | 148%                |
| Myerside          | 2.5                              | 4.1                                     | 125%                |

Another way of comparing density is gross units per acre. 130 units on  $\pm 1.87$  acres equates to a density of 69.5 units per acre, which is consistent with the comparison projects below.

| PROJECT           | DENSITY (UNITS/ACRE) |
|-------------------|----------------------|
| <i>Lighthouse</i> | 69.5                 |
| Margaritaville    | 50.3                 |
| Neptune           | 73.6                 |
| Myerside          | 43.7                 |

In addition to density, the development is also subject to a maximum Floor Area Ratio (FAR). The current CPD defaults to the Commercial Resort (CR) zoning district standards for all development standards, except for approved conditions and deviations. Condition 11 limits total square footage of hotel guest units to 58,432 SF and Deviation 9 allows the FAR to exceed the maximum of residential/commercial uses to provide for under building parking.

The Comprehensive Plan allows a FAR of up to 2.5 in the Pedestrian Commercial Future Land Use category, but LDC Section 34-645 limits the maximum FAR within the Commercial Resort (CR) zoning district to 1.2. This application proposes amending Deviation 9 to clarify that the FAR calculation will not include under building parking and will not exceed the maximum FAR of 1.2.

### Public Benefits

The Lighthouse Island Resort will provide numerous public benefits to the Town of Fort Myers Beach, its residents, and visitors. Public benefits being provided include the following:

- Enhanced pedestrian pathway that connects Crescent Street to the Old San Carlos Boulevard corridor
- Participation in the DRaC program
- Golf Cart Parking
- Bicycles for Resort Guests & Bicycle racks for the public
- Implementation of Park-Once Initiative



- Hardened and resilient structures
- Significant positive economic impact: ad valorem taxes, impact fees, bed tax, employment, capital improvement costs, secondary impacts in supporting other local businesses
- Support of FMB Elementary School through informing/educating staff about the school and providing flexible work schedules to facilitate drop-off and pick-up

### **Transportation, Parking and Pedestrian Access**

A traffic impact statement is being prepared by TR Transportation Consultants and will be provided in a subsequent submittal.

The Lighthouse Island Resort is an example of a multimodal development. Visitors will be able to reach the property by walking, vehicle, bicycle, and the Fort Myers Beach “Trolley”. The development proposes vehicle parking both on-street and beneath its hotel buildings and golf cart and bicycle parking throughout the site in order to encourage the “Park-Once” concept. The existing CPD was approved with 100 parking spaces for Phase V at buildout, which included parking for 75 hotel units, 4,300 SF of restaurant, 420 SF of office space, and 5,000 SF of retail uses. This amendment proposes a deviation from required parking to maintain the 100 spaces that were approved in the original CPD. Although the number of units will increase by 55 units, the 5,000 SF of retail is removed from the schedule of uses and providing 100 spaces consistent with the original MCP will provide sufficient parking for resort guests and the public.

### **Compatibility**

As presented above and further discussed in the Rezoning Approval Criteria below, careful consideration was given to designing infill redevelopment that fits into the fabric of both the existing resort and downtown Fort Myers Beach, while remaining feasible from a regulatory and economic standpoint. By honoring the Lighthouse Island Resort’s heritage as an iconic destination, and through the proposed thoughtful site design and public benefits, the proposed amendment ensures compatibility with surrounding properties. The Lighthouse has a long and beloved history on Fort Myers Beach and will continue to be an asset to the island for years to come by providing a family-oriented destination resort for visitors, by building a resort that is open to local residents, by providing public benefits and by being active participants in developing Town-wide mobility solutions and promoting the Beach School.

### **REZONING APPROVAL CRITERIA**

The proposed rezoning request from Downtown to Commercial Planned Development (CPD) must be found consistent with the established rezoning criteria provided in LDC Section 34-85 and Section 34-216 as well as post-disaster build back criteria in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan and LDC Section 34-3238. The following narrative demonstrates compliance with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.



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

Lighthouse Island Resort  
Supplemental #1  
Revised: 04/18/25

5618 Whispering Willow Way, Fort Myers, FL 33908 | 239.398.2016  
[www.theneighborhoodcompany](http://www.theneighborhoodcompany)

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## **A. COMPREHENSIVE PLAN AMENDMENTS**

The Lighthouse Island Resort is consistent with the following Comprehensive Plan Amendments which are pending and could affect the future use of this property:

Policy FLU-4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm. All new development is encouraged to provide for amenities that enhance the public realm, including, but not limited to: art, benches, bike racks, trash receptacles, right-of-way landscaping, etc.

Policy 4-C-2 FLU1-C-2 COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height and Floor to Area Ratio (FAR) regulations or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses on properties with frontage on Estero Boulevard and only in the "Pedestrian Commercial" "Mixed-Use" and "Boulevard" categories.

Policy FLU-1-C-6 MOTEL TRANSIENT DENSITIES: The Land Development Code shall provide for the usage of commercial, mixed-use, or transient residential FAR, and minimum hotel/motel unit sizes as the basis for calculating transient residential unit.

### **Policy CD-3-A-3 MAINTAIN PEDESTRIAN CIRCULATION**

Maintain the pedestrian circulation plan:

- a. Bayside sidewalk and streetscape improvements for Estero Boulevard within the Core area with underground utilities and improved sidewalks.
- ii. Sidewalks (5' wide minimum sidewalk) along all streets in the Core Area.
- iii. Bike path along Estero Boulevard utilizing Crescent Street to Third Street across to Old San Carlos and then connecting back to Estero Boulevard and north to Bowditch Point.
- iv. Old San Carlos as a pedestrian spine linking Times Square and the marina by implementing public sidewalks and major crosswalks designed to work in conjunction with arcades or plazas located on private property.
- v. A new public pedestrian plaza at the east of Old San Carlos.
- vi. New on-street parking and sidewalk on the south side of Crescent Street.
- vii. Third and Fourth Streets with on-street parking and sidewalks on both sides of the street.

Proposed improvements with the pedestrian, parking, mass transit, and traffic circulation concepts in the Transportation Element of this plan.



POLICY T-1-D-2 REDUCE NEED OF CAR: Promote compact development, enhance pedestrian realm, and promote modes of transportation other than single occupancy vehicles.



## **B. PHASING OF CONSTRUCTION**

The redevelopment is to be constructed in a single phase

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### **C. COMPREHENSIVE PLAN COMPLIANCE**

#### **COMMUNITY DESIGN ELEMENT:**

**GOAL 3 To revitalize and improve specific transitional neighborhoods.**

**OBJECTIVE 3-D TIMES SQUARE - Stimulate the revitalization of the downtown core area (near Times Square) as the nucleus of commercial and tourist activities.**

This redevelopment will play an integral role in supporting Object 3-D, which is to revitalize the downtown core area. As called for in the 1999 Old San Carlos Boulevard – Crescent Street Master Plan, redevelopment was desired within the area to create a strong sense of place and achieve a Park-Once strategy for the downtown core. The proposed infill redevelopment strengthens the eastern bookend for a cohesive downtown area. This development will expand the Times Square pedestrian friendly zone along Old San Carlos Boulevard, providing pedestrian connection through the resort. The proposed pedestrian path will feature lush landscaping and wayfinding, creating both an attraction and useful expansion of the pedestrian network. The connection between the Old San Carlos and Crescent Street corridors creates a walkable district, thereby reducing the need for vehicle travel.

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## **FUTURE LAND USE ELEMENT**

**GOAL 4:** To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

**OBJECTIVE 4-A SMALL-TOWN CHARACTER —** Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

**POLICY 4-A-1:** Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

**POLICY 4-A-2:** The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian oriented public realm.

**POLICY 4-A-7** Estero Bay also provides great benefits to the town and can be enhanced by improving public access and reversing the decline in water quality. The Conservation and Coastal Management Elements of this Plan outline the town’s efforts on these matters.

The devastation caused by Hurricane Ian has emphasized the need for more resilient structures on Fort Myers Beach. The Lighthouse Island Resort, though left standing, sustained significant damage and intends to redevelop to a more sustainable resort with additional public benefits. As expressed in Object 4-A, the desire is for the small-town character of Fort Myers Beach to be maintained while continuing the pedestrian-oriented “public realm” that encourages people to move around without their cars even in the midst of peak-season congestion. In planning the redevelopment of the property, the owners have considered what is needed in this area of the island for both visitors and residents to achieve this goal.

With the construction of new buildings that meet Florida Building Code and FEMA standards, the site will be more resilient and able to withstand impacts from future hurricanes. Through the reconfiguration of the access to the property, hardscape enhancements, enhanced pedestrian pathways, and a restaurant and tiki bar/pool open to the public, the Lighthouse will contribute to Fort Myers Beach’s goal of being a healthy





and vibrant “small town” while capitalizing on the vitality and amenities available in this beach resort environment.

#### **OBJECTIVE 4-B FUTURE LAND USE MAP CATEGORIES**

Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.

**POLICY 4-B-6 “PEDESTRIAN COMMERCIAL”:** a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The mixed-use resort supports the Pedestrian Commercial future land use designation policy of the Comprehensive Plan in several ways. The overall site design creates a resort that is approachable and human scale. The original rezone of the property from C-1 to CPD emphasized the public realm and the creation of a human scaled development through the use of build-to lines and pedestrian arcades; this amendment proposes to continue to emphasize pedestrian and multi-modal access to the resort. The subject property is a perfect location for visitors to use as their home base as they explore all the island has to offer through walking and bicycling.

#### **OBJECTIVE 4-C APPLYING THE FUTURE LAND USE**

**MAP —** The Future Land Use Map shall be interpreted in accordance with the following policies.

**Policy 4-C-2 COMMERCIAL INTENSITY:** The maximum intensity of allowable commercial development in any category may be controlled by height regulations or other provisions of this plan and the LDC. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development



**Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.**

Under the provisions of Policy 4-C-2, Pedestrian Commercial can achieve a Floor Area Ratio (FAR) of 2.5. The current maximum FAR allowed under the Commercial Resort (CR) zoning district is 1.2. The development will be consistent with the maximum FAR of 1.2, with a deviation for removing under building parking from the calculation of total square footage for the FAR.

**OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster build back policy.**

The new buildings associated with the proposed infill project will be more resilient, complying with the latest and more stringent state requirements.

#### **COASTAL MANAGEMENT ELEMENT**

**GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.**

**POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.**

The Coastal Management Element addresses special coastal management concerns which are specific to the Town of Fort Myers Beach and its need to protect resources, human life, and property, which are all vulnerable to events such as hurricanes and flooding. The proposed development will be constructed in compliance with Florida Building Codes and FEMA standards, complying with Goal 5 and Policy 5-A-1.

#### **TRANSPORTATION ELEMENT**

**GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation**



improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

**POLICY 7-A-2 PARKING:** Even though existing parking lots are not used to capacity; parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking. The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.

**POLICY 7-D-3 ALTERNATE TRAVEL MODES:** The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

The Transportation Element of the Comprehensive Plan acknowledges that conventional traffic solutions, like road widening and alternative routes, are ineffective for Fort Myers Beach and instead emphasizes alternative modes of transportation to relieve congestion on constrained roadways. The following are mitigation solutions cited by the Comprehensive Plan and ways in which the proposed project supports each strategy.

- **Make it easier for visitors to arrive without a car (Policy 7-D-1)**
  - Participation in the DRaC program, which incentivizes resort guests to travel to the island without a car by providing a discounted rate to those who do not bring a car.
  - The mix of uses provided within the resort will be easily accessible by pedestrians/bicycles, creating internal capture of trips that would otherwise add to traffic on Estero Boulevard and other local roads.
  - Bicycles will be available for guest use, encouraging use of the bike/pedestrian network.
  - Golf cart parking will be provided.
- **Create a hidden-path system (7-D-5)**
  - A separated pedestrian path system will be integrated throughout the resort and connected to downtown.
  - Wayfinding will direct pedestrian traffic to various destinations throughout downtown.

**OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD:** Maintain minimum acceptable levels of service for the transportation system.



**POLICY 7-J-2 TRAFFIC IMPACT ANALYSES:** A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:

- i. decrease the thresholds for requiring traffic impact analyses;
- ii. require them to study the cumulative impacts of potential development; and
- iii. use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.

A traffic impact statement is being prepared by TR Transportation Consultants, Inc. and will be provided in a subsequent submittal.

**UTILITIES ELEMENT:**

**GOAL 8:** To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

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

Complying with GOAL 8 and Policy 8-A-1, the Lighthouse Island Resort is already connected to central water and sewer utilities.



#### **D. DESIGN STANDARDS COMPLIANCE**

The post-hurricane redevelopment of the Lighthouse Island Resort will be generally consistent with the overall purpose and intent of the existing CPD, which was found consistent with LDC standards.

As demonstrated through the architectural elevations prepared by MHK Architecture and included in this submittal, the Lighthouse is designed in a contemporary coastal architectural style. The redeveloped resort achieves the goals set forth in the Comprehensive Plan and the Land Development Code by creating a development that will enhance the town's sense of place, implements the design concepts in the LDC, and creates an attractive destination which will enhance the island and its property values.



## **E. DECISION MAKING COMPLIANCE**

*The following considerations from LDC Sec. 34-85 shall be considered by town council whenever applicable:*

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

There are no known errors or ambiguity that must be corrected in relation to the requested CPD amendment. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Utilizing the proposed CPD rezone request, reductions or elimination of any existing non-conformities will be corrected as applicable.

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

The Lighthouse Island Resort suffered significant damage as a result of Hurricane Ian. Although the resort was able to reopen, it is currently operating at approximately 60% of its pre-Ian capacity as a direct result of damage from the storm. Infill redevelopment of the resort is consistent with the 1999 Old San Carlos Boulevard – Crescent Street Master Plan, which called for the expansion of the Times Square pedestrian-friendly zone and recommending redevelopment to be built to the sidewalk in order to help create a strong “sense of place” and achieve a “Park-Once” strategy that encourages pedestrian activity throughout the corridor. The hurricane’s destruction has presented an opportunity to achieve the desires as expressed through the Comprehensive Plan and the Old San Carlos Boulevard – Crescent Street Master Plan.

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

The proposed change will not have any impact on the intent of this chapter (LDC). The CPD amendment will allow the redevelopment of damaged structures to become an economic driver for the Town of Fort Myers Beach as well as a benefit to island residents and tourists.

**(4) The testimony of any applicant.**

The professional experts retained by the applicant to support this petition will provide testimony at both the Local Planning Agency (LPA) hearing and the Town Council hearing.



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

The Town staff will review the petition and provide a written report to be presented to the local planning agency at their appropriate public hearing. The petition along with the staff's report and the LPA recommendation will then be presented to the Town Council at the designated public hearing.

**(6) The testimony of the public.**

The public will be provided with the opportunity to present testimony to the LPA and Town Council.

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

As evidenced through this narrative, the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

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

The proposed location is ideal for the requested uses. The Lighthouse Island Resort is located in the heart of the Downtown district, which has always been identified as a redevelopment area and the preferred location for the Town's most dense and intense development. With its location directly abutting the Matanzas Pass Bridge, it serves as an important connection between the Old San Carlos Boulevard commercial corridor and the Crescent Street corridor.

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

Urban services are in place and utilized by the existing Lighthouse development and will remain in place to adequately serve the subject site. It is critical to note that adequate services were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian, but now approximately only 1,152 hotel/motel units are online. 2020 Census data also shows that the overall permanent population in Fort Myers Beach has declined roughly 11% since the 1990 Census. The Town's population estimates associated with transient lodging also show a decline over the last 30 years and the percentage of the in-season population attributed transient lodging has declined from 24% to 18%.

- 1990 Peak Season Population Estimate – Lodging: 3,620 or 24% of the overall population.
- 2020 Peak Season Population Estimate – Lodging: 3,133 or 18% of the total population.



Based on the data outlined above, existing urban services are and will be available to support not only the proposed Lighthouse Island Resort but many other proposed projects that will assist in the rebuilding of Fort Myers Beach.

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

The proposed redevelopment is located on a developed site which does not contain any environmentally critical areas or natural resources.

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

The request is compatible with existing or known planned commercial, residential and civic uses adjacent to the subject redevelopment and will not cause damage, hazard, nuisance or other detriment to persons or property of Fort Myers Beach. The proposed infill redevelopment will be compatible with existing uses and will complement the nearby downtown commercial uses.

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

This criteria will be addressed upon completion of the TIS.

**CONCLUSION**

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the CPD amendment process and compliance with today's Florida Building Codes and FEMA standards, the Kolar family will provide a project that will provide multiple public benefits and improve upon their legacy as multi-generational businessowners in the Town of Fort Myers Beach.





## **LIGHTHOUSE ISLAND RESORT COMMERCIAL PLANNED DEVELOPMENT (CDP) AMENDMENT**

### **SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS**

Deviation #1: Deviation 1 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways. *(Existing)*

Deviation #2: Deviation 2 requests relief from the F.A.R. requirements of LDC Sec. 34-633, which includes covered parking in the FAR calculation to exclude the under-building parking from this resort's FAR calculation. *(Existing)*

**Justification:** The requested language change is simply for clarification consistent with similarly approved deviations and does not change the previously permitted deviation to exclude under building parking from the FAR calculation.

Deviation #3: Deviation 3 requests relief from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 9.7' for "Sign C" on Fifth Street. *(Existing)*

**Justification:** This deviation was previously approved and there are no proposed changes to the existing sign. The amendments to the deviation language are consistent with the Town's amended sign code (Ord. 23-01), which no longer specifies a maximum height for the base of a monument sign.

Deviation #4: Deviation 4 requests relief from LDC Sec. 30-5(a)(1)b.1 for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face. *(Existing)*

**Justification:** This deviation was previously approved and there are no proposed changes to existing illuminated signage. The amendments to the deviation language simply update the LDC reference consistent with the Town's amended sign code (Ord. 23-01).

Deviation #5: A deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 40 feet 5 inches above base flood elevation and a maximum of four (4) stories consisting of three (3) stories above one (1) level of parking.

**Justification:** The Town's Comprehensive Plan allows for additional height through Policy 4-C-4 for parcels that are contiguous (or directly across a street) from taller buildings. The Lighthouse Island Resort currently allows a maximum height of 37 feet above base flood elevation. The resort buildings vary in height from single-story, cottage-style units to the current maximum of three stories. Margaritaville is directly south of the subject property, allowing a maximum of four stories or 40 feet. The proposed amendment is requesting a maximum height of four stories (three stories



over parking) or 40 feet 5 inches above base flood elevation, which is consistent with Margaritaville (see Figure 3). The increase in maximum height of 3.5 feet will allow for Building 5 to add roughly one additional foot of height per story of hotel rooms and allows for a sloped roof with attractive architectural embellishments. The infill development (Building 1) on the Crescent Street parcel proposed to be added to the CPD will be under 30 feet, providing a transition from residential uses on the east side of Crescent Street.

The resort's existing buildings are already varied in height and intensity, allowing for building massing that is well-integrated into the core of the Downtown district. Rather than a single, monolithic building, the Lighthouse has a village-style design that fits with the character of downtown Fort Myers Beach. The requested amendment for additional height will only be applicable to Building 5, which is located on the western edge of the property, closest to the main Downtown commercial corridors and directly abutting the Matanzas Pass Bridge. The granting of this deviation will not create negative impacts to the health, safety and welfare of the island's residents and visitors.

**Deviation #6:** A deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 0' and 6.75' feet along San Carlos Boulevard, Third Street, and Fifth Street.

**Justification:** The existing CPD had approved deviations for perimeter and street setbacks, ranging from 0' to 7.4'; these deviations were based on proposed buildings at various phases of the five-phase development. The requested deviation reflects the existing conditions and proposed buildings fronting Third Street, Fifth Street, and San Carlos Boulevard. Relief from the required 10' street setback promotes pedestrian access to the Downtown district by bringing buildings closer to the "public realm" and is consistent with the vision of the Pedestrian Commercial future land use designation, which emphasizes a pedestrian-friendly downtown. The site was intentionally designed with the majority of the buildings fronting Fifth Street and Crescent Street, with the buildings on Fifth Street cantilevered over the sidewalk to provide a pedestrian-friendly arcade consistent with the "Old San Carlos Boulevard – Crescent Master Plan". As depicted on the MCP, the proposed street setbacks are also consistent with the previously approved deviations for setbacks of 7.4', 4.5', 3', 2.6', 1.5', 1.4', and 0'.

**Deviation #7:** A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the east elevation of Building 5 of 104 square feet, as depicted on the MCP.

**Justification:** The Lighthouse Island Resort comprises ±1.87 acres, which is a significantly larger area than the average parcel containing one or two business establishments. Due to the scale of the resort and the fact that the property is surrounded on all sides by major roadways, it is reasonable to permit multiple signs totaling more than 32 square feet. The proposed mural-style sign will be located on the east elevation of Building 5 and will provide an attractive, contemporary visual from the Matanzas Pass Bridge. At 104 square feet, it will fit the scale of the proposed building. The rendering below represents the proposed sign.



BUILDING 5, EAST ELEVATION  
8'-0" X 13'-0"  
104 SF



Deviation #8: A deviation from LDC Section 30-5(a)(1)a which allows a maximum of 32 square feet of signage for a parcel of land containing one or two business establishments to allow a mural-style sign on the south elevation of Building 5 of 100 square feet, as depicted on the MCP.

**Justification:** The Lighthouse Island Resort comprises  $\pm 1.87$  acres, which is a significantly larger area than the average parcel containing one or two business establishments. Due to the scale of the resort and the fact that the property is surrounded on all sides by major roadways, it is reasonable to permit multiple signs totaling more than 32 square feet. The proposed mural-style sign will be located on the south elevation of Building 5 and will provide an attractive, contemporary visual from Fifth Street and at street level. At 100 square feet, it will fit the scale of the proposed building.

Deviation #9: A deviation from LDC Section 30-5(a)(1)b.3.iii which allows a maximum height of 5 feet for a monument sign to allow an overall height of 10 feet for a monument sign at the corner of Crescent Street and Fifth Street, as depicted on the MCP.

**Justification:** A deviation was previously approved for a 9.7' monument sign in this location. This deviation proposes a replacement monument sign with an architectural embellishment that is 10' and an actual sign height of 3'4". The proposed sign is consistent with the architectural style of the resort and pays homage to the iconic lighthouse design of the resort's historic signage. The rendering below represents the proposed sign.

BUILDING 1/2, CORNER  
6'-10" X 3'-4"  
22.78 SF





**Deviation #10: A deviation from LDC Section 30-8(16) which prohibits pole signs to allow a decorative wayfinding pole sign on the corner of Third Street and San Carlos Boulevard, as depicted on the MCP.**

**Justification:** The proposed wayfinding sign will allow pedestrians—whether resort guests, other visitors, or residents—to easily locate amenities within the resort, nearby landmarks such as Times Square, and nearby retail/restaurants. The sign's location at the corner of Third Street and the underpass of the Matanzas Pass bridge is ideal for capturing a significant amount of foot traffic, as Third Street provides connection from the Crescent Street corridor to the Old San Carlos Boulevard corridor. These pathways are part of the proposed pedestrian pathway network that runs through the resort and helps to enhance the pedestrian-oriented downtown area. The design of the sign will be consistent with the Lighthouse Island Resort branding and will enhance the beachy aesthetic of the resort.

**Deviation #11: A deviation from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulate parking for hotels/motels and other accessory uses, to allow a 58% reduction in parking requirements for a total of 82 on-site parking spaces and 99 total parking spaces, inclusive of 7 previously approved on-street parking spaces, 8 golf cart parking spaces, and credit for 2 bicycle parking spaces.**

**Justification:** The existing CPD was approved with 100 parking spaces for Phase V at buildout, which included parking for 75 hotel units, 4,300 SF of restaurant, 420 SF of office space, and 5,000 SF of retail uses. Of the 100 approved spaces, 93 were on-site and 7 were off-site. The previously approved parking calculations utilized the 33% parking reduction applicable to specific areas within the Downtown zoning district. This deviation from the required parking proposes maintaining the 7 approved off-site, reducing the on-site parking from 93 to 82, and adding 8 golf cart and 2 bicycle parking spaces, for a total of 99 spaces provided. A detailed parking analysis breaking down the required parking by use has been provided. Although the number of hotel units will increase by 55



**LIGHTHOUSE ISLAND RESORT**  
**COMMERCIAL PLANNED DEVELOPMENT (CDP) AMENDMENT**

**PROPOSED CONDITIONS/COMMITMENTS:**

**TRAFFIC MITIGATION**

**1. Don't Rent a Car (DRaC) Program**

- a. To help mitigate traffic congestion, the owner and resort operator will promote various marketing initiatives that support and encourage all guests to use alternative modes of transportation rather than drive a vehicle to or while on the island. Such efforts will include:
  - A dedicated page on the resort website outlining and promoting alternative modes of transportation and informing guests on ways to reduce vehicular trips including:
    - Information on the walkability of the area and businesses of interest to guests within walking distance;
    - Bicycle rentals;
    - Shuttle service;
    - Car hailing and taxi service;
    - Fort Myers Beach's LeeTran "TROLLEE" and seasonal TRAM Service Schedules and Route Maps, and
    - Food delivery service
  - Establish partnerships with businesses on the island, especially in the "Downtown", to provide incentives and discounts for guests. Hotel guests who do not drive onto the island will receive monetary discounts or vouchers for future stays and/or with participating local businesses, such as restaurants, bike rentals, and tour/tourism operators.
  - Participate in townwide traffic mitigation efforts, such as:
    - Off-island parking and transport initiatives, e.g. taxi or ride share discounts for those staying at the hotel.
    - Off-site parking availability identification systems.
    - Evaluating and improving LeeTran's "TROLLEE" and seasonal TRAM service and rider/user experience.

**2. Bicycles**

- a. The property owner or resort operator will provide for rent or complementary bicycles with bike locks, and dedicated bike parking at the resort for hotel guests.
- b. Minimum of 2 bicycle parking spaces (multiple bike racks) for public use.



### **3. Multi-Use Pathways:**

- a. Bicycle and pedestrian pathways will be provided throughout the property and will be open to guests and the public. The pathways will provide interconnection and ease of access to popular downtown venues to reduce vehicular trips.
- b. Enhancement and improvements will be made to the Third Street right-of-way that include but are not limited to:
  - Landscaping, benches, and open space features;
  - Wayfinding that will identify nearby destinations such as restaurants, retail, and beach access.
- c. Pathway enhancements and improvements will be made to the San Carlos Boulevard/Matanzas Pass Bridge right-of-way, subject to approval from FDOT.
  - Within six months of zoning approval by the town council, the property owner will coordinate with FDOT regarding enhancements to the San Carlos Boulevard/Matanzas Pass Bridge right-of-way.
- d. At the time of Development Order for Building 5, lighting will be provided for the San Carlos Boulevard/Matanzas Pass Bridge right-of-way. Lighting will meet requirements for "Nonresidential Walkways & Bikeways" per LDC Sec. 34-1833.

### **4. Golf Cart Parking**

- a. The Lighthouse Resort will provide 8 dedicated golf cart parking spaces available to guests or the public.

## **DESIGN**

### **5. Architecture & Site Design**

- a. Final design must be generally consistent with renderings provided in addition to the Master Concept Plan.

### **6. Landscaping & Buffering**

- a. All landscaping materials will be native varieties/Florida friendly species.

## **FORT MYERS BEACH ELEMENTARY SCHOOL**

### **7. Promoting the Beach School**

- a. The property owner or resort operator will work with the Town, Fort Myers Beach Chamber of Commerce, the School District of Lee County, and Fort Myers Beach Elementary School to promote the opportunity for resort employees to enroll their children at Fort Myers Beach Elementary School. Educational materials will be provided to employees regarding enrollment and after school care programs.

### **8. Flexible Work Schedules**

- a. The resort will allow flexible work schedules for employees to accommodate pick up and drop off of children attending Fort Myers Beach Elementary School.



## **COP, HOURS OF OPERATION & AMPLIFIED SOUND**

### **9. Consumption on Premises (COP)**

- a. Service of alcohol for on-premises consumption is approved at the location depicted on the Master Concept Plan, subject to these limitations:
  - Service to outdoor areas is permitted as follows:
    1. For Building 5, on the elevated pool deck.
    2. For the tiki bar and pool deck on the south end of the property between Buildings 3 and 5, limited to the areas depicted on the Master Concept Plan.
    3. For the tiki bar and pool deck on the north end of the property between Buildings 2 and 6, limited to the areas depicted on the Master Concept Plan.

### **10. Hours of Operation**

- a. Hours of operation for outdoor areas will be limited to the following unless otherwise temporarily altered per the Town's special event use regulations in LDC Section 34-1264. All other hours of operation will be regulated by the LDC.
- b. Pool deck (Building 5): 9:00am to 12:00am
- c. Pool deck and tiki bar (south end between Buildings 3 and 5): 9:00am to 2:00am
- d. Pool deck and tiki bar (north end between Buildings 2 and 6): 9:00am to 10:00pm





## **LIGHTHOUSE ISLAND RESORT COMMERCIAL PLANNED DEVELOPMENT (CDP) AMENDMENT**

### **DEVELOPMENT CONDITIONS**

1. The development of this project must be consistent with the Master Concept Plan entitled "Master Concept Plan (CPD) for Lighthouse Island Resort " last revised [date TBD], except as modified by the conditions and deviations below.
2. The following limitations apply to the project and uses:
  - a. Schedule of Uses  
All uses permitted by right in the Downtown zoning district with the following limitations:  
Restaurant is limited to 4,300 square feet  
Retail is limited to 500 square feet accessory to the primary resort use  
Office is limited to 420 square feet accessory to the primary resort use  
Hotel/Motel units limited to a maximum of 130 guest units  
On-premises consumption of alcoholic beverages, including outdoor seating areas as depicted on the MCP
  - b. Building placement, size, design, and all other property development regulations shall be the same as for the CR (Commercial Resort) zoning district unless approved as deviations as part of the approved zoning resolution.
3. Maximum building height may not exceed 40 feet 5 inches above Base Flood Elevation.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
5. The final design of the building within this planned development must be approved by the Town Manager prior to the approval of any permits. The design must be in substantial compliance with the Town of Fort Myers Beach Comprehensive Plan, the Land Development Code, and all other applicable requirements.
6. At no time will the total number of Hotel/Motel units exceed 130 guest units.
7. Prior to approval of a development order, the correct sidewalk easement must be recorded in the Public Records of Lee County, Florida.
8. Prior to each local development order approval, the developer must provide a current tally of the square feet for each use approved in all previous local development orders.
9. The total square feet of existing and proposed buildings must not exceed 58,432 square feet of total building area for buildings used as hotel/ motel guest units.
10. Any off-site parking, other than the existing approved 7 off-site parking spaces, must be addressed through an amendment to this CPD.
11. This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
12. This CPD project must obtain a development order within five years of the date of approval by the town council.





13. All signs containing commercial messages, including those shown for the proposed restaurant, must be in compliance with LDC Chapter 30, except as approved herein by deviations.
14. The deviation for internal illumination of signs is approved only for the existing signs. If the signage is moved, removed, or damaged beyond repair, the deviation will be null and void, and any new signage must comply with the regulations of the LDC.



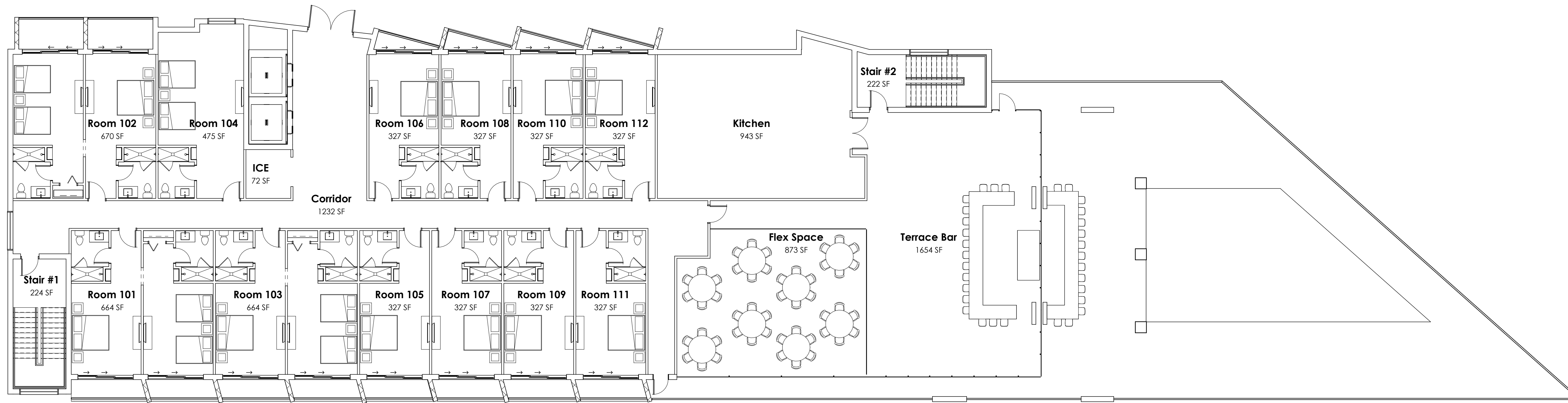


LIGHTHOUSE RESORT - BLDG 5

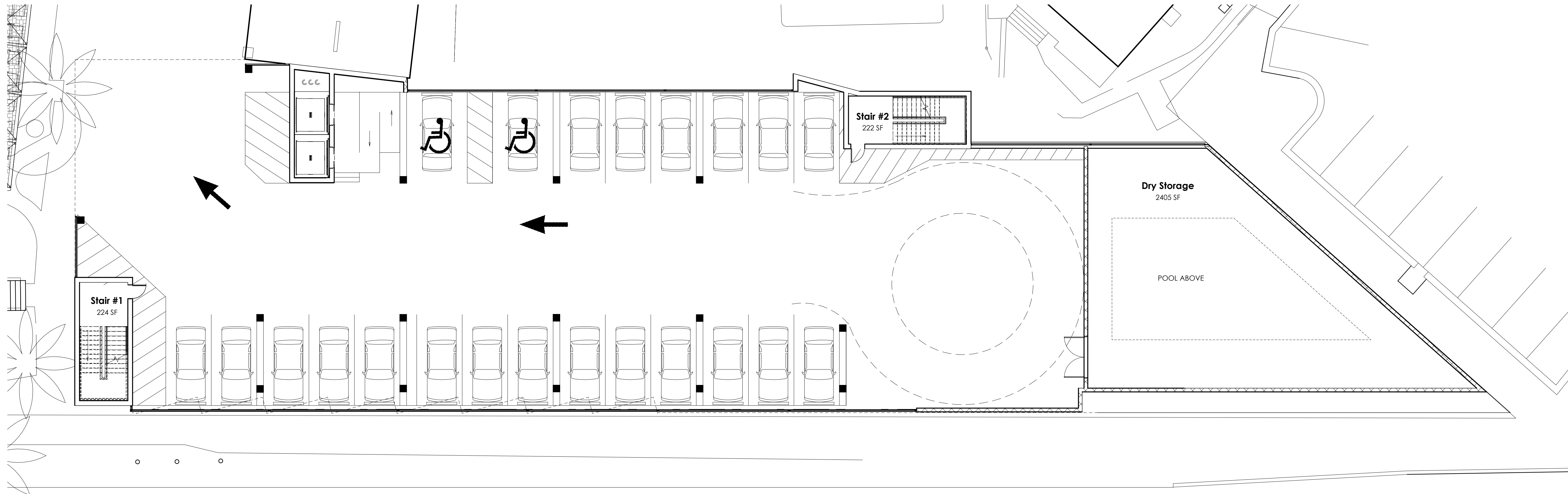
MHK ARCHITECTURE COPYRIGHT © 2025

SK1 MHK ARCHITECTURE



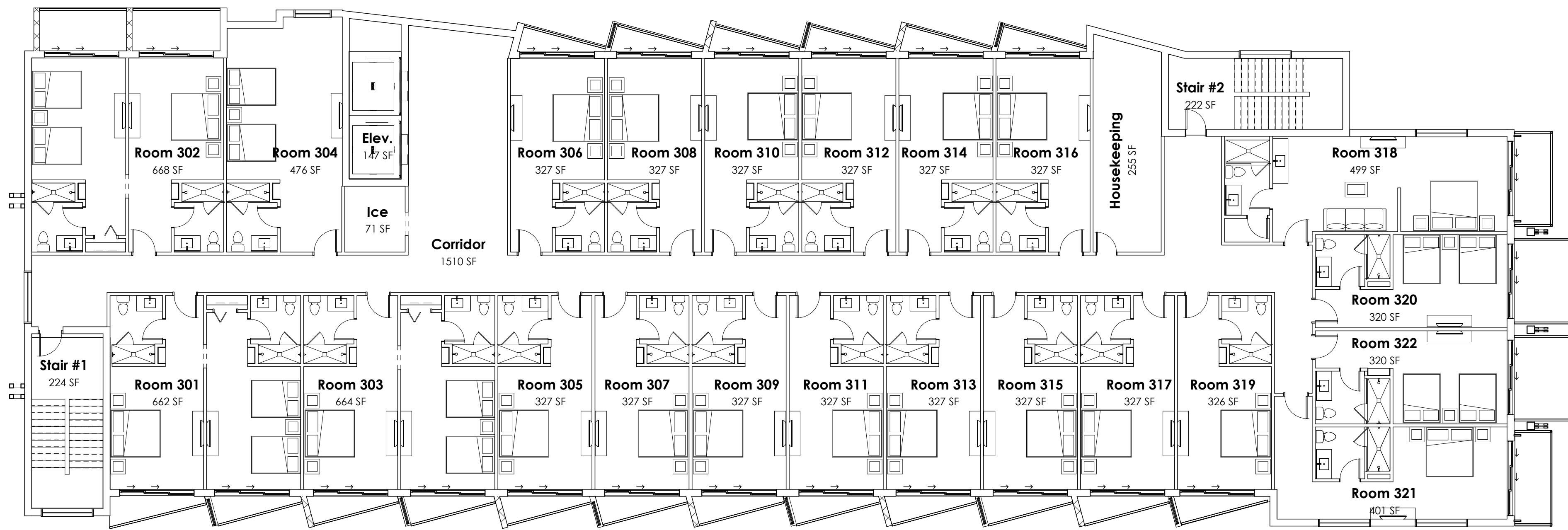


2 SK - LEVEL 1  
SCALE: 3/32" = 1'-0"

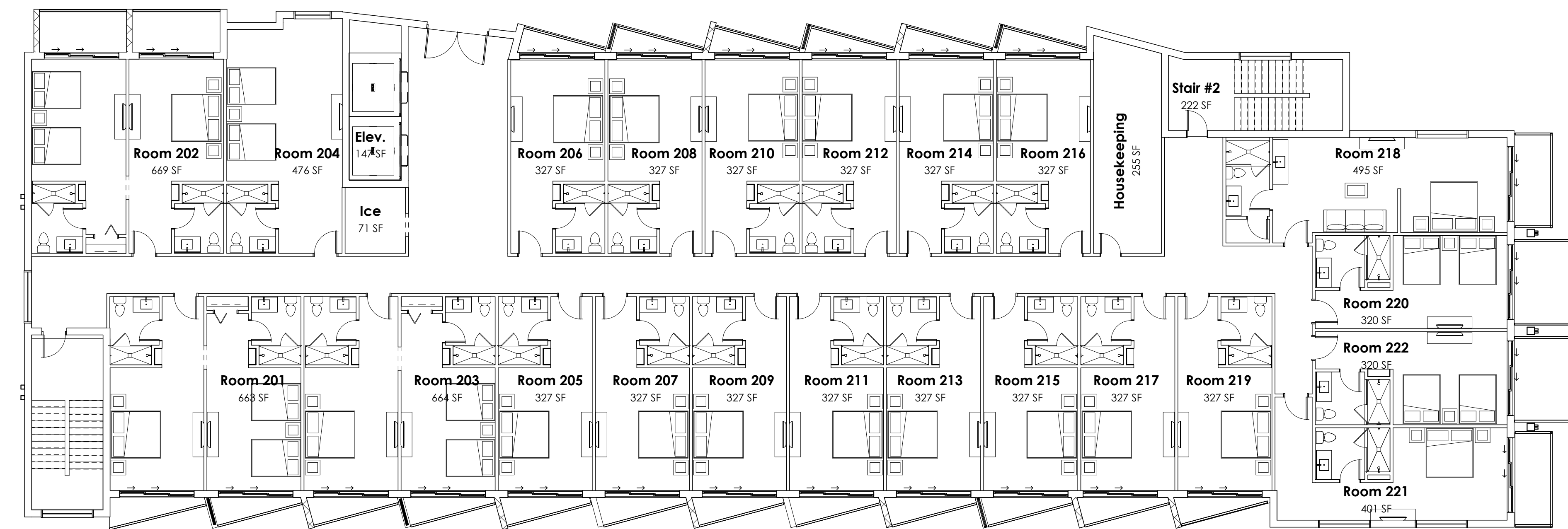


1 SK - GROUND LEVEL  
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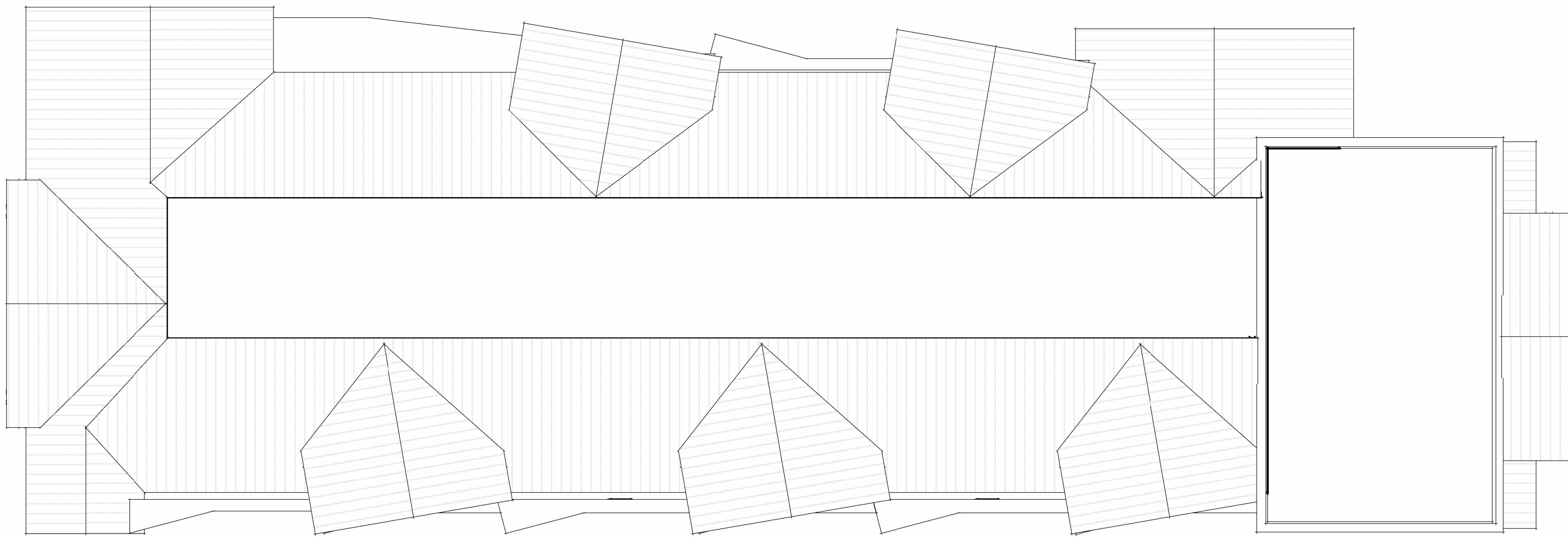


2 SK - LEVEL 3  
SCALE: 3/32" = 1'-0"



1 SK - LEVEL 2  
SCALE: 3/32" = 1'-0"





1 SK - ROOF PLAN

SCALE: 3/32" = 1'-0"





① EXTERIOR ELEVATION - NORTH  
SCALE: 3/32" = 1'-0"



② EXTERIOR ELEVATION - SOUTH  
SCALE: 3/32" = 1'-0"



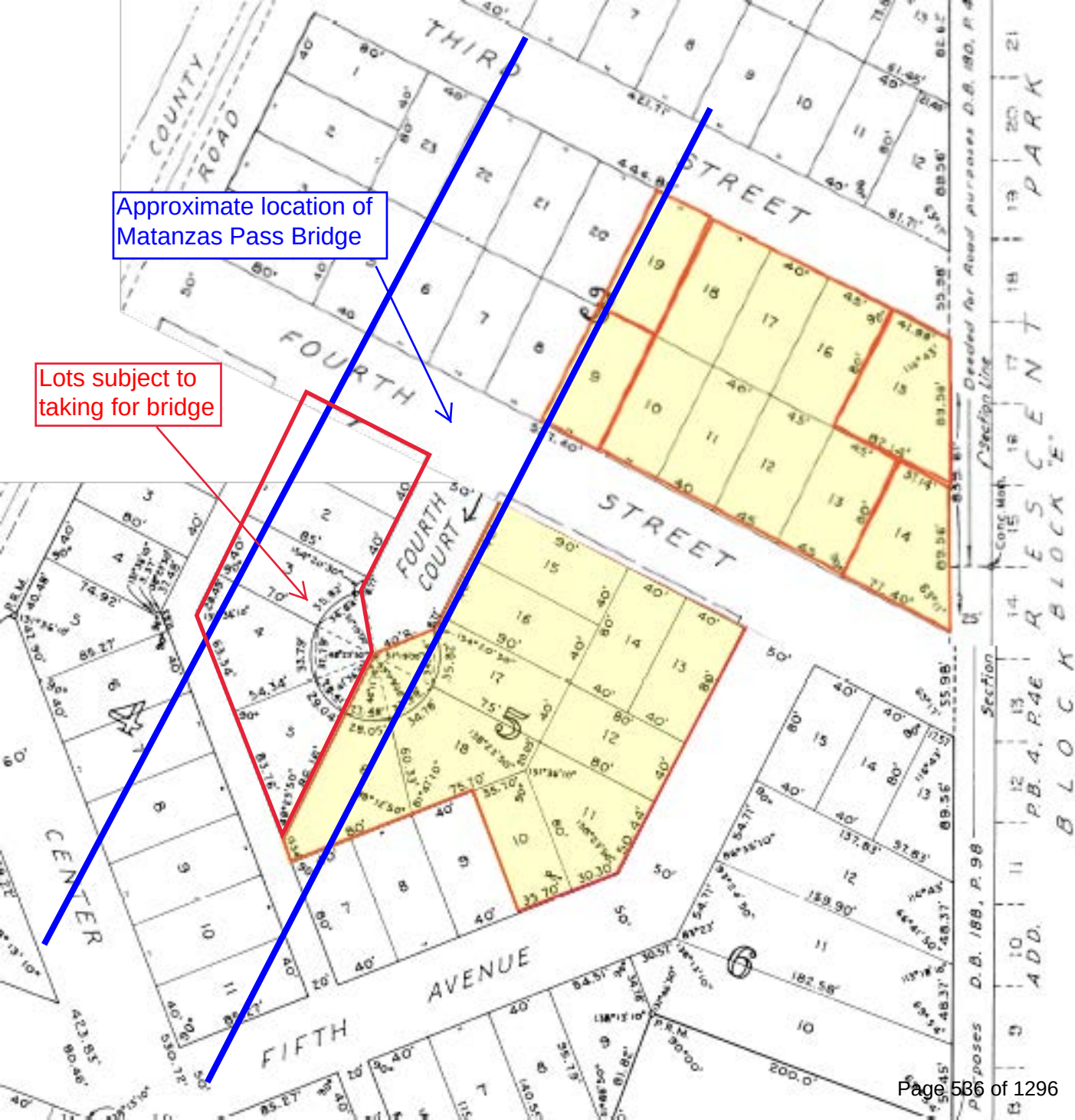
③ EXTERIOR ELEVATION - EAST  
SCALE: 3/32" = 1'-0"



④ EXTERIOR ELEVATION - WEST  
SCALE: 3/32" = 1'-0"

Approximate location of  
Matanzas Pass Bridge

Lots subject to  
taking for bridge



| Lighthouse Island Resort<br>Parking Analysis |                                                |                                 |        |
|----------------------------------------------|------------------------------------------------|---------------------------------|--------|
| Resort Lodging Units Required                |                                                |                                 |        |
| Typical Unit Size                            | # of Units                                     | Parking Ratio                   | Spaces |
| Up to 450 SF                                 | 94                                             | 1.2 spaces per unit             | 112.8  |
| Greater than 450 SF                          | 36                                             | 1.5 spaces per unit             | 54     |
|                                              |                                                | Subtotal                        | 166.8  |
| Restaurant Required                          |                                                |                                 |        |
| Restaurant Uses                              | Square Footage                                 | Parking Ratio                   | Spaces |
| Restaurant (interior to Building 5)*         | 4,300                                          | None required*                  | 0      |
| Tiki bar areas                               | 2,116                                          | 15 per 1,000 SF or 1 per 200 SF | 32     |
|                                              |                                                | Subtotal                        | 32     |
|                                              | TOTAL REQUIRED FOR RESORT & RESTAURANT         |                                 | 198.5  |
|                                              | TOTAL REQUIRED FOR RESORT with a 50% Reduction |                                 | 99     |
| Provided                                     |                                                |                                 |        |
|                                              | Standard on-site parking spaces                |                                 | 82     |
|                                              | Golf Cart parking:                             |                                 | 8      |
|                                              | Bicycle parking:                               |                                 | 2      |
|                                              | Previously approved on-street parking          |                                 | 7      |
|                                              | TOTAL PARKING PROVIDED                         |                                 | 99     |

\*Per LDC 34-2020(d)(2)h.1: "When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required."





# **Business Impact Estimate**

*This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.*

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 18-17 FOR THE PARCEL LOCATED AT 1051 FIFTH STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00205.0060, TO ADD PARCEL 1060 THIRD STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00203.0150 IN FORT MYERS BEACH;; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends and existing CPD zoning designation for 1051 Fifth Street and 1061 Third Street. The Town Council approved a CPD for the property at 1051 Fifth Street in 2018 through Resolution 18-17 which currently provides the zoning regulations for the site. The applicant is seeking through this ordinance to include the parcel at 1061 Third Street in the CPD.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx.

Ordinance 25-xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

This rezoning does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

**Meeting Date:** June 16, 2025

*This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-12 (Salty Crab Redevelopment).*

**ORDINANCE TITLE:**

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 64 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council approves or denies rezoning requests.

**What the action accomplishes:**

The approval of this application will allow for the redevelopment of the Salty Crab restaurant at an increased FAR.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

RVi Planning and Landscape Architecture, on behalf of Greg Powers and Clownfish Restaurant Holdings, LLC (Applicant) is requesting a rezoning from Downtown zoning to Commercial Planned Development (CPD). This request is to rebuild the Salty Crab restaurant and a ground-level ice cream shop at 1154 Estero Boulevard ("Property") after the existing establishment was destroyed in Hurricane Ian. The proposed CPD includes 5,256.88 square feet of the property landward of the Lee County 1978 Coastal Construction Control Line (CCCL) and codification of the consumption on premises and outdoor seating area waterward of the CCCL.

Prior to Hurricane Ian, the site included a two-story structure with covered porch areas and beachside dining including 1,561 square feet of outdoor seating and consumption on premises (Resolution 10-15 and COP2012-0005) area seaward of the 1978 Lee County Coastal Control Line (CCCL).

The application was heard by the Local Planning Agency (LPA) at their May 13<sup>th</sup>, 2025 meeting. The LPA voted 7 to 0 to approve with conditions the CPD with deviations. Member Jim Dunlap suggested the applicant discuss their planned operations with Lee County in order to coordinate the redevelopment plans for Crescent Park with their proposed development.

**Attachments:**

1. Exhibit B 1: Master Concept Plan-Salty Crab CPD
2. Exhibit B 2: Elevations and Renderings

3. Staff Report
4. Application for Public Hearing
5. Application for Planned Development
6. Boundary Survey
7. Project Narrative
8. Deviations and Justifications with Elevations
9. Deviation 5 Sign Images
10. Floor Plans
11. Pedestrian and Parking Distances
12. Development Standards v1.0 CPD
13. COP Resolution10-15 - Estero Beach Holdings LLC (Nemos on the Beach)
14. COP 2012-0005 Expansion Administrative Approval COP2012-0005
15. Survey showing pre-Ian COP
16. Exterior Elevations - Signage Revision
17. Business Impact Estimate - Ordinance 25-12 - Salty Crab
18. NS Final Ordinance 25-12 with Exhibit A - Conditions

**Financial Impact:**

Unknown

**6. Alternative Action**

Approve with Conditions

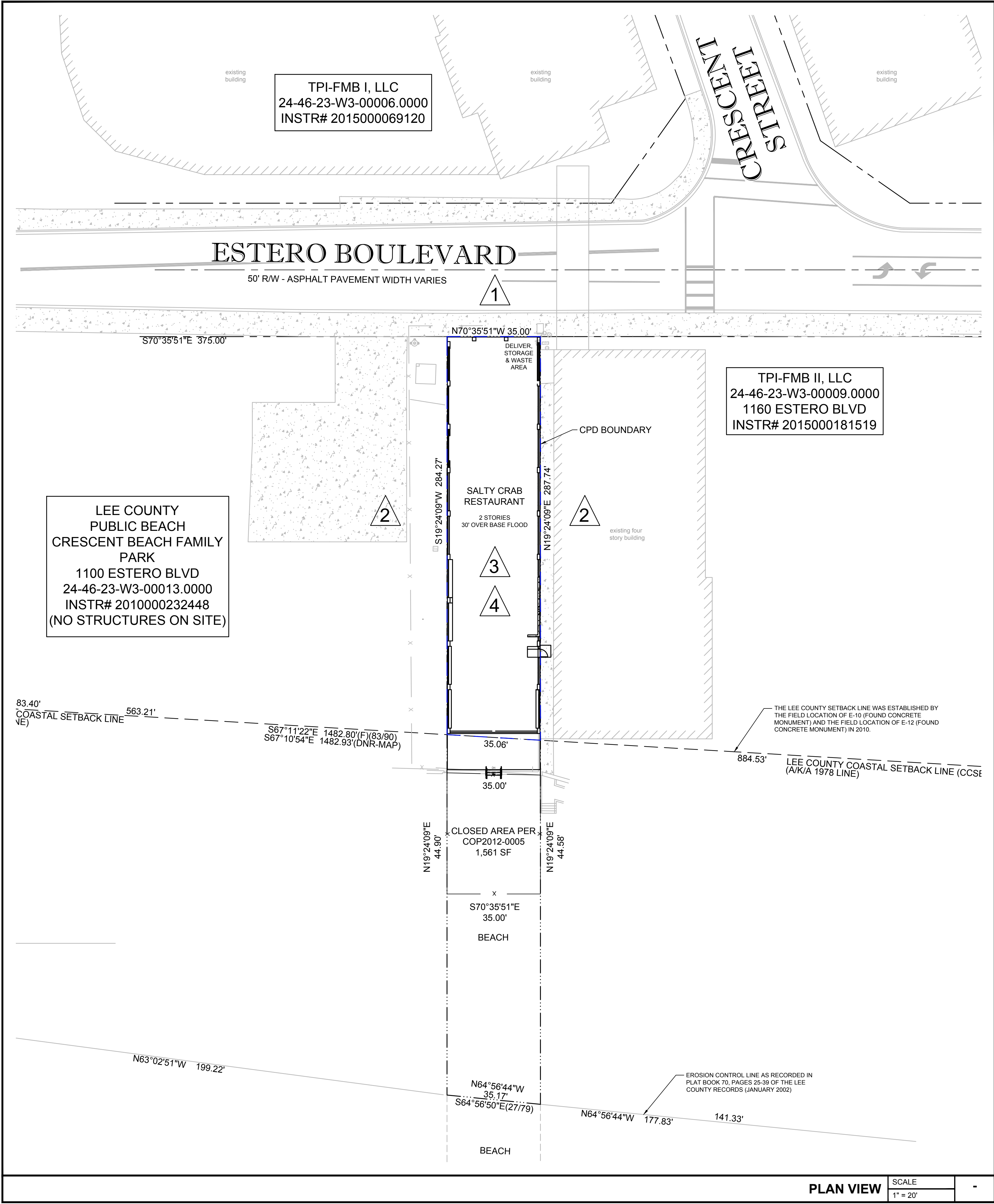
**7. Management Recommendations:**

**8. Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison  
 Judith Frankel, Principal Planner  
 Georgina Cid, Community Development Manager  
 Frankie Kropacek, Community Development Director  
 nancy stuparich, Town Attorney  
 Amy Baker, Town Clerk  
 William McKannay, Town Manager

Created/Initiated - 6/9/2025  
 Approved - 6/9/2025  
 Approved - 6/9/2025  
 Approved - 6/9/2025  
 Approved - 6/9/2025  
 Approved - 6/10/2025  
 Final Approval - 6/10/2025





LEGEND

- PROPERTY LINE
- EXISTING TO REMAIN
- EXISTING CONCRETE TO REMAIN
- SETBACK/BUFFER
- DEVIATION TRIANGLE

VICINITY MAP



AERIAL MAP



SITE DATA

|                        |                                                          |
|------------------------|----------------------------------------------------------|
| SITE ADDRESS:          | 1154 ESTERO BOULEVARD<br>FORT MYERS BEACH, FLORIDA 33931 |
| STRAP NUMBER:          | 24-46-23-W3-00011.0000                                   |
| FOLIO ID:              | 10127257                                                 |
| SITE AREA:             | 0.23 AC (10,010 SF)                                      |
| CPD AREA:              | 0.12 AC (5,256.88 SF)                                    |
| BUILDING AREA:         | 9,300 SF (MAXIMUM)                                       |
| FLOOR AREA RATIO:      | 1.77                                                     |
| EXISTING ZONING:       | DOWNTOWN                                                 |
| EXISTING LAND USE:     | VACANT LOT                                               |
| DEVELOPED USE:         | RESTAURANT                                               |
| BASE FLOOD ELEVATIONS: | FEMA: 19.60'<br>FDEP: 20.30'                             |
| MAX BUILDING HEIGHT:   | BFE + 30'<br>FEMA: 49.60'<br>FDEP: 50.30'                |

ARCHITECT/ ENGINEER OF RECORD

BDG ARCHITECTS  
400 N Ashley Dr Ste 600  
Tampa, Florida 33602  
P: 813.323.9233  
F: 813.323.9238  
www.bdgip.com



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SALTY CRAB CPD  
1154 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931

JOB NO. 230064

DATE: 04-14-25

DRAWN BY: IEG

SCALE: 1" = 20'

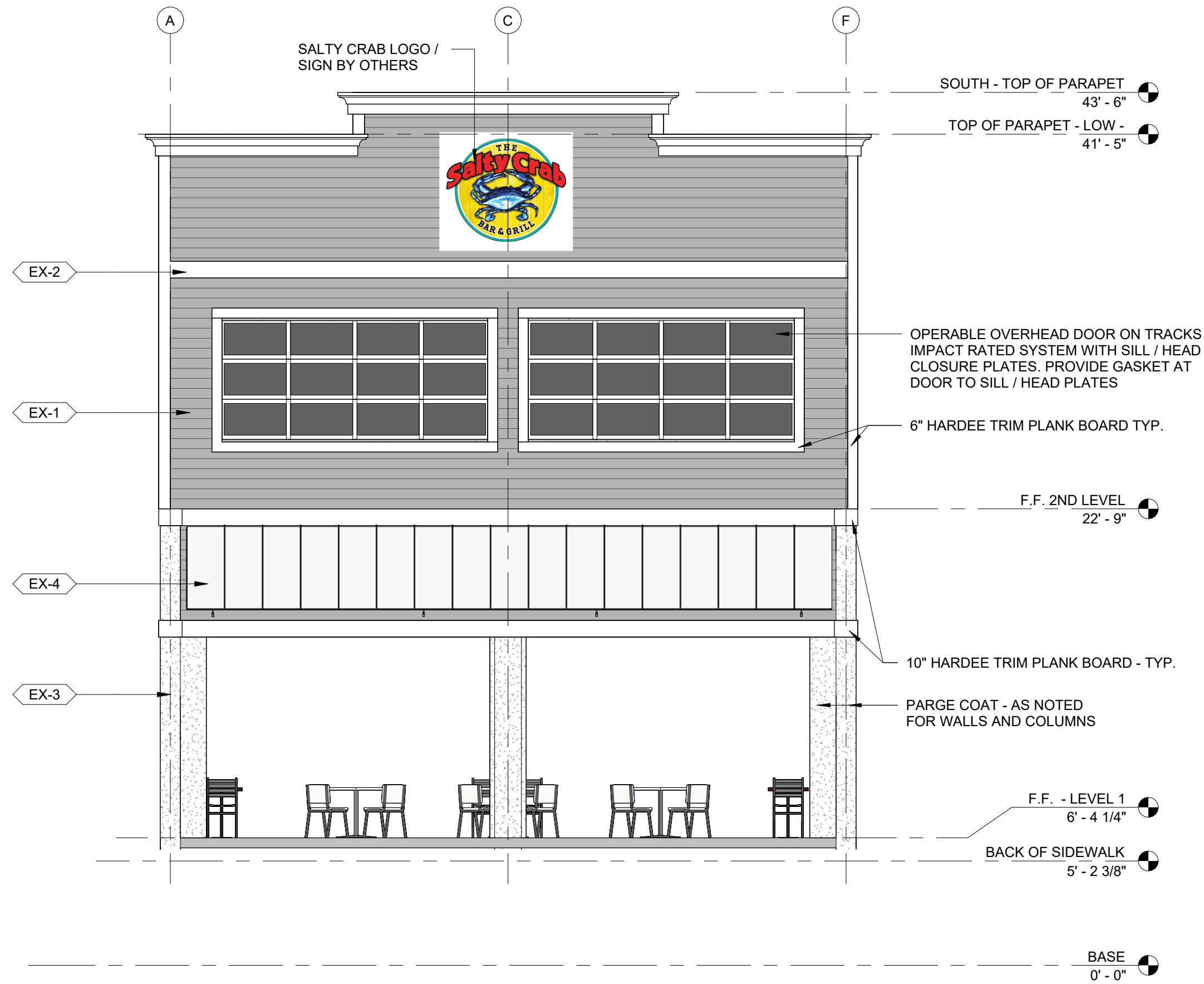
SHEET TITLE:  
MASTER CONCEPT  
PLAN

SHEET NUMBER:

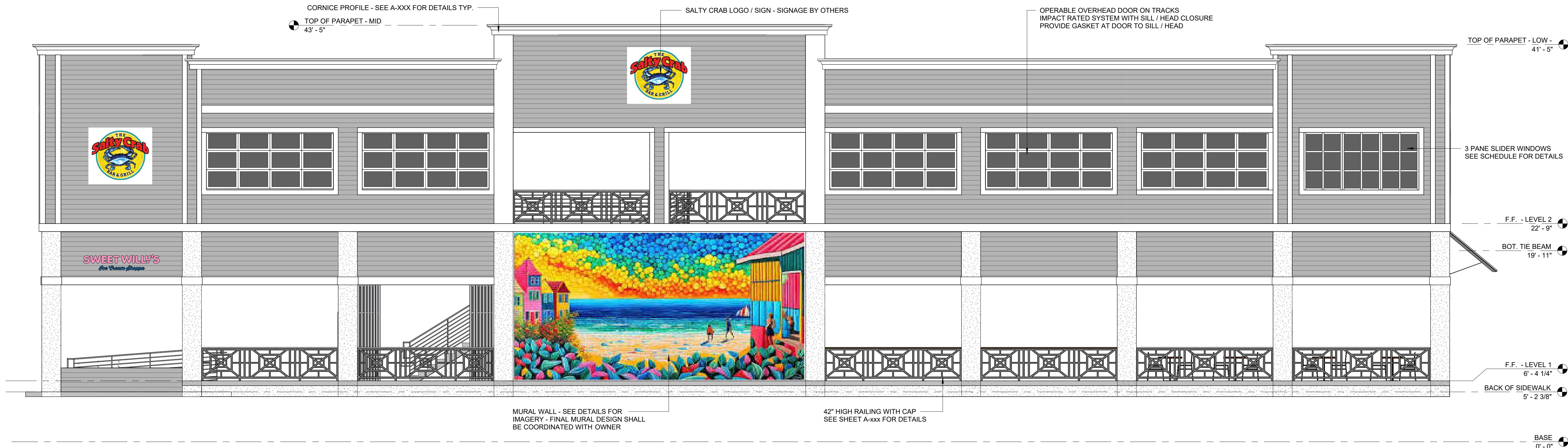
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| SCHEDULE - EXTERIOR FINISHES |              |                |                               |                                        |
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| MARK                         | MFR          | MODEL/SERIES   | DESCRIPTION                   | Color                                  |
| EX-1                         | James Hardie | Plank Siding - | 8 1/4" plank with 7" exposure | as selectedfrom full manuf. color list |
| EX-2                         | James Hardie | Trim planks    | 10" trim plank                | as selectedfrom full manuf. color list |
| EX-3                         | T.B.D.       | T.B.D.         | Parge Coat Application        | as selectedfrom full manuf. color list |
| EX-4                         | Mapes        | T.B.D.         | Aluminum                      | as selectedfrom full manuf. color list |



1 SOUTH ELEVATION  
3/16" = 1'-0"



2 WEST ELEVATION  
3/16" = 1'-0"

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A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

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SHEET TITLE

EXTERIOR ELEVATIONS

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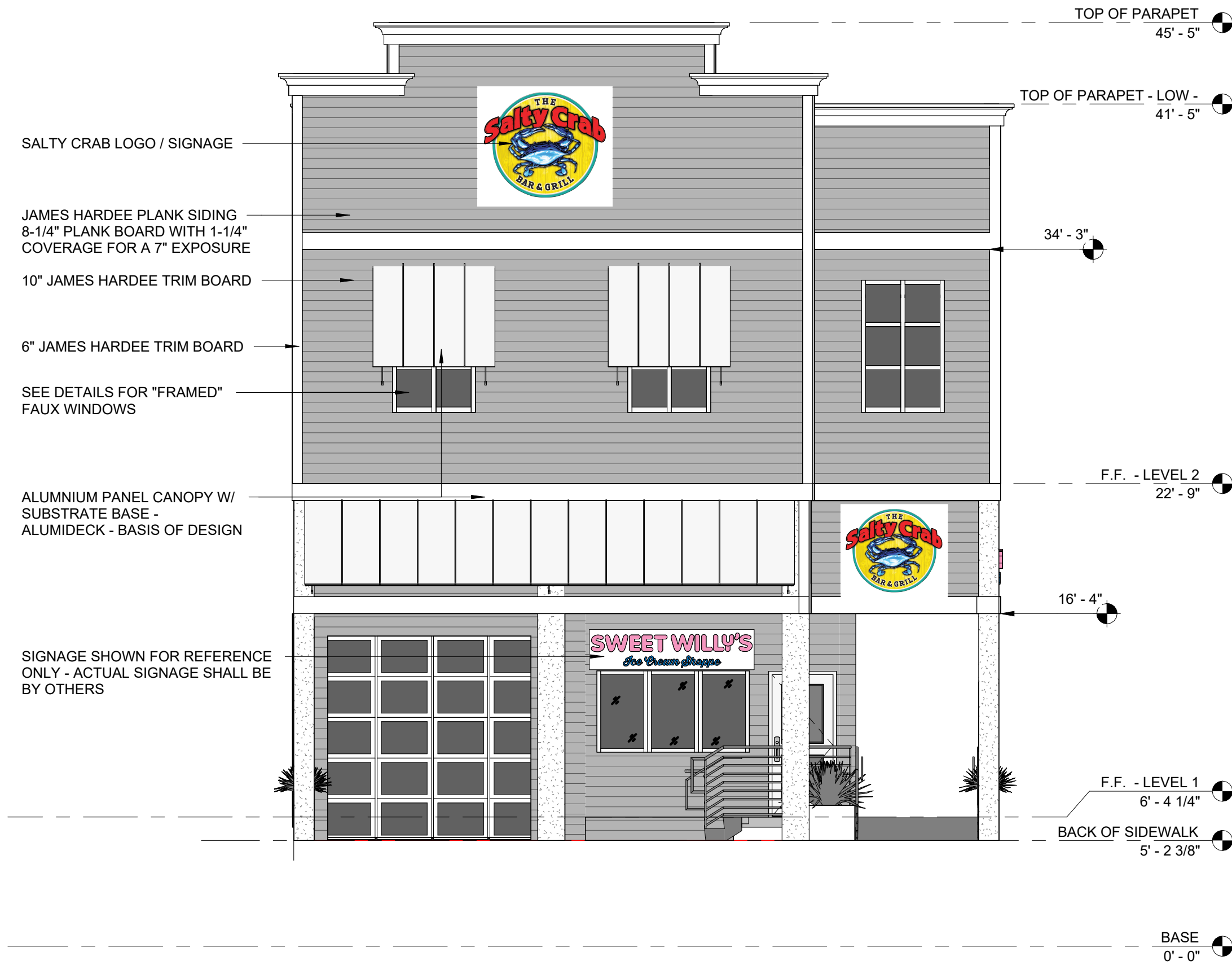
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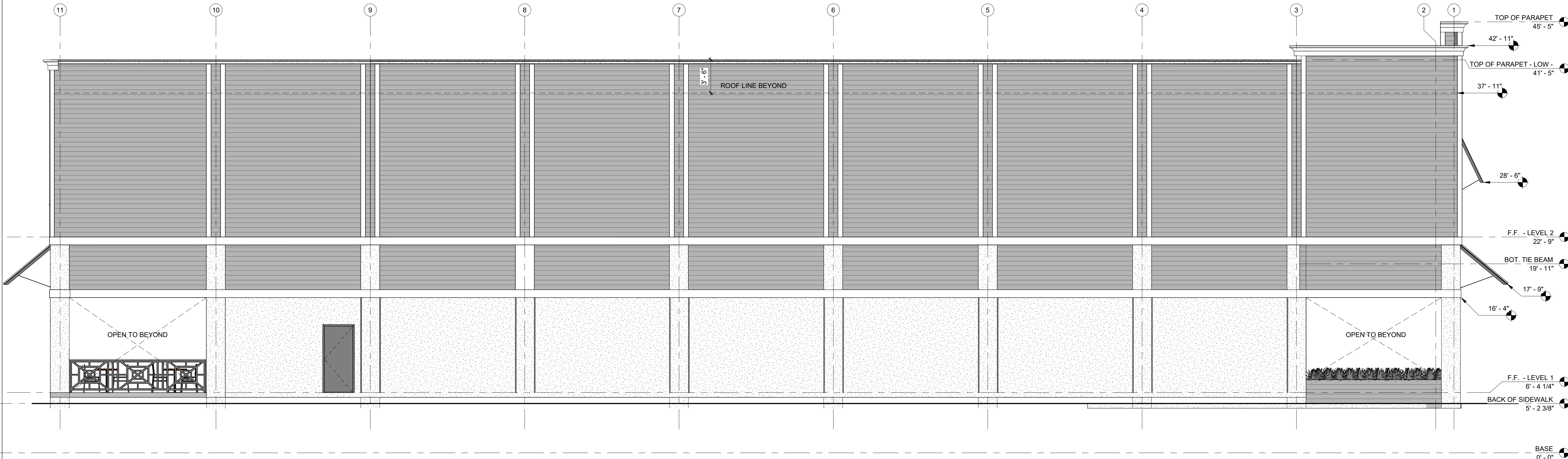
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KEYNOTES - EXTERIOR ELEVATIONS

| KEY | NOTES |
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1 NORTH ELEVATION  
3/16" = 1'-0"



2 EAST ELEVATION  
3/16" = 1'-0"

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SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

[illegible]

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### 3D REPRESENTATION

SHEET NUMBER

A900





# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development

**CASE NUMBER:** CPD20240136

**CASE NAME:** Salty Crab Restaurant Commercial Planned Development

**LPA**

**HEARING DATE:** May 13<sup>th</sup>, 2025

**1<sup>st</sup> TOWN COUNCIL**

**HEARING DATE:** June 2<sup>nd</sup>, 2025

**2nd TOWN COUNCIL**

**HEARING DATE:** June 16th, 2025

**STAFF**

**RECOMMENDATION:** APPROVAL WITH CONDITIONS

**PREPARED/  
SUBMITTED BY:** Judith Frankel, AICP

#### **I. APPLICATION SUMMARY**

Applicant/Owner: Clownfish Restaurant Holdings/ RVi Planning and Landscape Architecture

Request: Commercial Planned Development Rezoning of one parcel of 5,256.88 SF.

Subject property: See attached plan

Physical Address: 1154 Estero Boulevard

STRAP #s: 24-46-23-W3-00011.0000

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

|        |                                                      |
|--------|------------------------------------------------------|
| North: | Commercial Planned Development,<br>Hotel Resort      |
| South: | Environmental Critical (EC)<br>Beach and Gulf waters |
| East:  | Downtown (D)<br>Hotel Resort                         |
| West:  | Downtown (D)<br>County Park                          |

## **II. BACKGROUND AND ANALYSIS**

Background:

RVi Planning and Landscape Architecture, on behalf of Greg Powers and Clownfish Restaurant Holdings, LLC (Applicant) is requesting a rezoning from Downtown zoning to a Commercial Planned Development (CPD). This request is to rebuild the Salty Crab restaurant and an ice cream shop at 1154 Estero Boulevard ("Property") after the existing establishment was destroyed in Hurricane Ian. The proposed CPD includes 5,256.88 square feet of the property landward Lee County 1978 Coastal Construction Control Line (CCCL) and codification of the consumption on premises and outdoor seating area waterward of the CCCL.

Prior to Hurricane Ian, the site included a two-story structure with covered porch areas and beachside dining including 1,561 square feet of outdoor seating and consumption on premises (Resolution 10-15 and COP2012-0005) area seaward of the 1978 Lee County Coastal Control Line (CCCL).

The application was heard by the LPA at their May 13<sup>th</sup>, 2025 meeting. The LPA voted 7 to 0 to approve with conditions the CPD with deviations. Jim Dunlap suggested the applicant discuss their planned operations with Lee County in order to coordinate the redevelopment plans for Crescent Park with their proposed development.

Analysis:

F.A.R.

The development is subject to a maximum Floor Area Ratio (FAR). CPD are subject to the regulation of the CR zoning. Per LDC Section 34-645 Table 34-3 in the Commercial Resort (CR) District the permitted FAR is 1.2. Although the site is in the Downtown District with an allowable FAR of up to 1.8 in certain locations. Here is the breakdown of the *gross floor area* request:

- The lot landward of the CCCL is 5,256.88
- The proposed footprint of the building is 5,156 square feet
- The total floor area is a maximum of 9,300 square feet combining the two stories

- The FAR proposed is 1.77

The district allows for floor area very similar to the requested, allowing up to 1.8 and removing the dead areas show a usable space in the ballpark of the 1.2 FAR for the district and consistent with the Downtown District's 1.4 FAR. The Future Land Use designation for this site in the Comprehensive Plan is Pedestrian Commercial allows up to a 2.5 FAR. The requested FAR is less than the maximum and is found to be compliant with the Comprehensive Plan.

#### Height

This application does not request additional height or stories. The permitted height in the CR district at this location is a maximum of 30 feet above base flood elevation. The FEMA BFE+1 at this location is 19'6" feet and the FDEP LHSM is 20'3" feet. The proposed structure will meet this requirement. The permitted stories at this location in the Commercial Resort District a building may be no taller than three (3) stories. The proposed building is two stories, which will meet this requirement.

#### Parking

LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 64 spaces or a 100% deviation.

The property is a non-conforming lot that was platted in the 1950s by Lee County, prior to the current regulations were enacted. The site operated as a restaurant successfully for decades with no onsite parking being provided. The applicant is requesting to allow a similar restaurant to be rebuilt. It is in the FLU category of pedestrian commercial and the downtown zoning district both of which are intended to allow for uses in close proximity that can be reached through alternative transportation to individual vehicles. Additionally, several commercial and public parking lots are available near the site.

#### Schedule of Uses:

**SCHEDULE OF USES:** The requested schedule of uses for this CPD is limited to the following:

##### RETAIL

###### Principal:

- Bar or cocktail lounge
- Personal services
- Restaurant
- Retail store, small

###### Accessory:

- On-premises consumption of alcoholic beverages (per approval in COP2012-0005)
- ATM

##### OFFICE

###### Principal:

- Administrative offices
- Accessory:
- Commercial accessory use

Neighborhood Compatibility:

The general location is 500 feet south of Times Square on the Gulf side of Estero Boulevard in the “Core Area” of Fort Myers Beach, Florida. This is the most intensive and pedestrian-oriented node within the Town and serves as the main tourist and entertainment district. The northwestern boundary of the site abuts Crescent Beach Park, owned and operated by Lee County, and to the southeast abuts the Margaritaville Beach Resort beachside pool and building. It is less than 100 feet from the Estero Boulevard and Crescent Park signalized intersection and a few hundred feet south of a new bus pull off and stop that will be part of the SR 865 improvements to be completed by FDOT. The intent of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel and commercial properties that surround the subject property. In the general vicinity there are some of Fort Myers Beach’s most high intensity establishments. This location is appropriate for a restaurant and bar and is compatible with the surrounding land use as well as the Comprehensive Plan.

Infrastructure Impacts:

On-site access and circulation are unable to be accommodated at this location historically and as proposed to be redeveloped. The site is unable to accommodate a parking area as the width of the property would not allow for parking that would meet modern drive isle and parking space depths. Vehicular access to the site could be considered a safety concern at the busy signalized intersection of Estero Boulevard and Crescent Street.

Requested Deviations: Please see the Applicant’s submitted document titled Deviations and Justifications to review the applicant provided explanations.

1. Deviate from LDC §34-645 Table 34-2 for a STREET SETBACK that specifies in the CR zoning district no building or structure shall be placed closer than 10 feet (to Estero Boulevard); to allow a 0-foot street setback.

*The LDC requires the use of the standards of the CR zone, however this site is in the Downtown zone which permits a 0-foot setback. The proposed development will provide shade structures cantilevered from the front façade to shade the public sidewalk. This is a benefit to the public and would not be possible with a 10-foot setback.*

2. Deviate from LDC §34-645 Table 34-2 for SIDE SETBACKS that specifies in the CR zoning district no building or structure on a water-front property shall be placed closer than 20 feet as a side setback; to allow a 0-foot side setback on the western boundary and a 0-foot setback on the eastern boundary (abutting Margaritaville).

*The Downtown district requires build-to-lines that would make the proposed development setback of 0-feet in compliance. However, a CPD requires*

*the setbacks of the CR district which is inconsistent with the intent of the area.*

3. Deviate from LDC §34-645 Table 34-2 for FLOOR AREA RATIO that specifies in the CR zoning district a maximum of 1.2; to allow a 1.96 floor area ratio.

*The LDC requires the use of the standards of the CR zone, however this site is in the Downtown zone which permits a 1.8 FAR. The applicant requests that the LPA consider that by removing the loading/dry storage and circulation areas from the ground floor and counting all areas on the second story results in a floor area of 6,755, or an FAR of 1.29.*

4. Deviate from LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 64 spaces or a 100% deviation. The parking requirements for the proposed development are as follows:

|                  |                                                                                              |
|------------------|----------------------------------------------------------------------------------------------|
| REQUIRED PARKING | 8 SPACES PER 1,000 SF (including outdoor seating)                                            |
| BUILDING SIZE    | 10,312 SF + 1,561 SF (COP WITH OUTDOOR SEATING) / 1,000 SF =<br>95 SPACES x 0.67 = 64 spaces |

*The previous restaurant operated for many years without onsite parking being provided. The request is to allow a similar restaurant to be rebuilt after being destroyed by Hurricane Ian. It is in the pedestrian commercial area and the downtown district both of which are to allow for uses in close proximity that can be reached through alternative transportation to individual vehicles.*

5. Deviate from LDC §30-5.(a)(1)a.1. - Permitted signs in Commercial Districts that permits a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area; to allow five signs for the Salty Crab Bar and Grill with a combined sign area of 115 SF – a deviation of 83 SF (with the largest sign limited to 40.5 SF)

Please see the sign images attached to the Deviations and Justifications document provided by the applicant. *The proposed Salty Crab restaurant will house two businesses: The Salty Crab Bar and Grill and Sweet Willy's Ice Cream Shoppe. The Signage for Sweet Willy's complies with the code section with two signs of 16 square feet (SF) of sign area each for a total of 32 SF. No deviation is needed for the signs for this business. The deviation request is only for the Salty Crab. The Salty Crab is in a unique placement in the Downtown Core. It has facades and visibility on three sides: Estero Boulevard, Crescent Park, and the beach. The signs are of moderate size ranging from 14.2 SF to 20.1 SF each.*

#### Findings and Conclusions:

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

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

- (1) Whether there exists an error or ambiguity which must be corrected.
  - a. No errors or ambiguities exist.

- (2) Whether there exists changed or changing conditions which make approval of the request appropriate.
  - a. The site was destroyed due to Hurricane Ian.
- (3) The impact of a proposed change on the intent of this chapter.
  - a. The proposed change will not have any impact on the intent of this chapter (LDC). The CPD rezone will allow the redevelopment of a restaurant at this location.
- (4) The testimony of any applicant.
  - a. The professional experts retained by the applicant to support this petition will provide testimony at both the Local Planning Agency (LPA) hearing and the Town Council hearing.
- (5) The recommendation of staff and of the local planning agency.
- (6) The testimony of the public.
  - a. The public will be provided with the opportunity to present testimony to the LPA and Town Council.
- (7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
  - a. The request is consistent with the goals, objectives, policies, and intent, and densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
- (8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
  - a. The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.
- (9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.
  - a. The urban services exist in this location.
- (10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
  - a. The proposed redevelopment which is the portion of the property landward of the 1978 CCCL is located on a previously developed site which does not contain any environmentally critical areas or natural resources.
- (11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
  - a. The request is compatible with existing or known planned commercial, and civic uses adjacent to the subject redevelopment and will not cause damage, hazard, nuisance or other detriment to the commercial or civic property uses of Fort Myers Beach. The site abuts the Margaritaville resort and with zero lots lines will impact the view from several guest rooms on the northwest side of the abutting building.
- (12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
  - a. An undue burden on the transportation system is not anticipated.
- (13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

- (1) The Fort Myers Beach Comprehensive Plan.  
The proposed application complies with the Comprehensive Plan.
- (2) This chapter.



- The proposed uses comply with this chapter except in regards to the deviations.
- (3) Any other applicable town ordinances or codes.  
The proposed request complies with the town ordinances and codes, except in regard to the deviations.
- (4) For planned development rezonings, see § 34-216 of this chapter for additional findings

LDC Sec. 34-216(a)(2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

- a. The proposed use or mix of uses is appropriate at the subject location;  
Staff response: Restaurant use is appropriate in this zone and FLU category.
- b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.  
Staff response: The proposed shade structures over the public sidewalk benefit the public.
- c. All recommended special conditions are reasonably related to the impact on the public's interest created by or expected from the proposed development.  
Staff response: All recommended conditions are related to the public's interest.
- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:  
Policy 4-C-4 – The proposed building height is consistent with the Comprehensive Plan and the LDC.  
Policy 7-J-2 – Increased traffic impacts are not anticipated as the site's prior use and intensity will remain similar.

LDC sec. 34-216(a)(4) requires that the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:

- a. Each item enhances the achievement of the objectives of the planned development; and
  - a. Staff concurs
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
  - a. Staff concurs. LPA should consider whether rigid compliance to the 1.2 FAR limit is necessary to protect public policy in this case.
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
  - a. Staff concurs
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
  - a. Staff concurs
- e. If the local planning agency concludes that the application omits necessary deviations, it may include the necessary deviations in its recommendation without an additional hearing.

### **III. RECOMMENDATIONS**

Staff finds that the CPD with deviations does meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends **Approval with conditions** of CPD20240136, a request for a CPD with deviations. If the Town's LPA recommends approval for the variance, staff recommend the following conditions of approval.

#### Recommended Conditions of Approval

1. A photometric plan must be provided with the Development Order application to determine compliance with turtle-friendly lighting restrictions in LDC Sec. 34-1834.
2. A plan for mitigating impacts of the furniture in the COP area on turtle nesting habitats will be required.
3. Applicant will provide cantilevered shade structure(s) from the Estero Boulevard façade to shade the public sidewalk that abuts the property.
4. Final architectural design must be generally consistent with renderings provided in addition to the Master Concept Plan.
5. The applicant must apply for and receive all federal, state and local permits and approvals required for the construction of all proposed structures. This condition includes FEMA floodplain regulation.

PROJECT NUMBER:

DATE:



# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 1154 Estero Blvd, Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-W3-00011.0000

Applicant: Clownfish Restaurant Holdings, LLC Phone: 813-817-6190

Contact Name: Greg Powers Phone: 727-210-0987

Email: keith.diaz@purepm.com Fax: \_\_\_\_\_

Current Zoning District: Downtown (D) and Environmentally Critical (EC)

Future Land Use Map (FLUM) Category: Pedestrian Commercial and Recreation

FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☒ NO

#### ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: \_\_\_\_\_

#### SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PROJECT NUMBER:

DATE:

### PART I – General Information

A. Applicant\*: Clownfish Restaurant Holdings, LLC Phone: 813-817-6190

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

Applicant Mailing Address: 11201 Corporate Circle North Suite 100, St. Petersburg, FL 33716

Email: keith.diaz@purepm.com Fax: \_\_\_\_\_

Contact Name: Greg Powers Phone: 727.210.0987

B. Relationship of Applicant to subject property:

- |                                                     |                                                         |                                              |
|-----------------------------------------------------|---------------------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Owner*                     | <input type="checkbox"/> Land Trust*                    | <input type="checkbox"/> Partnership*        |
| <input checked="" type="checkbox"/> Corporation*    | <input type="checkbox"/> Association*                   | <input type="checkbox"/> Condominium*        |
| <input type="checkbox"/> Subdivision*               | <input type="checkbox"/> Timeshare Condo*               | <input type="checkbox"/> Contract Purchaser* |
| <input type="checkbox"/> Authorized Representative* | <input type="checkbox"/> Other* (please indicate) _____ |                                              |

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

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

Name: Fred Drovdlc, AICP Phone: 239-318-6707

Address: RVI Planning, 1514 Broadway #201, Fort Myers, FL 34195

Email: fdrovdlc@rviplanning.com Fax: 239-989-3370

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

Name: Keith Diaz, PE Phone: 813-817-6190

Address: 2926 Richmond St. Philadelphia, PA 19134

Email: keith.diaz@purepm.com Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

PROJECT NUMBER:

DATE:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

## PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception

☒ Variance from LDC Section 34 - 2020

☐ Conventional Rezoning from \_\_\_\_\_ to \_\_\_\_\_

☐ Planned Development

☐ Rezoning from \_\_\_\_\_ to ☐ Commercial PD ☐ Residential PD

☐ Amendment. List the project number: \_\_\_\_\_

☐ Extension/reinstatement of Master Concept Plan. List project number: \_\_\_\_\_

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## PART III – Waivers N/A

Please indicate any specific submittal items that have been waived by the Director for the request.  
Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: \_\_\_\_\_

Description: \_\_\_\_\_

Code Section: \_\_\_\_\_

Description: \_\_\_\_\_

Code Section: \_\_\_\_\_

PROJECT NUMBER:

DATE:

Description: \_\_\_\_\_

#### PART IV – Property Ownership

☐ Single Owner (individual or husband and wife)

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email \_\_\_\_\_

Fax: \_\_\_\_\_

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

☒ Complete Disclosure of Interest Form (see below)

☐ Attach list of property owners as Exhibit 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

#### DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 24-46-23-W3-00011.0000

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

PROJECT NUMBER:

DATE:

Name, Address and Office

Clownfish Restaurant Holdings, LLC

Percentage of Stock

Greg Powers

100

11201 CORPORATE CIRCLE NORTH, SUITE #120

ST. PETERSBURG, FL 33716

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership



PROJECT NUMBER:

DATE:

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Date of Contract:

\_\_\_\_\_

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name

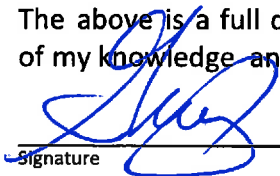
Address

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature



Greg Powers

Printed Name

**SIGN HERE**

PROJECT NUMBER:

DATE:

**STATE OF FLORIDA)  
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

(SEAL)

\_\_\_\_\_  
Notary Printed Name

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

### **PART V – Property Information**

**A. Legal Description:**

STRAP: 24-46-23-W3-00011.0000

Property Address: 1154 Estero Blvd, Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 5-1.

☒ Yes. Property identified in subdivision: Crescent Park Addition Subdivision

Book: 4 Page: 46 Unit: \_\_\_\_\_ Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_

**B. Boundary Survey:**

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

**C. Property Dimensions:**

Width (please provide an average width if irregular in shape) 35.0+/- feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 284.27 feet

Frontage on street: 35' Estero feet. Frontage on waterbody: 35' feet

Total land area: 10,356 ☐ acres ☒ square feet

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

The Property is generally located south of Crescent Beach Family Park and 500-feet  
from the San Carlos Blvd / Estero Blvd intersection.

☒ Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.

☒ Attach a map showing the surrounding property owners as Exhibit 5-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Marina

☐ Mixed Residential

☒ Recreation

☐ Boulevard

☐ Wetlands

☒ Pedestrian Commercial

☐ Platted Overlay

H. Zoning (see official Zoning Map):

☐ RS (Residential Single-family)

☐ CF (Community Facilities)

☐ RC (Residential Conservation)

☐ IN (Institutional)

PROJECT NUMBER:

DATE:

- |                                                                |                                                                   |
|----------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> RM (Residential Multifamily)          | <input type="checkbox"/> BB (Bay Beach)                           |
| <input type="checkbox"/> RPD (Residential Planned Development) | <input checked="" type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marina)                | <input checked="" type="checkbox"/> DOWNTOWN                      |
| <input type="checkbox"/> CO (Commercial Office)                | <input type="checkbox"/> SANTOS                                   |
| <input type="checkbox"/> CB (Commercial Boulevard)             | <input type="checkbox"/> VILLAGE                                  |
| <input type="checkbox"/> CR (Commercial Resort)                | <input type="checkbox"/> SANTINI                                  |
| <input type="checkbox"/> CPD (Commercial Planned Development)  |                                                                   |

## PART VI

### AFFIDAVIT

#### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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

PROJECT NUMBER:

DATE:

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

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

  
Signature of owner or authorized agent

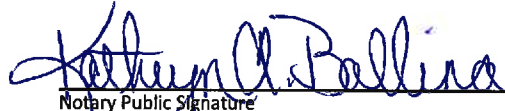
5/2/24  
Date

STATE OF FLORIDA)

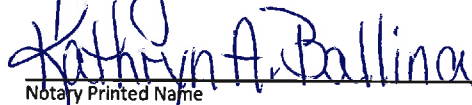
COUNTY OF ~~LEE~~

Pinellas

Subscribed and sworn to (or affirmed) before me this 2 day of May,  
2024, by Greg Powers

  
Notary Public Signature

(SEAL)

  
Notary Printed Name

Personally Known X or Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_ My Commission Expires: December 3, 2027



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-D

### Additional Required Information for a Planned Development Application

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

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

|                                                                |
|----------------------------------------------------------------|
| <b>Project Name:</b> Salty Crab CPD                            |
| <b>Authorized Applicant:</b> Clownfish Restaurant Holdings LLC |
| <b>STRAP Number(s):</b> 24-46-23-W3-00011.0000                 |
|                                                                |

|                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|
| <b>Current Property Status:</b> Vacant (destroyed restaurant)                                                           |
| <b>Current Zoning:</b> Downtown (D) and Environmentally Critical (EC)                                                   |
| <b>Future Land Use Map (FLUM) Category:</b> Pedestrian Commercial and Recreation                                        |
| <b>Platted Overlay?</b> <input type="checkbox"/> yes, <input checked="" type="checkbox"/> no <b>FLUM Density Range:</b> |

**Requested Action:**

|                                     |                                                          |
|-------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/>            | DRI (with rezoning)                                      |
| <input checked="" type="checkbox"/> | Planned Development (also check below)                   |
| <input checked="" type="checkbox"/> | Rezoning from: Downtown to: CPD                          |
| <input type="checkbox"/>            | Amendment to Master Concept Plan/attendant documentation |

## PART I Narrative Statements

### A. Comprehensive Plan Amendments (check one)

|                                     |                                                                                                                                                                                   |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.                                                                             |
| <input type="checkbox"/>            | The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect) |
|                                     |                                                                                                                                                                                   |
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### B. Phasing of Construction

|                                     |                                                                                              |
|-------------------------------------|----------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | The development is to be constructed in a single phase.                                      |
| <input type="checkbox"/>            | The development is to be constructed in phases as follows: (describe proposed phasing below) |
|                                     |                                                                                              |
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|                                     |                                                                                              |





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

#### D. Design Standards Compliance

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

[illegible]

### E. Decision-making Compliance

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

|                                                     |
|-----------------------------------------------------|
| Request Narrative Comprehensive Plan Compliance-CPD |
|                                                     |
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### F. Schedule of deviations and written justification

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

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

[illegible]

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

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

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

## Guide to Filing Supplement PH-D for Planned Developments

**Amendments** Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

**All other planned developments** All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

**Case Number** will be inserted by Community Development staff.

**Project Name** must be the same as the name used on the Request for Public Hearing form.

**Authorized Applicant** must be the same as on the Request for Public Hearing form.

**STRAP numbers** must be the same as on the Request for Public Hearing form.

**Current status of property** must be the same as on the Request for Public Hearing form.

**Requested Action:** Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

### Part 1 Narrative Statements:

#### Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

### **Construction Phasing**

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

### **Comprehensive Plan Compliance**

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

### **Design Standards Compliance**

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

### **Decision-making compliance**

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

### **Schedule of deviations and written justification**

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

### **Administrative amendments**

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

## **Part 2 Submittal Requirements**

**Public Hearing Application Form.** Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

**Master Concept Plan.** The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

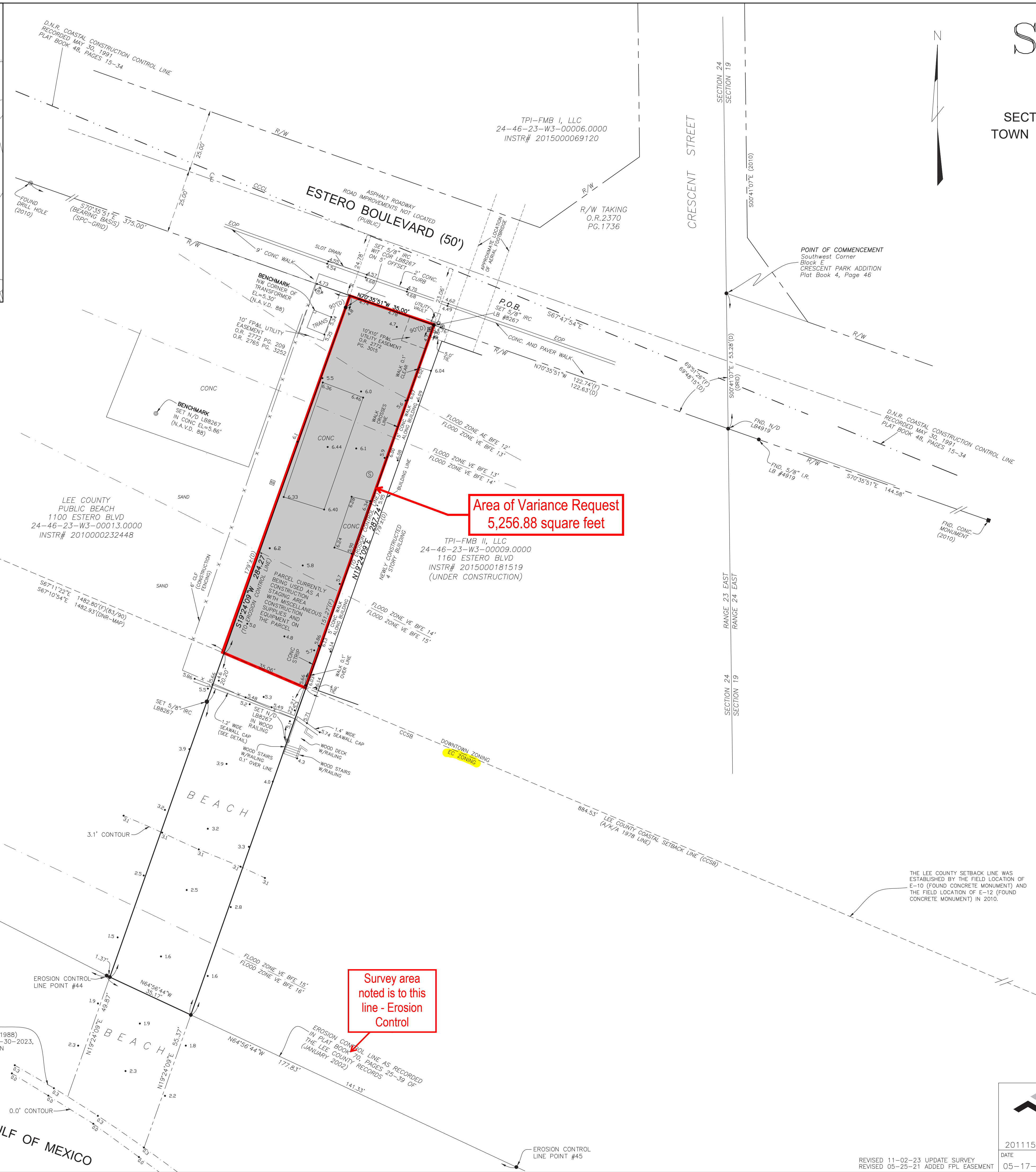
- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

**Traffic Impact Statement.** A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

**Architectural Elevations.** Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

**Schedule of uses.** A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.





DESCRIPTION:  
AS RECORDED IN INSTRUMENT #2015000177606:

FROM THE SW CORNER OF BLOCK E, CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON THE EAST LINE OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, RUN ALONG SAID LINE FOR 53.28 FEET TO THE SOUTH LINE OF EXISTING COUNTY ROAD (ESTERO BLVD.) RIGHT OF WAY 50 FEET WIDE, THENCE RUN NORTHWESTERLY AT AN INCLUDED ANGLE OF 69-48' 15" WITH SAID SECTION LINE, ALONG THE SOUTH SIDE OF SAID RIGHT-OF-WAY FOR 122.63 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUE ALONG THE SOUTH LINE OF SAID RIGHT-OF-WAY FOR A DISTANCE OF 35 FEET; THENCE RUN SOUTHWESTERLY PERPENDICULAR TO SAID ROAD A DISTANCE OF 179 FEET, MORE OR LESS, TO THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY ALONG SAID GULF OF MEXICO TO A POINT PERPENDICULAR TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED, BEING APPROXIMATELY 35 FEET, MORE OR LESS, THENCE RUN NORTHERLY AND PERPENDICULAR WITH THE RIGHT-OF-WAY OF THE EXISTING COUNTY ROAD 179 FEET, MORE OR LESS, TO THE POINT OF BEGINNING,

BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING NGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK UNLESS NOTED OTHERWISE.

STATE PLANE COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE AS SHOWN AND NOTED HEREON HOLDING NGS CONTROL POINT "BOOB-2".

PARCEL LIES IN FLOOD ZONES AE AND VE, WITH BASE FLOOD ELEVATIONS OF 12', 13', 14', 15, AND 16' (NAVD 1988) AS SHOWN. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0554C, COMMUNITY NAME: TOWN OF FORT MYER'S BEACH AND COMMUNITY NUMBER: 120673 WITH EFFECTIVE DATE AND INDEX DATE BEING 11-17-2022. THAT PORTION OF THE PARCEL LAYING WITHIN FLOOD ZONE AE IS WITHIN A FEMA DESIGNATED LIMMA AREA.

THE FEMA FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE  
FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING  
REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID  
FLOOD INFORMATION.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

WETLANDS, IF ANY, WERE NOT LOCATED.

THIS PLAT PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

THE MEAN HIGH WATER LINE WAS FIELD LOCATED ON MAY 12, 2021 AND WAS ESTABLISHED BY FIELD LOCATING THE CONTOUR ELEVATION OF 0.26' (N.A.V.D. OF 1988) PER APPROVAL LETTER RECEIVED BY DEP ON NOVEMBER 19, 2012. THIS LINE IS SHOWN FOR REFERENCE ONLY AS THE EROSION CONTROL LINE IS UNDERSTOOD TO BE THE WATERWARD BOUNDARY OF THIS SITE.

THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE AS SHOWN ON MAPS PREPARED FOR  
STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES FILE NUMBER 617-0275 DATED MARCH  
1978 IS RECORDED IN PLAT BOOK 31 AT PAGES 1-16.

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY. OWNERSHIP TO THE EROSION CONTROL LINE NEEDS TO BE CONFIRMED WITH STATE LANDS.

PARCEL CONTAINS 0.23 ACRES (10,010 SQUARE FEET), MORE OR LESS. AREA WAS CALCULATED FROM THE RIGHT-OF-WAY OF ESTERO BOULEVARD TO THE EROSION CONTROL LINE.

ADDRESS: 1154 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 11-02-2023

\*NOT VALID WITHOUT THE SIGNATURE AND  
THE ORIGINAL RAISED SEAL OF A FLORIDA  
LICENSED SURVEYOR AND MAPPER.  
HALEY WARD, INC.

*Stephen J. Shawles*

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STEPHEN J. SHAWLES II, P.S.M., NO. LS6419  
PROFESSIONAL SURVEYOR & MAPPER  
STATE OF FLORIDA

- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.



|                                                                |             |          |          |        |                  |
|----------------------------------------------------------------|-------------|----------|----------|--------|------------------|
| Engineering   Environmental   Surveying                        |             |          |          |        |                  |
| 13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919            |             |          |          |        |                  |
| PH (239) 481-1337                                              |             |          |          |        |                  |
| 2011159.001SR.DWG                                              |             |          |          |        |                  |
| FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EDB32664 & LDB262 |             |          |          |        |                  |
| DATE                                                           | PROJECT NO. | DRAWN BY | SCALE    | SHEET  | FILE NO. (S-T-R) |
| 05-17-21                                                       | 11159.001   | SFS      | 1" = 20' | 1 OF 1 | 24-46-23         |





## **SALTY CRAB CPD**

### **Request Narrative & Comprehensive Plan Compliance**

#### **I. Request**

On behalf of Greg Powers and Clownfish Restaurant Holdings, LLC (“Applicant”) RVI Planning and Landscape Architecture is pleased to submit the enclosed petition for a Commercial Planned Development (CPD) zoning from Downtown to CPD for the rebuild of the Salty Crab restaurant at 1154 Estero Boulevard (“Property”) after the existing establishment was destroyed in Hurricane Ian.

The CPD includes 5,256.88 square feet of the property landward Lee County 1978 Coastal Construction Control Line (CCCL)<sup>1</sup> only and codification of the consumption on premises and outdoor seating area waterward of the CCCL.

#### **II. Property History & Existing Conditions**

Originally constructed in the 1980’s, the primary use of the building has been commercial and well-known in the community as The Salty Crab Bar & Grill. The original building was a mix of one- and two-story structures and covered patios and walkways. There was no onsite parking provided and loading was completed in the beach access and parking area for Crescent Park abutting the property.

Prior to Hurricane Ian, the Property included a two-story structure with covered porch areas and beachside dining including 1,561 square feet of outdoor seating and consumption on premises (Resolution 10-15 and COP2012-0005) area seaward of the seawall and the 1978 Lee County Coastal Control Line (CCCL). An aerial exhibit depicting the project location is attached to this application as Exhibit 5-3 – Areal Location Maps. The exhibit also includes before and after pictures of the property to identify the original structure.

The general location is 500 feet south of Times Square on the Gulf side of Estero Boulevard in the Town of Fort Myers Beach, Florida. This is the most intensive and pedestrian-oriented node within the Town and serves as the main tourist and entertainment district. The northern boundary of the site abuts Crescent Beach Family Park’s Public Parking lot, owned and operated by Lee County, and to the south abuts the Margaritaville Beach Resort beachside pool and building. It is less than 100 feet from the Estero Boulevard and Crescent Park signalized intersection and a few hundred feet south of a new bus pull off and stop that will be part of the SR 865 improvements to be completed by FDOT. See Exhibits 5-3 FDOT SR865 for details.

The regulatory environment for the property is that it has two zoning classifications - Downtown (D) and Environmentally Critical (EC). The Downtown district area landward of the CCCL occupies 5,256.88 square feet. The future land use categories (FLUC) of the property are Pedestrian Commercial and Recreation. No changes are proposed. Like the zoning, the Pedestrian Commercial portion of the site will be redeveloped with the restaurant structure while the outdoor seating and COP area will be in the Recreation FLUC as has been historically documented. As indicated by the name of the underlying future land use, the property is sited within a dynamic, tourist-oriented area of the Town intended for pedestrian oriented, commercial uses – precisely what is intended by the proposed redevelopment and associated parking variance.

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<sup>1</sup> Also referred to as the Coastal Construction Setback Line (CCSL) on the survey and in common practice.

The lot was originally pre-platted as part of the Crescent Park Subdivision formed in the 1950's (see Exhibit 5-1 Plat-PB4-PG46). According to the boundary survey the site has an area of 10,010 square feet, or (0.23 acres), with an average depth of 286 feet and 35 feet wide. Per LDC 34-3277(1) the lot does not meet the minimum width for those created prior to 1962 which is 40 feet and can therefore be considered a legally nonconforming lot.

### III. Surrounding Land Uses

The underlying future land use category ("FLU") is Pedestrian Commercial landward of the 1978 Lee County CCCL and Recreation seaward of the 1978 Lee County CCCL. The property is zoned Downtown landward of the CCCL and Environmentally Critical seaward of the 1978 Lee County CCCL. Likewise, all surrounding properties are in the Downtown zoning district or CPD, and the Pedestrian Commercial future land use category.

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel and commercial properties that surround the subject property. In the general vicinity are some of Fort Myers Beach's most high intensity establishments in Times Square including abutting the Margaritaville Resort.

**Table 1 – Surrounding Land Uses**

|              | <b>Future Land Use</b> | <b>Zoning</b>              | <b>Existing Land Uses</b> |
|--------------|------------------------|----------------------------|---------------------------|
| <b>North</b> | Pedestrian Commercial  | CPD                        | Margaritaville            |
| <b>South</b> | Recreation             | Environmental Conservation | Gulf of Mexico            |
| <b>West</b>  | Pedestrian Commercial  | Downtown                   | Crescent Park             |
| <b>East</b>  | Pedestrian Commercial  | Downtown                   | Margaritaville            |

### IV. Proposed Development

The site's historic use and location provide for an ideal rebuild of the Salty Crab restaurant. Situated in an area of town that encourages pedestrian walkability and has substantial public parking within ¼ mile walking distance (see Exhibit 5-3 Walkability and Parking Map), the site has been proven to successfully operate without designated parking spaces.

As a property in the Downtown district, the Town's Land Development Code implies this area is intended to create a quality and character for the center of pedestrian-oriented commercial activities within the town. In addition, the supporting Pedestrian Commercial future land use promotes the park-once concept and is primarily a commercial district situated around activity centers such as Times Square.

The proposed restaurant, a two-story structure with outdoor seating, will be landward of the 1978 CCCL in the Downtown district area only. In addition to the 2-story building there will be a 1,561 square foot outdoor seating and consumption on premise (COP) area seaward of the existing seawall and the 1978 CCCL consistent with the use and area that was part of the former structure as demonstrated in Exhibit 5-3 - Pre-Ian Survey COP Location Area. The lot is an undersized legally non-conforming lot that is only 35 feet wide. Because of the size of the lot and location surrounded by Lee County Crescent Park to the west and Margaritaville to the east there is limited room for a structure. The development program to rebuild the restaurant requires a variance because there historically been no parking, and no room to add such a feature, and similarly,

limited floor area requiring relief from the floor area ratio permitted, yet complying with height and stories permitted in the Comprehensive Plan.

### HEIGHT, STORIES and FAR

Per the LDC requirements for height, stories and floor-to-area ratio (FAR) the project is located on the south side of Estero Boulevard adjacent to the Times Square area in the Downtown district fronting on Estero Boulevard. The CPD zoning district applies the development standards of the Commercial Resort District per LDC §34-645 Table 34-3.

#### **Height**

The permitted height in the Commercial Resort District at this location is a maximum of 30 feet above base flood elevation. The FEMA BFE+1 at this location is 19'6" feet and the FDEP LHSM is 20'3" feet. The proposed structure will meet this requirement.

#### **Stories**

The permitted stories at this location in the Commercial Resort District a building may be no taller than three (3) stories. The proposed building is two stories, which will meet this requirement.

#### **FAR**

As defined in the LDC Section 34-633, floor area ratio is the gross floor area of all buildings on a site divided by the site's lot area. Gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).

Per LDC Section 34-645 Table 34-3 in the Commercial Resort (CR) District the permitted FAR is 1.2. Although it is in the Downtown District with an allowable FAR of up to 1.8 in certain locations. Here is the breakdown of the *gross floor area* request:

- The lot landward of the CCCL is 5,256.88
- The proposed footprint of the building is 5,156 square feet
- The total floor area is a maximum of 9,300 square feet combining the two stories
- The FAR proposed is 1.77

#### ***Net Request***

The ground floor building plan, or the area below base flood, includes 1,285 square feet of loading area and dry storage. It also includes 1,260 square feet of area of circulation and open areas used for elevators, stairwells, and customer circulation areas – a total of 2,545 square feet.

Removing the loading/dry storage and circulation areas from the ground floor and counting all areas on the second story results in a floor area of 6,755, or an FAR of 1.29.

#### ***Justification***

The former restaurant occupied less floor area than the proposed structure because it was a single-story structure with a small second floor that only occupied a portion of the available area. The structure was built long before modern FEMA flood regulations and was able to have most if the operation and seating at ground level. The land is in the VE FEMA flood zone which highly restricts the infrastructure that can be rebuilt at grade.

Because of the limitations of uses on the first floor, the second floor is the true useful space and therefore expanded from the original. The flood elevation at this site is 20 feet at FDEP design flood elevation.

The new restaurant will increase the area on the second floor to a full level while the at grade floor will be fully covered and enclosed and considered floor area. However, the first-floor uses, because of the limitations of uses and required elevation, is occupied by a significant amount of dead space. The ground floor building plan includes 1,285 square feet of loading area and dry storage. It also includes 1,260 square feet of area of circulation and open areas used for elevators, stairwells, and customer circulation areas – a total of 2,545 square feet. Removing the loading/dry storage and circulation areas from the ground floor only results in a floor area of 6,755, or an FAR of 1.29.

Rigid compliance to the 1.2 FAR limit is not necessary to protect public policy. The district allows for floor area very similar to the requested, allowing up to 1.8 and removing the dead areas show a useable space in the ballpark of the 1.2 FAR for the district and consistent with the Downtown District's 1.4 FAR.

The lot is limited in size with no options to create room for dead spaces such as storage to be outside of an enclosed first floor area. The lot was originally pre-platted as part of the Crescent Park Subdivision formed in the 1950's (see Exhibit 5-1 Plat-PB4-PG46). According to the boundary survey the site has an area of 10,010 square feet, or (0.23 acres), with an average depth of 286 feet and 35 feet wide. Per LDC 34-3277(1) the lot does not meet the minimum width for those created prior to 1962 which is 40 feet and can therefore be considered a legally nonconforming lot.

Also, the need for the deviation is due to Hurricane Ian destroying the former structure as the new structure must adhere to flood regulations making the second floor essential to be full-sized which enlarges the floor area of the total structure. The second floor now must provide room for a kitchen, restrooms, bar and serving areas and seating where most of the backhouse functions were on the ground floor formerly.

Because of a business at this location needing to place most functional aspects of a commercial business, particularly a restaurant, on the second floor, removing ground floor uses that serve functions such as circulation and dead storage and dumpster and delivery areas is the minimum variance. Strict adherence to the policy of 1.2 FAR would create a limited second floor, which is where the primary functions of a restaurant must be located, while counting storage and dead space on the first floor. This would greatly limit the overall functionality and viability of rebuilding a restaurant at this location.

#### INGRESS/EGRESS

Access and circulation are unable to be accommodated at this location historically and as redeveloped.

#### PARKING

LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 58 spaces or a 100% deviation. The parking requirements for the proposed development are as follows:

##### ***REQUIRED PARKING***

- 8 SPACES PER 1,000 SF (including outdoor seating)

### ***BUILDING SIZE***

- $9,300 \text{ SF} + 1,561 \text{ SF (COP WITH OUTDOOR SEATING)} / 1,000 \text{ SF} = 87 \text{ SPACES}$   
 $\times 0.67 = 58 \text{ spaces}$

### ***Justification***

The property is considered a non-conforming lot that was platted in the 1950s, long before the current regulations were enacted.

The site operated successfully for decades with no onsite parking being provided. The request is to allow a similar restaurant to be rebuilt after being destroyed by Hurricane Ian. It is in the pedestrian commercial area and the downtown district both of which are to allow for uses in close proximity that can be reached through alternative transportation to individual vehicles.

In addition to the park once and pedestrian oriented character of the area, the lot is approximately 35 feet wide at the Estero Boulevard frontage. Due to the limited width and the following factors, onsite parking cannot be accommodated:

1. The LDC Sec. 34-676(d)(1) prevents an access point onto Estero Boulevard Properties fronting on Estero Boulevard. The code states, "Existing driveways and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property."
2. The location near the signalized intersection at Estero Boulevard and Crescent Street and the pedestrian crossing at the same location make a curb cut onto Estero Boulevard a safety concern.
3. Access from side streets is not available due to the neighboring properties uses and because of lack of available property width to accommodate ingress/egress onto the site. To the south is the Margaritaville structure and to the north is parking for Crescent Park owned and operated by Lee County.

Historically, the restaurant has been successful despite the lack of onsite parking. The property is a platted lot established prior the Land Development Code and an undersized commercial lot per code minimums. As a property in the Downtown zoning district, the location and use meets the purpose of the district as a pedestrian-oriented commercial space with walk-up access from both Estero Boulevard and the Beach for a desirable service of food and beverage near the Times Square area.

A significant amount of public parking opportunities is located within the ¼ mile walkshed of the proposed restaurant. Exhibit 5-3 titled, "Walkability and Parking Proximity", shows more than 800 spaces within the typical ¼ mile walkshed. Also in support of walk-in patrons are 254 rooms in the Margaritaville Resort next to the restaurant, Lani Kai's 100+ rooms, Lighthouse Resort Inn & Suites 75 rooms, Diamond Head Beach Resort's 124 rooms, Best Western Plus's 100 rooms, and many timeshare and short-term rentals units in the area.

The site is unable to accommodate a parking area as the width of the property would not allow for parking that would meet modern drive isle and parking space depths. Perhaps a parallel parking design would provide some spaces but causes issues with safety and the LDC. But even if that were proposed, due to developed properties to the north and south an access from a side street is not possible and curb cuts onto Estero Boulevard do not meet code and would be

considered a safety concern at the busy signalized intersection of Estero Boulevard and Crescent Street.

Finally, the historic use of the property has been a restaurant without onsite parking and is located in an area that encourages and experiences significant pedestrian activity. Granting the variance will not negatively impact compatibility, public health, safety, or welfare.

Like uses in the immediate area, such as the Times Square restaurants and Margaritaville, demonstrate the compatibility and consistency with the historical character of the area.

The restaurant use and location promotes the use of alternative forms of transportation, with a future bus stop within a few hundred feet (in front of Crescent Park as part of the SR865 redevelopment plan), and is well served by pedestrian connectivity.

The direct access to a restaurant from Estero Boulevard and the beach complements the area and serves residents and visitors of the beach.

## VI. Infrastructure

The subject property was developed as a restaurant for decades and has been adequately served by public utilities and services due to its urban location and general proximity to the Town's and County's investment in infrastructure. Only a marginal increase in usage rates is likely for this CPD, thus additional evidence of infrastructure availability is not required by the application.

## VII. Decision-making Compliance

The following is an analysis of the CPD's consistency with the criteria for Rezoning in the LDC §34-85(b) in bold.

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

**The rezoning of the property to CPD is not because of error or ambiguity but rather prevents future discrepancy issues between what would have been allowed for setbacks in the Downtown district and the larger floor area ratio necessary for functional build back of the restaurant. The CPD zoning district allows for specific development regulations to meet unique site designs such as those required when constructing on a legal non-conforming lot (width) and unique nature of the pre-existing restaurant that had no parking. The CPD allows for a unique design to promote things such as retail uses that are walkable in the Downtown area and unique setbacks.**

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

**The Town of Fort Myers Beach and Estero Island have been changed by Hurricane Ian. Furthermore, the building code and flood zones have changed significantly since the site was first developed decades ago. Rebuilding this restaurant requires a significantly different structure than the original structure. The original restaurant was able to have many functions on the ground floor such as kitchen and bar equipment and other permanent features such as restrooms that are no longer permitted below base flood elevation, particularly in the FEMA VE Zone that occupies all of this property. As such the primary restaurant must be on the second**



**floor creating a roof over the ground floor area that now counts as floor area but has limited usefulness to the restaurant.**

**The proposed CPD will allow for development of a unique, safe and modern structure, that complies with current development standards and is more resilient to future weather events while building back an historic restaurant in a wonderful location in the middle of the pedestrian area at Times Square.**

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

**N/A**

(4) The testimony of any applicant.

**As a quasi-judicial process, the CPD zoning will allow for substantive and competent evidence to be presented to and considered by the Local Planning Agency for recommendation and Town Council for a decision or conditions for approval. The testimony presented will conclude that the request is consistent with the goals, objective and policies of the Comprehensive Plan and all applicable development regulations.**

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

**The Town Council will consider the staff report and recommendation as well as the report and recommendation of the LPA, which will be rendered after a public hearing where the staff and applicant will present evidence, the public will speak, and the LPA is permitted to ask questions of all parties.**

(6) The testimony of the public.

**During the quasi-judicial process, the public is invited to present evidence for support, concerns, or issues with the proposed development in an advertised forum according to Sunshine laws of Florida. The competent and substantive evidence presented will be strongly considered by the applicant.**

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

**The proposed development considers Fort Myers Beach Comprehensive Plan and does not seek to increase density, height or change use. The site will comply with modern post-disaster buildback policies in the Comprehensive Plan and LDC, by meeting flood regulations and life safety and ADA requirements. The requested floor area ratio increase will be compatible with surrounding building mass in this intensive Downtown core near Times Square.**

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

**The proposed use is a build back of an existing use that is substantially the same. The location is appropriate for the use and has proper placement and access on Estero Boulevard near Times Square.**

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

**The proposed request will need very similar urban services that have been in place for quite some time in this location.**

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

**The proposed development will occur on impacted portions of the site where development historically occurred. No new impacts to environmentally sensitive areas are proposed. The project will comply with all local and state regulations pertaining to the area seaward of the 1978 CCCL through compliance with the stringent EC zoning district.**

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

**The proposed development is identical in use and density with the former use of the property. The increased floor area will be designed in such a way to not create negative impacts to the surrounding land uses.**

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

**The proposed development is identical in use and density with the former use of the property.**

According to LDC §34-216, Planned Development Rezonings must also comply with the following criteria:

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

**The use and location have historically been the Salty Crab Restaurant until Hurricane Ian.**

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

**The site plan, development standards and schedule of uses are designed and limited to ensure there are sufficient safeguards to the public interest, relating to access, uses, building placement, design, and setbacks.**

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

**The Applicant will coordinate with Staff relating to appropriate conditions of approval for the CPD.**

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

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

**N/A**

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

**N/A**

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

**The proposed building height demonstrates consistency with the Comprehensive Plan and LDC.**

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

**N/A**

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

**N/A**

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

**The CPD will not result in significant traffic impacts as the site's existing use and intensity will remain the same as before the Hurricane.**

## **VIII. Comprehensive Plan Consistency Narrative**

The following is an analysis of how the proposed Comprehensive Plan Amendment is consistent with the goals, objectives, and policies (GOPs) of the Town of Fort Myers Beach Comprehensive Plan. The adopted GOP headings are listed below, and the Applicant's compliance analysis is shown in **bold**.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

**The proposed CPD rezone includes pedestrian shading and streetscape aesthetics with retail services on the ground floor in direct compliance with this policy.**

POLICY 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.

**Uses and development in the areas waterward of the 1978 Coastal Construction Control Line (CCCL) will continue to comply with the above policy. The approved COP area and outdoor seating seaward of the CCCL is to be replaced in accordance with the provisions of the LDC. Other portions of the Property are**

**disturbed/developed. The development program will be designed and constructed to the latest South Florida Water Management District and Department of Environmental Protection standards to ensure high-quality development that protects natural resources.**

POLICY 4-B-8 "RECREATION": applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

**The proposed request takes into consideration the Recreation portion of the site and is only requesting to rezone those areas within the Downtown district zoning category. Because the Recreation category will remain, the uses and development in this area will continue to comply with the above policy based on restriction.**

**The design and scale of the proposed development has been carefully planned to remain consistent with the surrounding developments and provides a new building with softened landscaping and architectural details.**

#### OBJECTIVE 6-E DUNES AND BEACHES

**The proposed development will contribute to the beach renourishment efforts by the Town and state agencies, as well as implement localized dune renourishment, as required by the Town.**

#### POLICY 6-H-5 WATER QUALITY

**The proposed project will abide by any required reviews by the FDEP and SFWMD to ensure water quality is maintained and the project meet the current standards will be applied**

### BUILDING SETBACKS

1. Deviate from LDC §34-645 Table 34-2 for a STREET SETBACK that specifies in the CR zoning district no building or structure shall be placed closer than 10 feet (to Estero Boulevard); to allow a 0-foot street setback.

**JUSTIFICATION:** The Downtown district requires build to lines that would make the proposed development setback of 0-feet in compliance. However, a CPD requires the setbacks of the CR district which is inconsistent with the intent of the area. The setback allows for shade structures to be on the façade of the entrance providing shade on the sidewalk.

2. Deviate from LDC §34-645 Table 34-2 for SIDE SETBACKS that specifies in the CR zoning district no building or structure on a water-front property shall be placed closer than 20 feet as a side setback; to allow a 0-foot side setback on the western boundary and a 0-foot setback on the eastern boundary (abutting Margaritaville).

**JUSTIFICATION:** The Downtown district requires build to lines that would make the proposed development setback of 0-feet in compliance. However, a CPD requires the setbacks of the CR district which is inconsistent with the intent of the area.

### FLOOR AREA RATIO

3. Deviate from LDC §34-645 Table 34-2 for FLOOR AREA RATIO that specifies in the CR zoning district a maximum of 1.2; to allow a 1.96 floor area ratio.

**JUSTIFICATION:** As defined in the LDC Section 34-633, floor area ratio is the gross floor area of all buildings on a site divided by the site's lot area. Gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).

Per LDC Section 34-645 Table 34-3 in the Commercial Resort (CR) District the permitted FAR is 1.2. Although it is in the Downtown District with an allowable FAR of up to 1.8 in certain locations. Here is the breakdown of the gross floor area request:

- The lot landward of the CCCL is 5,256.88
- The proposed footprint of the building is 5,156 square feet.
- The total floor area is a maximum of 9,300 square feet combining the two stories
- The FAR proposed is 1.77

### **Net Request**

The ground floor building plan, or the area below base flood, includes 1,285 square feet of loading area and dry storage. It also includes 1,260 square feet of area of circulation and open areas used for elevators, stairwells, and customer circulation areas – a total of 2,545 square feet.

Removing the loading/dry storage and circulation areas from the ground floor and counting all areas on the second story results in a floor area of 6,755, or an FAR of 1.29.

### **Narrative**

The former restaurant occupied less floor area than the proposed structure because it was a single-story structure with a small second floor that only occupied a portion of the available area. The structure was built long before modern FEMA flood regulations and was able to have most if the operation and seating at ground level. The land is in the VE FEMA flood zone which highly restricts the infrastructure that can be rebuilt at grade. Because of the limitations of uses on the first floor, the second floor is the true useful space and therefore expanded from the original. The flood elevation at this site is 20 feet at FDEP design flood elevation.

The new restaurant will increase the area on the second floor to a full level while the at grade floor will be fully covered and enclosed and considered floor area. However, the first-floor uses, because of the limitations of uses and required elevation, is occupied by a significant amount of dead space. The ground floor building plan includes 1,285 square feet of loading area and dry storage. It also includes 1,260 square feet of area of circulation and open areas used for elevators, stairwells, and customer circulation areas – a total of 2,545 square feet. Removing the loading/dry storage and circulation areas from the ground floor only results in a floor area of 6,755, or an FAR of 1.29.

Rigid compliance to the 1.2 FAR limit is not necessary to protect public policy. The district allows for floor area very similar to the requested, allowing up to 1.8 and removing the dead areas show a useable space in the ballpark of the 1.2 FAR for the district and consistent with the Downtown District's 1.4 FAR.

The lot is limited in size with no options to create room for dead spaces such as storage to be outside of an enclosed first floor area. The lot was originally pre-plated as part of the Crescent Park Subdivision formed in the 1950's (see Exhibit 5-1 Plat-PB4-PG46). According to the boundary survey the site has an area of 10,010 square feet, or (0.23 acres), with an average depth of 286 feet and 35 feet wide. Per LDC 34-3277(1) the lot does not meet the minimum width for those created prior to 1962 which is 40 feet and can therefore be considered a legally nonconforming lot.

Also, the need for the deviation is due to Hurricane Ian destroying the former structure as the new structure must adhere to flood regulations making the second floor essential to be full-sized which enlarges the floor area of the total structure. The second floor now

must provide room for a kitchen, restrooms, bar and serving areas and seating where most of the backhouse functions were on the ground floor formerly.

Because of a business at this location needing to place most functional aspects of a commercial business, particularly a restaurant, on the second floor, removing ground floor uses that serve functions such as circulation and dead storage and dumpster and delivery areas is the minimum variance. Strict adherence to the policy of 1.2 FAR would create a limited second floor, which is where the primary functions of a restaurant must be located, while counting storage and dead space on the first floor. This would greatly limit the overall functionality and viability of rebuilding a restaurant at this location.

#### PARKING

4. Deviate from LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 58 spaces or a 100% deviation. The parking requirements for the proposed development are as follows:

##### REQUIRED PARKING

8 SPACES PER 1,000 SF (including outdoor seating)

##### BUILDING SIZE

9,300 SF + 1,561 SF (COP WITH OUTDOOR SEATING) / 1,000 SF = 87 SPACES x 0.67 = 58 spaces

**JUSTIFICATION:** The property is considered a non-conforming lot that was platted in the 1950s, long before the current regulations were enacted.

The site operated successfully for decades with no onsite parking being provided. The request is to allow a similar restaurant to be rebuilt after being destroyed by Hurricane Ian. It is in the pedestrian commercial area and the downtown district both of which are to allow for uses in close proximity that can be reached through alternative transportation to individual vehicles.

In addition to the park once and pedestrian oriented character of the area, the lot is approximately 35 feet wide at the Estero Boulevard frontage. Due to the limited width and the following factors, onsite parking cannot be accommodated:

1. The LDC Sec. 34-676(d)(1) prevents an access point onto Estero Boulevard Properties fronting on Estero Boulevard. The code states, "Existing driveways and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property."



2. The location near the signalized intersection at Estero Boulevard and Crescent Street and the pedestrian crossing at the same location make a curb cut onto Estero Boulevard a safety concern.
3. Access from side streets is not available due to the neighboring properties uses and because of lack of available property width to accommodate ingress/egress onto the site. To the south is the Margaritaville structure and to the north is parking for Crescent Park owned and operated by Lee County.

Historically, the restaurant has been successful despite the lack of onsite parking. The property is a platted lot established prior the Land Development Code and an undersized commercial lot per code minimums. As a property in the Downtown zoning district, the location and use meets the purpose of the district as a pedestrian-oriented commercial space with walk-up access from both Estero Boulevard and the Beach for a desirable service of food and beverage near the Times Square area.

A significant amount of public parking opportunities are located within the ¼ mile walkshed of the proposed restaurant. Exhibit 5-3 titled, “Walkability and Parking Proximity”, shows more than 800 spaces within the typical ¼ mile walkshed. Also in support of walk-in patrons are 254 rooms in the Margaritaville Resort next to the restaurant, Lani Kai’s 100+ rooms, Lighthouse Resort Inn & Suites 75 rooms, Diamond Head Beach Resort’s 124 rooms, Best Western Plus’s 100 rooms, and many timeshare and short-term rentals units in the area.

The site is unable to accommodate a parking area as the width of the property would not allow for parking that would meet modern drive isle and parking space depths. Perhaps a parallel parking design would provide some spaces but causes issues with safety and the LDC. But even if that were proposed, due to developed properties to the north and south an access from a side street is not possible and curb cuts onto Estero Boulevard do not meet code and would be considered a safety concern at the busy signalized intersection of Estero Boulevard and Crescent Street.

Finally, the historic use of the property has been a restaurant without onsite parking and is located in an area that encourages and experiences significant pedestrian activity. Granting the variance will not negatively impact compatibility, public health, safety, or welfare.

- Like uses in the immediate area, such as the Times Square restaurants and Margaritaville, demonstrate the compatibility and consistency the with historical character of the area.
- The restaurant use and location promotes the use of alternative forms of transportation, with a future bus stop within a few hundred feet (in front of Crescent Park as part of the SR865 redevelopment plan), and is well served by pedestrian connectivity.
- The direct access to a restaurant from Estero Boulevard and the beach complements the area and serves residents and visitors of the beach.

## SIGNAGE

5. Deviate from LDC §30-5.(a)(1)a.1. - Permitted signs in Commercial Districts that permits a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area; to allow five signs for the Salty Crab Bar and Grill with a combined sign area of 115 SF – a deviation of 83 SF (with the largest sign limited to 40.5 SF)

**JUSTIFICATION:** The proposed Salty Crab restaurant will house two businesses: The Salty Crab Bar and Grill and Sweet Willy's Ice Cream Shoppe. The Signage for Sweet Willy's complies with the code section with two signs of 16 square feet (SF) of sign area each for a total of 32 SF. No deviation is needed for the signs for this business.

The deviation request is only for the Salty Crab. The Salty Crab is in a unique placement in the Downtown Core. It has facades and visibility on three sides: Estero Boulevard, Crescent Park, and the beach. It is in a highly pedestrian location but also has visibility as you come off the bridge in your vehicle and round the Times Square area. The reason for this deviation is to allow for signage to address the pedestrian scale and the traveler as well.

The proposed Salty Crab signs are tasteful and attractive and of moderate in size of 14.2 SF, 20.1 SF and 40.5 SF. There are five signs proposed: two on Estero, two on the façade facing Crescent Park and Times Square, and one on facing the beach over the COP seating area of the restaurant totaling 115 SF – a deviation of 83 SF.

- **ESTERO:** The first sign facing Estero Boulevard is placed over the entrance to the restaurant at just over 10 feet from grade for recognition by pedestrians. This sign is the smallest at 14.2 SF. A second sign is placed at the top of the second floor for those from farther away.
- **CRESCENT PARK:** One sign facing Crescent Park and Times Square is also placed over the entrance area with another centered on the second floor of the building. The sign over the entrance is 20.1 SF and a larger sign at the top center of the building is 40.5 SF.
- **BEACH:** Lastly, a 20.1 SF sign placed on the second floor facing the beach.

The signs we designed to be the minimal size necessary to see the writing and the crab image from a moderate distance without dominating the façade or overwhelming the location. The Salty Crab has used this design and size in its other locations and feel the design adds to the beach vibe as fun and playful.

Attached are the elevations and signage plans for reference.

**bdg**  
architects

400 N Ashley Drive  
Suite 600  
Tampa, FL 33602

P: 813 - 323 - 9233  
Lic #: AA - 0003590  
W: [www.bdgllp.com](http://www.bdgllp.com)

# Salty Crab

1154 Estero Blvd. Fort Myers Beach, FL 33931

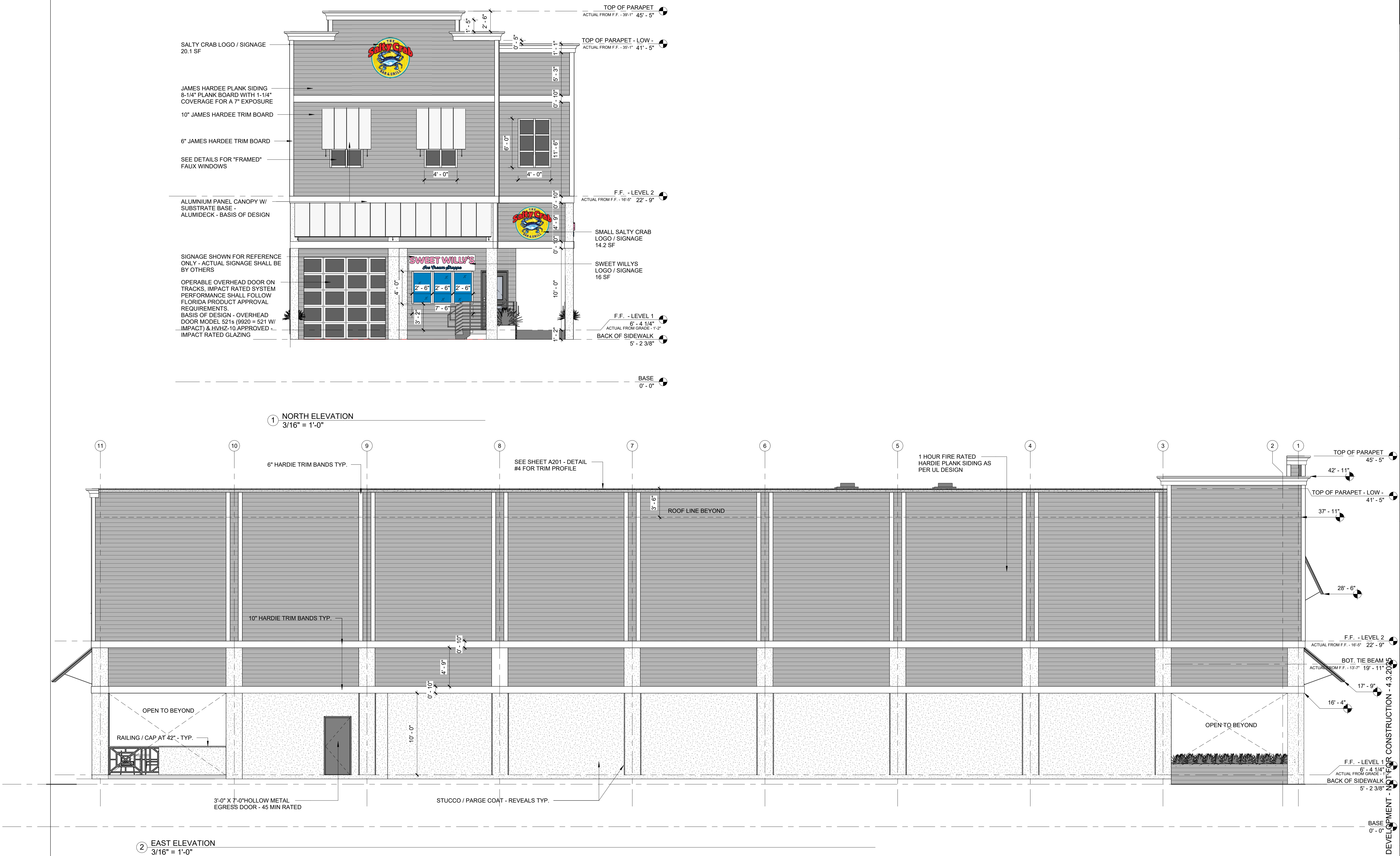
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Architect of Record:  
GREGORY P. WALDEN, NCARB, AIA  
License # FL AR97560

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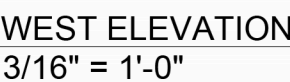
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Salty Crab

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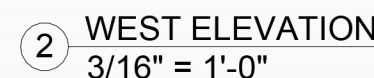
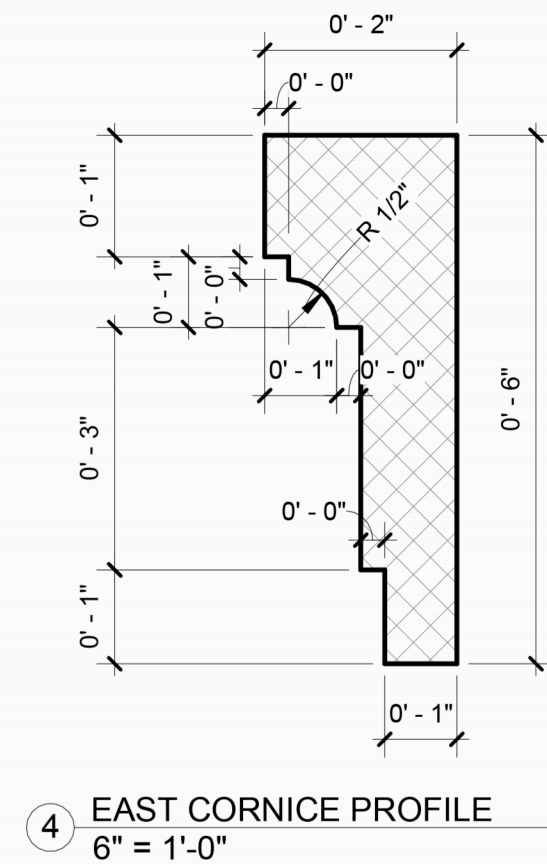
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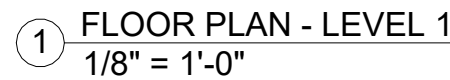
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Salty Crab

A201







## KEYNOTES - FLOOR PLAN

**KEY**

NOTES

**bdg**  
architects

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# Salty Crab

1154 Estero Blvd, Fort Myers Beach, FL 33931

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A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

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PROJECT INFORMATION BLOCK

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SHEET TITLE

## 1ST FLOOR PLAN

SHEET NUMBER

A101

SCHEMATIC DESIGN PLANS - NOT FOR CONSTRUCTION

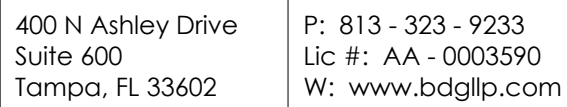


PLAN NORTH



TRUE NORTH





Salty Crab

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A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

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Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

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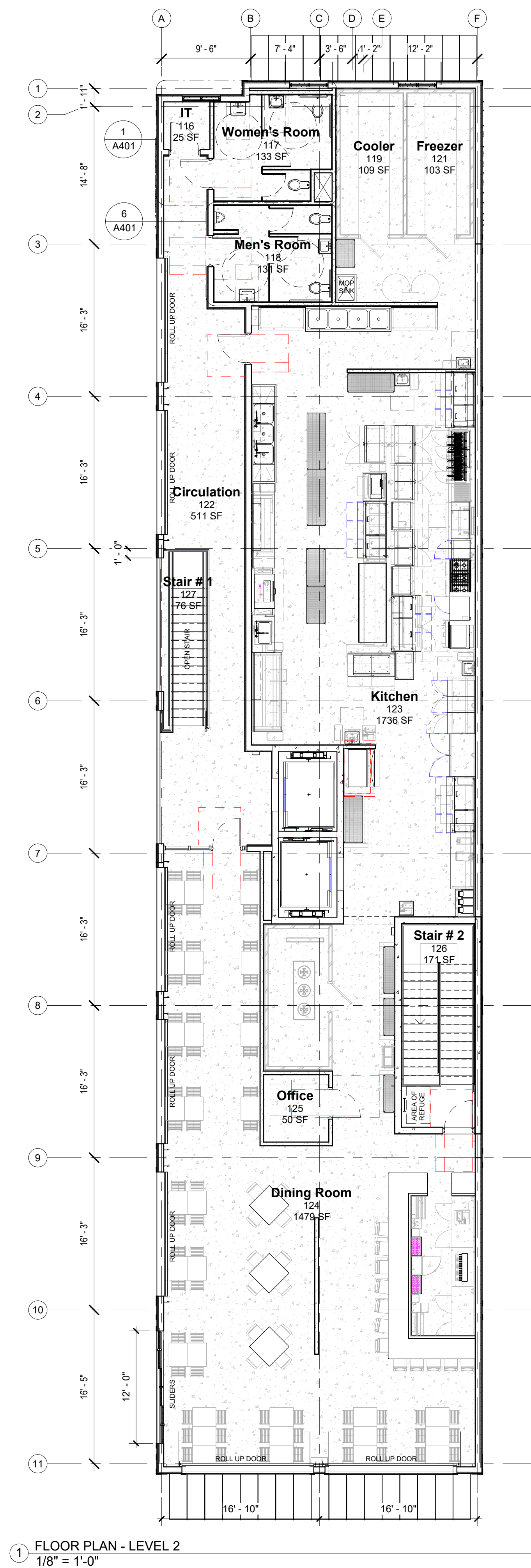
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## 2ND FLOOR PLAN

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A102

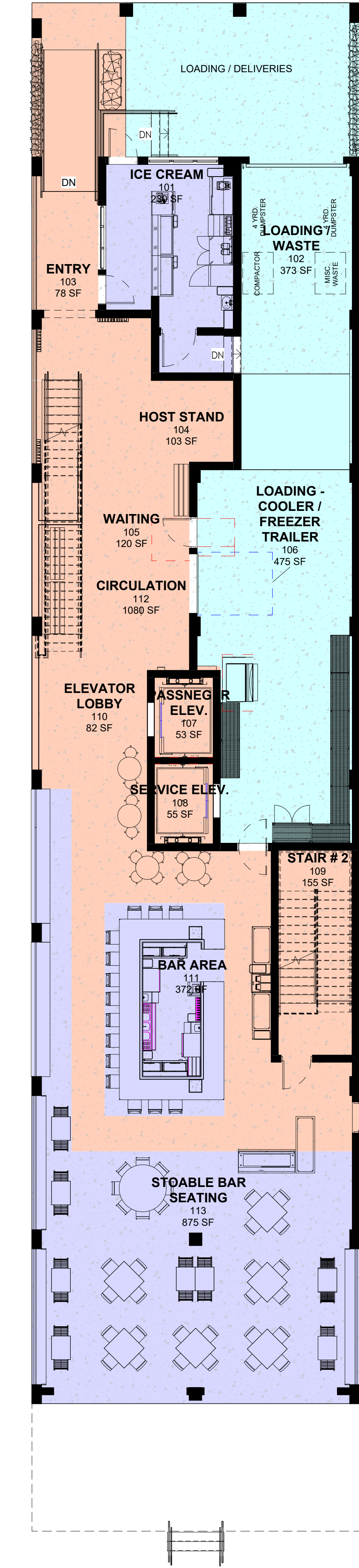


PLAN NORTH



TRUE NORTH

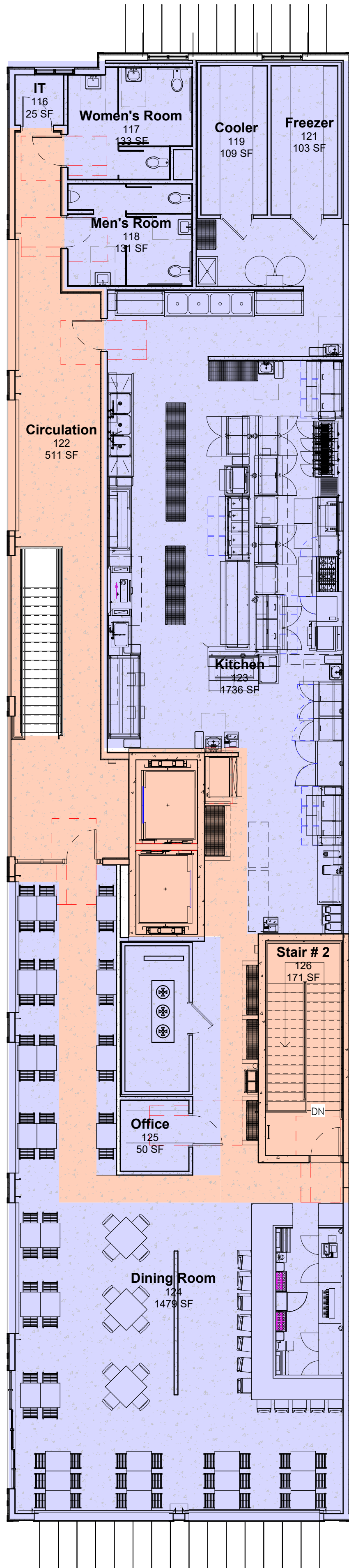




1 AREA PLAN - LEVEL 1  
1/8" = 1'-0"

OVERALL 1ST FLOOR AREA PLAN

- MOBILE SERVE AREAS - RELOCATABLE ELEMENTS  
TOTAL SQ. FT. = 1,640
- CIRCULATION SPACE - (ELEVATORS, STAIRWELLS, CIRCULATION)  
TOTAL SQ. FT. = 1,260
- LOADING / DRY STORAGE - 1ST LEVEL  
TOTAL SQ. FT. = 1,285



2 AREA PLAN - LEVEL 2  
1/8" = 1'-0"

OVERALL 2ND FLOOR SQUARE FOOTAGES

- RESTAURANT USE ( KITCHEN AREA, BAR, DINING , RESTROOMS)  
TOTAL SQ. FT. = 3,850
- CIRCULATION SPACE - (ELEVATORS, STAIRWELLS, CIRCULATION)  
TOTAL SQ. FT. = 1,365
- LOADING / DRY STORAGE -  
TOTAL SQ. FT. = 0

OVERALL TOTAL BUILDING SQUARE FOOTAGES - BOTH FLOORS

- RESTAURANT USE ( KITCHEN AREA, BAR, DINING , RESTROOMS)  
TOTAL SQ. FT. = 5,290
- CIRCULATION SPACE - (ELEVATORS, STAIRWELLS, CIRCULATION)  
TOTAL SQ. FT. = 2,625
- LOADING / DRY STORAGE -  
TOTAL SQ. FT. = 1,285

FOOTPRINT -  
TOTAL SQ. FT. = 5,156

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A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE, THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

| ISSUE | BY | DATE | DESCRIPTION |
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SHEET TITLE

AREA PLANS

SHEET NUMBER

A103



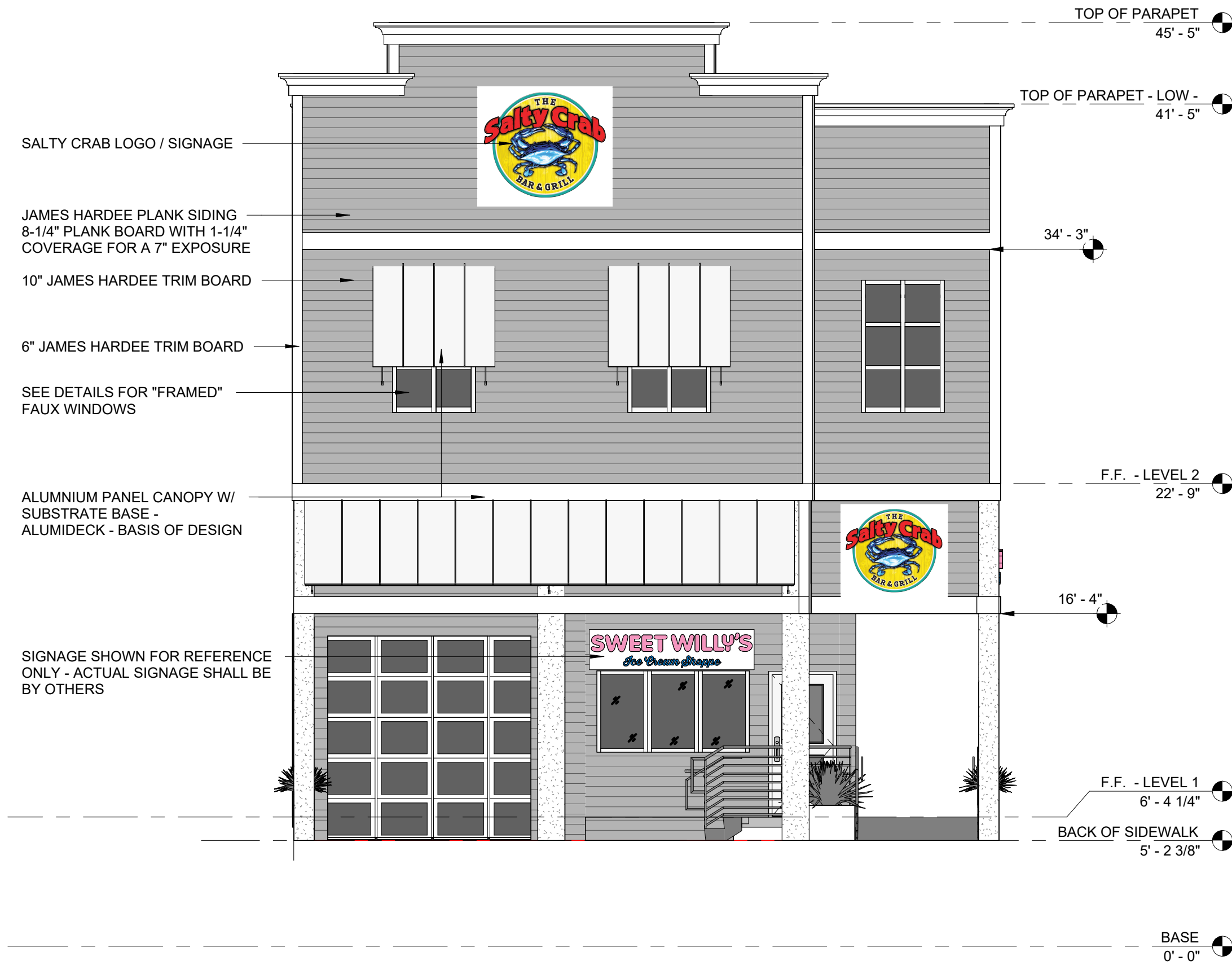




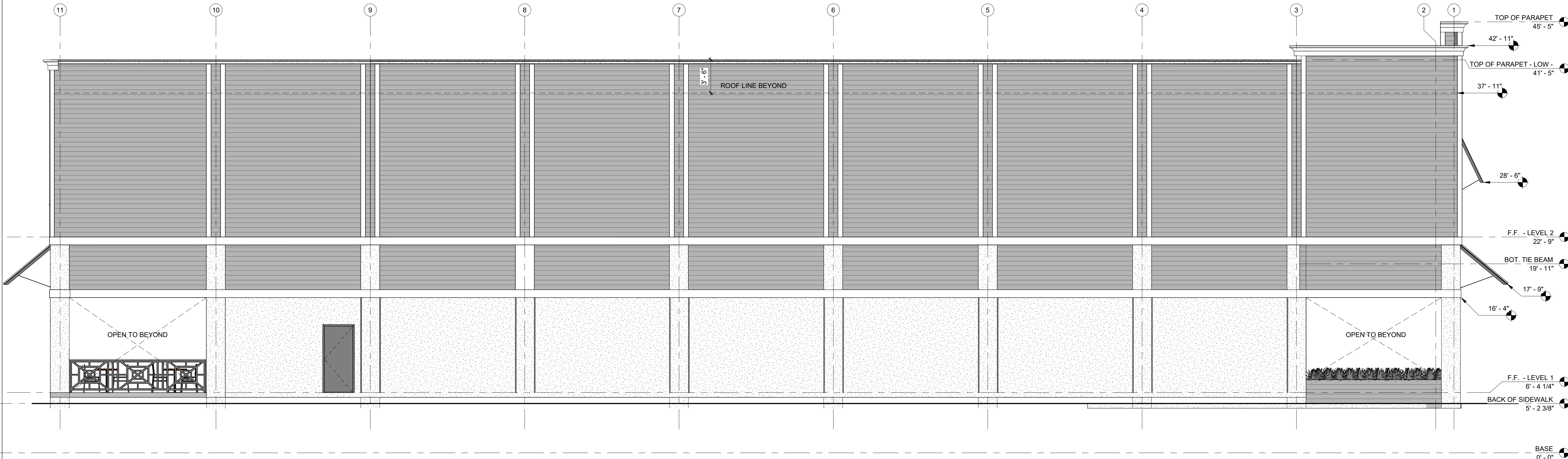
| SCHEDULE - EXTERIOR FINISHES |              |                |                               |                                        |
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| MARK                         | MFR          | MODEL/SERIES   | DESCRIPTION                   | Color                                  |
| EX-1                         | James Hardie | Plank Siding - | 8 1/4" plank with 7" exposure | as selectedfron full manuf. color list |
| EX-2                         | James Hardie | Trim planks    | 10" trim plank                | as selectedfron full manuf. color list |
| EX-3                         | T.B.D.       | T.B.D.         | Parge Coat Application        | as selectedfron full manuf. color list |
| EX-4                         | Mapes        | T.B.D.         | Aluminum                      | as selectedfron full manuf. color list |

KEYNOTES - EXTERIOR ELEVATIONS

| KEY | NOTES |
|-----|-------|
|-----|-------|



1 NORTH ELEVATION  
3/16" = 1'-0"



2 EAST ELEVATION  
3/16" = 1'-0"

THESE DRAWINGS AND PLANS, ANY REPRODUCTION THEREOF, AND ANY CAD OR ELECTRONIC FILE OF THESE DRAWINGS AND PLANS (HEREINAFTER "PLANS") ARE THE SOLE AND EXCLUSIVE, PROPRIETARY PROPERTY OF BDG ARCHITECTS, AND MAY NOT BE REPRODUCED, PUBLISHED, MODIFIED OR USED IN ANY WAY WITHOUT THE EXPRESS WRITTEN PERMISSION OF BDG ARCHITECTS. USE OF THESE PLANS FOR CONSTRUCTION SHALL BE CONSIDERED ACCEPTANCE OF THE TERMS CONTAINED HEREIN AND THE SUITABILITY AND CONSTRUCTIBILITY OF THE PLANS. THE PLANS SHALL NOT BE SEALED OR MODIFIED FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN APPROVAL OF BDG ARCHITECTS. ANY CHANGES TO THESE PLANS, REGARDLESS OF HOW MINOR, WITHOUT THE EXPRESS WRITTEN APPROVAL OF BDG ARCHITECTS, ANY CONSTRUCTION EXCLUDED FROM THESE PLANS WITHOUT THE EXPRESS WRITTEN APPROVAL OF BDG ARCHITECTS, OR ANY CHANGE IN THE SCOPE, DESIGN, OR INTENT OF THESE PLANS FOR ANY REASON, BY ANY PERSON OTHER THAN BDG ARCHITECTS SHALL AUTOMATICALLY VOID ANY DESIGN-RELATED OBLIGATIONS BDG ARCHITECTS MAY HAVE ON THE PROJECT, AND RESULT IN THE FULL AND COMPLETE RELEASE OF BDG ARCHITECTS FROM ANY LIABILITY, CLAIMS, OR DAMAGES INCLUDING BREKES AND OMISSIONS ARISED OUT OF OR RELATED TO THE PLANS. ANY DISCREPANCIES OR CONFLICTS IN THE PLANS SHALL BE REFERRED IMMEDIATELY TO BDG ARCHITECTS FOR CLARIFICATION PRIOR TO CONTINUING WITH THE WORK. FAILURE TO REFER DISCREPANCIES OR CONFLICTS TO BDG ARCHITECTS PRIOR TO PERFORMING WORK SHALL RESULT IN THE WAIVER OF ANY CLAIMS OR DAMAGES ASSOCIATED WITH THE DISCREPANCIES OR CONFLICTS. THE CONTRACTOR IS RESPONSIBLE FOR THE COORDINATION, SCHEDULING AND CONFORMANCE OF ITS WORK AND ALL WORK PERFORMED BY SUBCONTRACTORS OR OTHER TRADES WITH THE DESIGN DOCUMENTS.

A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

| ISSUE | BY | DATE | DESCRIPTION |
|-------|----|------|-------------|
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| PROJECT INFORMATION BLOCK |           |
|---------------------------|-----------|
| JOB #                     | 230064    |
| DATE:                     | 2/25/2025 |
| DRAWN BY:                 | Author    |
| CHECKED BY:               | Checker   |

SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER





THESE DRAWINGS, PLANS, ANY REPRODUCTION THEREOF, AND ANY CAUSE OF ELECTRIC LIFE OF THESE DRAWINGS AND PLANS HEREINAFTER, SHALL BE THE PROPERTY OF THE COMPANY AND SHALL REMAIN THE PROPERTY OF THE COMPANY AND NOT BE REPRODUCED, COPIED, OR IN ANY MANNER USED FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE COMPANY. ANY REPRODUCTION OR USE OF THESE DRAWINGS OR PLANS FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE COMPANY SHALL BE CONSIDERED ACCEPTANCE OF THE TERMS CONTAINED HEREIN AND THE LIABILITY AND CONSTRUCTION OF THE WORK SHALL BE THE RESPONSIBILITY OF THE COMPANY. ANY REPRODUCTION OR USE OF THESE DRAWINGS OR PLANS FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE COMPANY SHALL BE CONSIDERED ACCEPTANCE OF THE TERMS CONTAINED HEREIN AND THE LIABILITY AND CONSTRUCTION OF THE WORK SHALL BE THE RESPONSIBILITY OF THE COMPANY. ANY REPRODUCTION OR USE OF THESE DRAWINGS OR PLANS FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE COMPANY SHALL BE CONSIDERED ACCEPTANCE OF THE TERMS CONTAINED HEREIN AND THE LIABILITY AND CONSTRUCTION OF THE WORK SHALL BE THE RESPONSIBILITY OF THE COMPANY.

A STATEMENT ON "ALL" SIGNED AND SEALED PLANS THAT TO THE BEST OF THE ARCHITECT'S KNOWLEDGE THE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES.

SEAL

Architect of Record:  
Greg Walden, NCARB, AIA, LEED AP

[illegible]

PROJECT INFORMATION BLOCK

|       |       |
|-------|-------|
| JOB # | 23006 |
|-------|-------|

DATE: 2/25/202

DRAWN BY: \_\_\_\_\_ Author: \_\_\_\_\_

|             |         |
|-------------|---------|
| CHECKED BY: | Checked |
|-------------|---------|

**SHEET TITLE**

### 3D REPRESENTATION

SHEET NUMBER

A900



Salty Crab Walkshed and  
Parking Proximity

Mantanzas Pass Public Parking

Third St. Parking  
20 spaces

234 Old San Carlos Parking  
20 spaces

Center St. Public Parking  
75 spaces

Old San Carlos On-street  
50 spaces

Restaurant/Public Parking  
57 spaces

Margaritaville  
360 spaces

Lani Kai Overflow  
40 spaces

Norm's Beach Parking  
55 spaces

Lani Kai (100)  
Diamondhead Resort (124)

Lynn Hall Park  
120 spaces

Lighthouse Inn & Suites (75)  
Margaritaville Resort (254)  
Best Western (100+)

Sunset Beach  
Parking Lot  
36 spaces

Future LeeTran  
Bus Stop (2026)

Crescent Park  
5 spaces

Salty  
Crab Site

Town Parking  
30 spaces

Beach Parking  
30 spaces

Smart Park  
45 spaces

- Reachable Streets
- 1/4 Mile Travel Area
- 1/4 Mile Buffer
- 1/2 Mile Buffer
- Subject Parcel

Estero Blvd





## **SALTY CRAB CPD**

### **Development Standards**

#### Minimum Setbacks<sup>1 and 2</sup>

|                                 |                                       |
|---------------------------------|---------------------------------------|
| North (Estero Boulevard):       | 0 feet building setback               |
| East (abutting Margaritaville): | 0 feet building setback               |
| West (abutting Crescent Park):  | 0 feet building setback               |
| South (rear):                   | 25 feet                               |
| 1978 LC CCCL:                   | 0 feet (principal)/0 feet (accessory) |

Maximum Building Height: 3 stories and 30 feet above base flood

Maximum FAR:<sup>3</sup> 1.77

Parking Spaces:<sup>4</sup> 0

1. See deviation #1
2. See deviation #2
3. See deviation #3
4. See deviation #4

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 10-15

NEMOS ON THE BEACH COP

WHEREAS applicant Estero Beach Holdings, LLC has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership, including an existing patio surfaced with paver blocks located landward of an existing retaining wall but within the EC zoning district, to include beer, wine and liquor; and

WHEREAS the subject property is located at 1154 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS the applicant has indicated that the STRAP for the subject property is 24-46-23-W3-00011.0000 and the legal description of the subject property is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 8, 2010; at which time the LPA gave full and complete consideration to the request of the Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) section 34-88, and recommended approval of applicant's request, with various recommended conditions of approval as set forth more fully in LPA Resolution No. 2010-06; and

WHEREAS at its meeting of June 8, 2010, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town council on July 12, 2010, at which time the town council gave full and complete consideration to the request of Applicant, LPA resolution 2010-06, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2101-06 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a special exception to permit consumption on premises of beer, wine and liquor in the DOWNTOWN zoning district, with such approval subject to the following conditions:

**CONDITIONS OF APPROVAL:**



1. *The area of the subject establishment used for consumption on premises must be confined entirely to the areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the first floor of the building, the front porch and the rear patio.*

2. *Music and other audible entertainment are prohibited before 10:00 am and after 10:00 pm each day in outdoor seating areas and must comply at all times with applicable ordinances.*

3. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 7:00 AM and must end no later than 2:00 AM during each day.*

4. *The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.*

5. *The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.*

6. *The special permit approved by the Lee County Hearing Examiner in case # 95-07-162.02S is hereby declared null and void.*

#### **FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the Town Council makes the following findings and reach the following conclusions:

1. Changed or changing conditions **exist** that make the requested approval, as conditioned, appropriate:

*The location of the request was approved in 1995 for consumption of alcoholic beverages on the premises in conjunction with a restaurant, and the allowable seating areas were established through the appeal in 1007. The Comprehensive Plan and Land Development Code do not distinguish classes of restaurants that (in addition to non-alcoholic beverages and food) serve beer only, beer and wine only, or beer, wine, and liquor. The applicant's request does not implicate a change in use except insofar as the approved use was limited by special conditions attached to a prior special permit, subsequently modified by Town Council determination of an administrative appeal. The modifications to the allowable seating area through the 2007 appeal have made it possible for the establishment to obtain a special restaurant (SRX) series beverage license.*

2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

*The subject property is in the Pedestrian Commercial FLUM category on Estero Boulevard and other bars, hotels, restaurants and retail stores. Comp Plan **Policy 4-B-6**, regarding the Pedestrian Commercial FLUM, states that commercial activities must*

*contribute to the pedestrian-oriented public realm. The beach and streets northward to Lynn Hall Park and southward to the Lani Kai are heavily traveled by pedestrian beachgoers. The existing restaurant is oriented toward this foot traffic, though it has essentially no parking area for patrons arriving by automobile. The outdoor seating areas are located on porches and patios separated by railings and elevation from the sidewalks and the beach.*

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

*A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use were addressed through permitting for prior remodeling activities and through the 1995 variance as modified by the 2007 administrative appeal. There are no specific performance or locational standards in Town regulations for a restaurant with outdoor seating areas that serves beer, wine, and liquor, that differ from the standards that apply to a restaurant with outdoor seating that serves beer and wine only.*

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

*Construction of additional structures in environmentally critical areas has not been requested or permitted. The existing wood retaining wall is not proposed to be replaced or expanded. As conditioned, the use will be required to comply with current sea turtle protection standards.*

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will** cause damage, hazard, nuisance or other detriment to persons or property:

*The existing surrounding uses include a hotel, a shopping center, bars and restaurants, and a few dwelling units. Within the Pedestrian Commercial Future Land Use Map category, adjacent lots could potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The recommended conditions clearly restrict the use to specific areas of the floor plan and prohibit any further expansion.*

6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*The existing restaurant use has already received a variance related to parking requirements, and was required to comply with lighting and other similar requirements set forth in LDC Chapter 34 at the time of remodeling. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license. The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which*

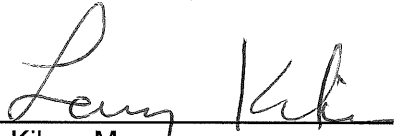
*process they should find that the conditions attached are reasonably related to the special exception requested.*

Upon Motion made by Vice Mayor Raymond and seconded by Council Member List, this Resolution was

DULY PASSED AND ADOPTED ON THIS 12th DAY OF JULY, 2010.

|                    |        |                         |     |
|--------------------|--------|-------------------------|-----|
| Larry Kiker, Mayor | aye    | Bob Raymond, Vice Mayor | aye |
| Tom Babcock        | absent | Jo List                 | aye |
| Alan Mandel        | aye    |                         |     |

DULY PASSED AND ADOPTED THIS 12th DAY OF JULY 2010,

By:   
Larry Kiker, Mayor

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

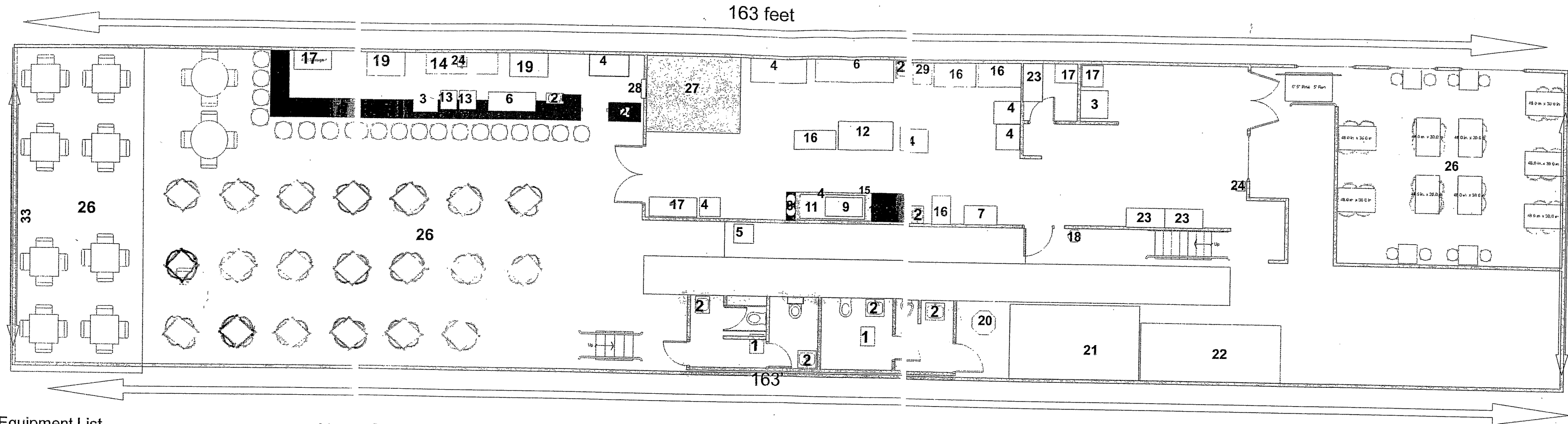
Approved as to form and legal sufficiency:

By:   
for James T. Humphrey, Town Attorney

## Exhibit "A" Attachment

From the SW corner of Block E, CRESCENT PARK ADDITION, as recorded in Plat Book 4, Page 46 of the Public Records of Lee County, Florida, on the East line of Section 24, Township 46 South, Range 23 East, run along said line for 53.28 feet to the South line of existing county road (Estero Blvd.) right of way 50 feet wide; thence run Northwesterly at an included angle of  $69^{\circ} 48' 15''$  with said section line, along the South side of said right-of-way for 122.63 feet to the Point of Beginning of the land hereby conveyed; thence continue along the South line of said right-of-way for a distance of 35 feet; thence run Southwesterly perpendicular to said road a distance of 179 feet, more or less, to the Gulf of Mexico; thence run Southeasterly along said Gulf of Mexico to a point perpendicular to the Point of Beginning of the lands hereby conveyed, being approximately 35 feet, more or less, thence run Northerly and perpendicular with the right-of-way of the existing county road 179 feet, more or less, to the Point of Beginning, being on Estero Island, Lee County, Florida.

# Nemo's On The Beach



## Equipment List

- |                                    |                             |
|------------------------------------|-----------------------------|
| 1. Ventilation Fan                 | 20. Grease Trap             |
| 2. Hand Sinks                      | 21. Propane Tank Area       |
| 3. Ice Machine                     | 22. Dumpster Area           |
| 4. Refrierator/Freezer             | 23. Dry Storage             |
| 5. Mop Sink                        | 24. POS System              |
| 6. 3-Compartment sink w/drainboard | 25. Bar                     |
| 7. Steam Table                     | 26. Table & Chairs          |
| 8. 2 Burner Stove                  | 27. Walk In Cooler          |
| 9. Flat - Top Griddle              | 28. Draft Beer Taps         |
| 10. Fryer                          | 29. Steamer                 |
| 11. Char Broiler                   | 30. Portable Fire Extinguis |
| 12. Sandwich Prep Table            |                             |
| 13. Ice Bins                       |                             |
| 14. Bottle Beer Refrigerator       |                             |
| 15. Hood with Suppression System   |                             |
| 16. Work Table                     |                             |
| 17. Pepsi Bag N Box System         |                             |
| 18. Water Heater                   |                             |
| 19. Bottle Chillers                |                             |

**ADMINISTRATIVE APPROVAL  
TOWN OF FORT MYERS BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
COP2012-0005  
Nemo's on the Beach COP in the EC**

WHEREAS, Patrick Ciniello, president of Estero Beach Holdings, LLC applied for administrative approval for expansion of outdoor seating into the Environmentally Critical zoning district for sales, service and consumption on premises of alcoholic beverages in conjunction with a restaurant under the provisions of Ordinance 12-03; and

WHEREAS, the subject property is located at 1154 Estero Boulevard, Fort Myers Beach, FL and is legally described in the attached **Exhibit A**; and

WHEREAS, the current zoning of the subject property is DOWNTOWN and EC (Environmentally Critical); and

WHEREAS, the applicant submitted an application containing the information required by Fort Myers Beach Land Development Code (LDC) Section 34-1264(g)(1); and

WHEREAS, the subject property currently contains a restaurant with a 4COP-SRX alcohol beverage license ("Nemo's on the Beach"); and

WHEREAS, the applicant submitted a survey of the subject property which is attached hereto and incorporated herein as **Exhibit B**; and

WHEREAS, a site plan, as submitted by the applicant, depicting the 'area of expansion' for the sales, service and consumption on premises of alcoholic beverages into the EC district is attached hereto and incorporated herein as **Exhibit C**; and

WHEREAS, the hours of service for indoor and outdoor consumption on premises is limited to from 7:00AM to 2:00AM of the following day, as approved in Resolution 10-15; and

WHEREAS, the hours for outdoor entertainment are limited to from 10:00AM to 10:00PM and must comply at all times with applicable noise ordinances as approved in Resolution 10-15; and

WHEREAS, the Director makes the following findings of fact:

1. All applicable standards have been met;
2. The premises are suitable in regard to location, site characteristics, and intended purpose; and

3. All the preceding clauses introduced by "WHEREAS" are incorporated herein as findings of fact;

NOW, THEREFORE, the Director **APPROVES** the requested administrative approval for expansion of outdoor seating into the Environmentally Critical zoning district for sales, service and consumption on premises of alcoholic beverages in conjunction with a restaurant under the provisions of Ordinance 12-03,

**SUBJECT TO the following conditions:**

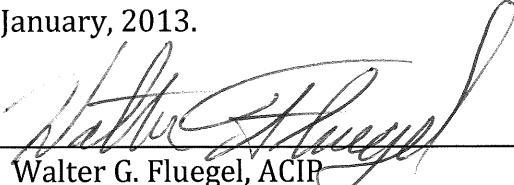
1. The area of expansion of the licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premises must be located immediately adjacent to and contiguous with the EC zoning district.
2. Patrons of the permitted establishment may not bring any alcoholic beverages or coolers into the licensed premise in the EC zoning district, nor may they consume any alcohol on the premises that has not been purchased from the permitted establishment.
3. Alcohol served in the EC zoning district may not be dispensed in glass or aluminum containers of any type.
4. The permit holder shall be responsible for ensuring that the licensed premises in the EC zoning district is at all times free of litter and debris. Refuse containers that meet the requirements of LDC Section 34-1264(g)(1)b.iv.4. must be provided.
5. Hours of service and consumption for the area of the licensed premises that is labeled 'Proposed Enclosed Area' on **Exhibit C** shall be limited to between the hours of 11:00AM and one (1) hour after Sunset or 9:00 PM, whichever is earlier, except for any additional hours that may have been granted by a special events permit.
6. Entertainment within the area of the licensed premises that is located in the EC zoning district may not extend into the area labeled 'Proposed Enclosed Area' as shown on **Exhibit C**.
7. Applicant shall maintain a valid Certificate of Insurance that covers the area of the licensed premises that is located in the EC zoning district.
8. The maximum area of expansion is 1,561 square feet as depicted on **Exhibit C** and labeled 'Proposed Enclosed Area.'
9. The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post. The installation of the rope and post will require Florida Department of Environmental Protection (DEP) approval as well as applicable Town building permits.
10. A maximum of one six-foot wide pedestrian access opening is allowed per one hundred feet of the rope and post along the side parallel to the waterline. Each access point in the rope and post to the beach shall contain a sign, at each entrance, stating on both sides, "NO ALCOHOL ALLOWED BEYOND THIS POINT." The sign shall have a maximum dimension of two (2) feet by one (1) foot.



11. The property shall comply with all sea turtle protection requirements contained in Chapter 14 of the Land Development Code. All beach furniture, including but not limited to beach chairs, table and umbrellas shall be removed from the beach by one (1) hour after sunset or 9:00 PM whichever is earlier

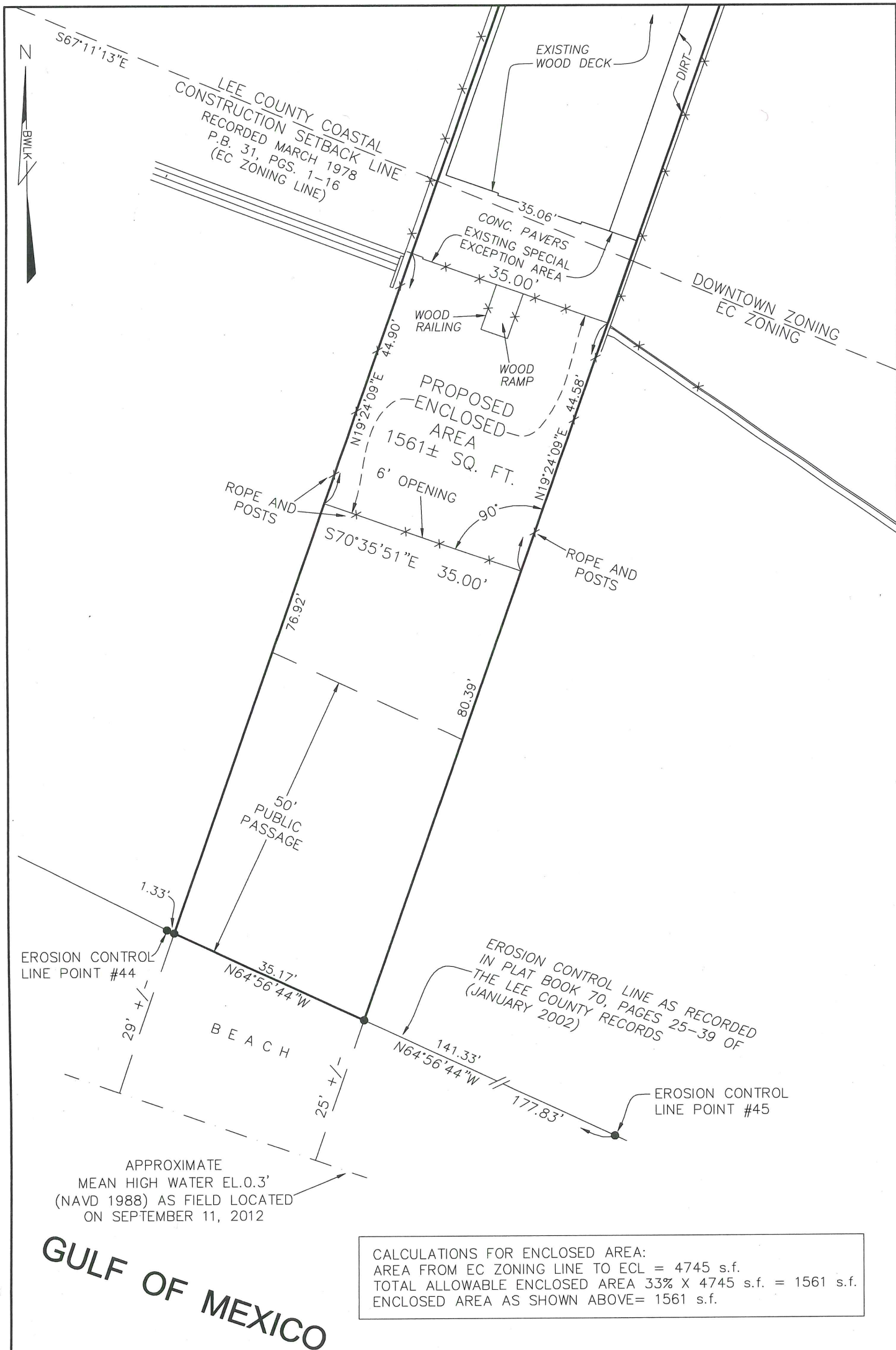
APPROVED this 15<sup>th</sup> day of January, 2013.

By: \_\_\_\_\_

  
Walter G. Fluegel, ACIP  
*Director of Community Development*  
Town of Fort Myers Beach

From the SW corner of Block E, CRESCENT PARK ADDITION, as recorded in Plat Book 4, Page 46 of the Public Records of Lee County, Florida, on the East line of Section 24, Township 46 South, Range 23 East, run along said line for 53.28 feet to the South line of existing county road (Estero Blvd.) right of way 50 feet wide; thence run Northwesterly at an included angle of 69° 48' 15" with said section line, along the South side of said right-of-way for 122.63 feet to the Point of Beginning of the land hereby conveyed; thence continue along the South line of said right-of-way for a distance of 35 feet; thence run Southwesterly perpendicular to said road a distance of 179 feet, more or less, to the Gulf of Mexico; thence run Southeasterly along said Gulf of Mexico to a point perpendicular to the Point of Beginning of the lands hereby conveyed, being approximately 35 feet, more or less, thence run Northerly and perpendicular with the right-of-way of the existing county road 179 feet, more or less, to the Point of Beginning, being on Estero Island, Lee County, Florida.





CALCULATIONS FOR ENCLOSED AREA:  
 AREA FROM EC ZONING LINE TO ECL = 4745 s.f.  
 TOTAL ALLOWABLE ENCLOSED AREA 33% X 4745 s.f. = 1561 s.f.  
 ENCLOSED AREA AS SHOWN ABOVE = 1561 s.f.

NEMOS ON THE BEACH - DETAIL

|                                                                           |             |           |          |        |                  |
|---------------------------------------------------------------------------|-------------|-----------|----------|--------|------------------|
| Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)                              |             |           |          |        |                  |
| CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS                        |             |           |          |        |                  |
| 13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331 |             |           |          |        |                  |
| DETAIL_40032.DWG                                                          |             |           |          |        |                  |
| DATE                                                                      | PROJECT NO. | DRAWN BY  | SCALE    | SHEET  | FILE NO. (S-T-R) |
| 9-14-12                                                                   | 40032       | S. PIERCE | 1" = 20' | 2 OF 2 | 24-46-23         |



1978 Lee County Coastal  
Construction Control Line (CCCL)

PRE-IAN COP AND  
OUTDOOR SEATING  
WATERWARD OF CCCL  
(1,087 SQUARE FEET)



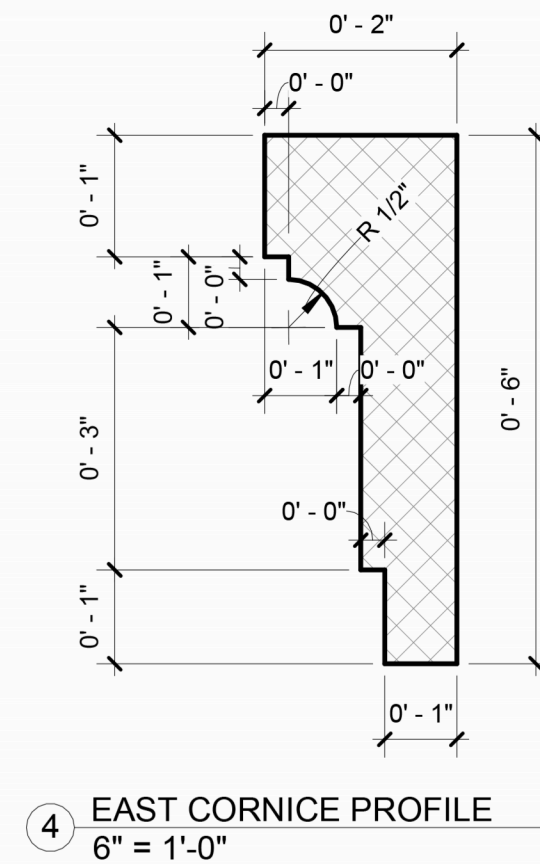
**bdg**  
architects

400 N Ashley Drive  
Suite 600  
Tampa, FL 33602

P: 813 - 323 - 9233  
Lic #: AA - 0003590  
W: [www.bdgllp.com](http://www.bdgllp.com)

Salty Crab

A201







# **Business Impact Estimate**

Proposed ordinance's title/reference:

**Ordinance 25-12 Rezoning from Downtown to CPD with deviations for the redevelopment of the salty Crab restaurant and an ice cream shop**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 64 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;

---

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.



- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

**1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):**

The proposed ordinance approves CPD with five deviations to redevelop a restaurant with an ice cream shop.

**2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:**

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

Any costs incurred by the applicant will be to further their commercial business, this has been requested by the applicant themselves.

Ordinance 25-12 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

**3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:**

The proposed approval of the applicant's CPD with deviations will be relevant only to the applicant and their lot/business.

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

N/A

## ORDINANCE 25-12

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 64 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, Clownfish Restaurant Holdings, LLC the owner, and RVi Planning and Landscape Architecture, as agents for the property located at 1154 Estero Boulevard, Fort Myers Beach, FL 33931, parcels generally identified as STRAP number 24-46-23-W3-00011.0000 in the Town of Fort Myers Beach, filed an application to rezone the property from the Downtown zoning district to a CPD with a corresponding Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) for a restaurant; and

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

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on May 13, 2025, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7 to 0 to recommend approval of the Commercial Planned Development (CPD) with deviations and conditions; and

**WHEREAS**, on June 2, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior

to the Town Council on June 16, 2025; and

**WHEREAS**, at the June 16, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort LDC Section 34- 85; and

**WHEREAS**, the Applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

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

**WHEREAS**, with the following terms, conditions, and requirements as provided herein, the Town Council finds approval to be in the best interest of the health, safety, and welfare of the public; and

**WHEREAS**, Exhibit A provides the conditions of approval to be used during the permitting process; and

**WHEREAS**, Exhibit B provides the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

**WHEREAS**, the Town Council reaffirms Resolution 10-15 and COP 2012-005, which currently allow for Consumption on Premises (COP) in outdoor seating areas seaward of the 1978 CCCL; and

**WHEREAS**, the Town Council finds that this request to rezone the property from the Downtown to CPD with Master Concept Plan with five deviations to the LDC and conditions in order to redevelopment and increase the size of a restaurant; and

**WHEREAS**, the requested deviations from the LDC include:

**Deviation #1**

Deviate from LDC §34-645 Table 34-2 for a STREET SETBACK that specifies in the CR zoning district no building or structure shall be placed closer than 10 feet (to Estero Boulevard); to allow a 0-foot street setback.

**Deviation #2**

Deviate from LDC §34-645 Table 34-2 for SIDE SETBACKS that specifies in the CR zoning district no building or structure on a water-front property shall be placed closer than 20 feet as a side setback; to allow a 0-foot side setback on the western boundary and a 0-foot setback on the eastern boundary (abutting Margaritaville).

**Deviation #3**

Deviate from LDC §34-645 Table 34-2 for FLOOR AREA RATIO that specifies in the CR zoning district a maximum of 1.2; to allow a 1.96 floor area ratio.

**Deviation #4**

Deviate from LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 64 spaces or a 100% deviation.

**Deviation #5**

Deviate from LDC §30-5.(a)(1)a.1. - Permitted signs in Commercial Districts that permits a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area; to allow five signs for the Salty Crab Bar and Grill with a combined sign area of 115 SF – a deviation of 83 SF (with the largest sign limited to 40.5 SF).

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

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development

Code (see LDC 34-216):

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

**WHEREAS**, the Town Council finds that this application to approve Ordinance 25-12 which is, **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 25-12 and the conditions of approval for the commercial planned development zoning, **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested application.

Section 3. Town Ordinance 25-12 is adopted and the Conditions of Approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

**THE FOREGOING ORDINANCE** was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this \_\_\_\_ day of June 2025.

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

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 16th day of June 2025.

Exhibits:

- A- Conditions of Approval
- B - Master Concept Plan (MCP) with renderings



## **Exhibit A: Conditions of Approval**

1. A photometric plan must be provided with the Development Order application to determine compliance with turtle-friendly lighting restrictions in LDC Sec. 34-1834.
2. Applicant will provide cantilevered shade structure(s) from the Estero Boulevard façade to shade the public sidewalk that abuts the property.
3. Final architectural design must be generally consistent with renderings provided in addition to the Master Concept Plan.
4. Approval of this Ordinance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
5. The applicant must apply for and receive all state and local permits and approvals required for the reconstruction of all proposed structures.

1. **Request:**

**Meeting Date:** June 16, 2025

*This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-13 (Estero Island Beach Club).*

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING TO REZONE THE PROPERTY LOCATED AT 1836 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010, TO REZONE FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND REQUEST FOUR (4) DEVIATIONS FROM REQUIREMENTS TO PROVIDE; 1) OPERABLE DOORS ALONG ESTERO BLVD, 2) SCREENING MATERIAL ON THE GROUND FLOOR, 3) INCREASE BUILD-TO LINE SETBACKS, AND 4) INCREASE THE MAXIMUM ALLOWED HEIGHT BY 18- FEET; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council approves Commercial Planned Developments.

**What the action accomplishes:**

The proposed CPD will allow for the redevelopment of the Estero Island Beach Club timeshare with 75 units.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

Estero Island Beach Club was originally developed in 1981 by Lee County. The building was developed with 75 units, across two buildings that were two and three stories tall. The northernmost building on the property appears to have been very minimally seaward of the CCCL. The site contains multiple recreation facilities, like swimming pools, one of which was originally developed seaward of the CCCL. The applicant states that they will need to apply later for a Special Exception to repair the remaining pool, which appears to be seaward of the control-line. The proposal for redevelopment has been designed to ensure that all new structures will be constructed landward of the 1978 CCCL.

**Attachments:**

1. Exhibit A, part 2: Applicant Conditions of Approval and Public Benefit Commitments
2. EXHIBIT B: REVISED MCP
3. Exhibit C: CPD SCHEDULE OF USES
4. TC STAFF REPORT
5. Applicant's Narrative
6. REVISED ARCHITECTURAL VIEW AND HEIGHT EXHIBIT
7. AREAS DEVELOPED SEAWARD OF CCCL
8. APPLICANT'S DEVIATIONS AND JUSTIFICATIONS
9. ESTERO ISLAND BEACH CLUB RMR STUDY 5.9.25
10. Business Impact Estimate - Ordinance 25-13 - EIBC
11. Final ORDINANCE 24-13 EIBC CPD with Exhibit A, part 1 Conditions of Approval

**Financial Impact:**

N/A

**6. Alternative Action**

Adopt with Conditions

**7. Management Recommendations:**

N/A

**8. Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Judith Frankel, Principal Planner

Georgina Cid, Community Development Manager

Frankie Kropacek, Community Development Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

William McKannay, Town Manager

Created/Initiated - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/9/2025

Approved - 6/10/2025

Final Approval - 6/10/2025



## CONDITIONS OF APPROVAL AND PUBLIC BENEFITS

### 1. CONDITIONS OF APPROVAL:

- a. Height – The proposed structure is a single building of 67.7 feet in total height from sea level, a deviation of 18 feet above the LDC:
  - 48 feet above FDEP design flood elevation (DFE)
- b. Stories – five (5) stories [four (4) stories over ground level parking]
- c. Floor Area Ratio – maximum floor area is 100,000 square feet resulting in an FAR of 1.2.
- d. Minimum of 75 parking spaces.
- e. No access points on Estero Boulevard; one access on Miramar Street and one on Palm Avenue.

### 2. PUBLIC BENEFITS: The landowner commits to construct and/or manage the public features, special benefits and amenities identified below, *as subject to approval by the applicable permitting agencies*:

- a. **Public Parking for Beach Access #31 (Miramar Street)** - construct up to five parking spaces, as permitting by applicable agencies allows, on EIBC property parallel to Miramar Street right-of-way and establish a use easement for the Town of Fort Myers Beach in perpetuity. The spaces are to be completed at the time of the first certificate of occupancy. The spaces are to be installed by EIBC and then turned over to the Town for long term maintenance and operation.
- b. **Five-foot Sidewalk on the EIBC side of Miramar Street** – install a public sidewalk that connects to the public sidewalk on Estero Boulevard and runs to the Lee County CCCL line along Beach Access #31 to be completed at the time of the first certificate of occupancy. The sidewalk is to be installed by EIBC and then turned over to the Town for long term maintenance.
- c. **Seating and Bike Rack for Public Beach Access #31 at end of proposed Sidewalk on Miramar Street** – a public bench and seating will be installed by EIBC at the end of the new sidewalk near the 1978 Lee County CCCL line to be completed at the time of the first certificate of occupancy. The bench and bike rack is to be installed by EIBC and then turned over to the Town for long term maintenance.
- d. **Provide a drop off zone and turnaround for Beach Access #31** – South of EIBC's proposed entrance on Miramar and north of the 1978 Lee County CCCL EIBC will construct a drop off area and turn around for vehicles, to be completed at the time of the first certificate of occupancy. The area is to be installed by EIBC and then turned over to the Town for long term maintenance.
- e. **Extension of Miramar Street pavement** – extend the street pavement to the 1978 Lee County CCCL line, approximately 45 feet, to be completed at the time of the first certificate of occupancy. The pavement is to be installed by EIBC and then turned over to the Town for long term maintenance.
- f. **Beach Accessibility** – install a Mobi Mat for disabled person's access at the end new sidewalk or at the end of the extended pavement of Miramar Street for increased accessibility to be completed at the time of the first certificate of occupancy. The mat is to be installed by EIBC and then turned over to the Town for long term maintenance.



- g. **Seating and Bike Rack on Estero Boulevard** – nested in the landscaping proposed along Estero Boulevard will be a public seating area and bike rack that will be shaded with landscaping. The bench and bike rack is to be installed by EIBC and then turned over to the Town for long term maintenance.
- h. **Landscape Buffers** – a 15' landscaping buffer on Estero Boulevard and 5' buffers along Miramar Street and Palm Avenue according to the conceptual landscape plan. Landscaping will be maintained by EIBC in perpetuity.



**MASTER CONCEPT PLAN**  
**1836-1840 ESTERO BOULEVARD**  
**Fort Myers Beach, FL 33931**

ESTERO ISLAND BEACH CLUB SCOPE OF WORK AIMED AT CONSTRUCTING 75 TIMESHARE UNITS INCLUDING THE LANDSCAPING AND THE STORM WATER MANAGEMENT DEVICES PER THE INITIALLY PERMITTED SPECIFICATIONS.

· FLORIDA BUILDING CODE - BUILDING - 8TH EDITION (2023)

| <b>SHEET #</b> | <b>Description</b> |
|----------------|--------------------|
| T-0            | COVER SHEET        |
| C-1            | PROPOSED SITE PLAN |
| C-2            | EMERGENCY ACCESS   |



| No. | Date | Revision    |  | By |
|-----|------|-------------|--|----|
|     |      | Description |  |    |
| 7   |      |             |  |    |
| 6   |      |             |  |    |
| 5   |      |             |  |    |
| 4   |      |             |  |    |
| 3   |      |             |  |    |
| 2   |      |             |  |    |
| 1   |      |             |  |    |

**MECA Engineering  
Corporation**

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5237 Summerlin Commons Blvd., Suite 460  
Fort Myers, FL 33907  
T: (239) 275-2598 F: (219) 962-3969  
[www.mecaengineering.com](http://www.mecaengineering.com)



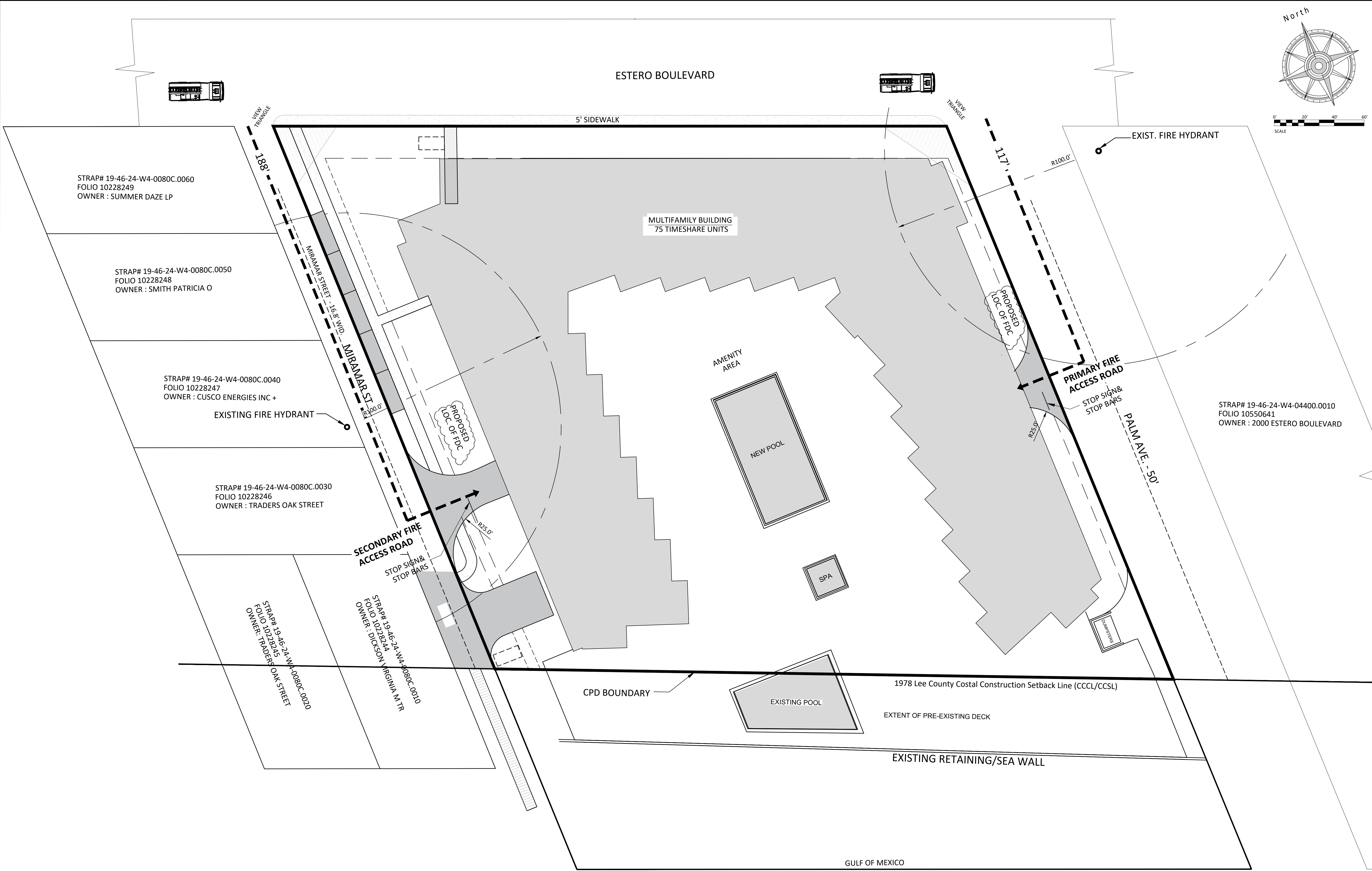
**ESTERO ISLAND BEACH CLUB**  
**MASTER CONCEPT PLAN**  
1836-1840 ESTERO BLV, FORT MYERS  
BEACH, FL 33931

|                        |          |
|------------------------|----------|
| Project No.: FL-32-901 |          |
| Drawn:                 | Checked: |
| Date: 05/22/2025       |          |
| Scale: AS NOTED        |          |
| Sheet Title:           |          |
| COVER SHEET            |          |
| Sheet Number:          |          |
| T-0                    |          |









| REVISION |      | By          |
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| 8        |      |             |
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| 5        |      |             |
| 4        |      |             |
| 3        |      |             |
| 2        |      |             |
| 1        |      |             |
| No.      | Date | Description |

**MECA Engineering Corporation**  
5237 Summerlin Commons Blvd. Suite 460  
Fort Myers, FL 33907  
T: (239) 275-2598  
www.mecaengineering.com



**ESTERO ISLAND BEACH CLUB  
EMERGENCY ACCESS EXHIBIT**  
1836-1840 ESTERO BLV, FORT MYERS  
BEACH, FL 33931

|                                  |               |
|----------------------------------|---------------|
| Project No.: FL-32-905           |               |
| Drawn: B.N.                      | Checked: M.A. |
| Date: 05/22/2025                 |               |
| Scale: 1" = 20'                  |               |
| Sheet Title: FIRE ACCESS EXHIBIT |               |
| Sheet Number: C-2                |               |



## **ESTERO ISLAND BEACH CLUB CPD**

### **Schedule of Uses**

#### **Principal:**

- Administrative offices
- Beach access
- Essential services and essential service equipment
- Home occupation, no outside help
- Hotel/motel
- Hotel/condo
- Parking, surface and garage
- Recreational facilities –private on-site
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort accessory uses
- Timeshare units (fractional ownership)
- Temporary uses

#### **Accessory:**

##### **Resort accessory uses, including:**

- Rental of beach furniture and cabanas
- Meeting space
- Signs
- Business center
- Subordinate commercial uses



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development (CPD)

**CASE NUMBER:** CPD20240015

**CASE NAME:** 1836 Estero Blvd (incl. all associated addresses) CPD rezoning request to develop a timeshare building with four (4) deviations from the Land Development Code.

**LPA**

**HEARING DATE:** May 13<sup>th</sup>, 2025, at 9 AM

**1<sup>st</sup> TOWN COUNCIL**

**HEARING DATE:** June 2<sup>nd</sup>, 2025, at 9 AM

**2<sup>nd</sup> TOWN COUNCIL**

**HEARING DATE:** June 16<sup>th</sup>, 2025, at 9 AM

**STAFF**

**RECOMMENDATION:** Approve with Conditions

**PREPARED/  
SUBMITTED BY:** Jason Smalley- Senior Planner

#### **I. APPLICATION SUMMARY**

Applicant/Owner: Estero Island Beach Club Association Timeshare

Request: A Commercial Planned Development (CPD) rezoning for the re-development of a 75-unit timeshare condominium. The applicant is requesting four deviations: 1) relief from requirements that buildings with more than 50-feet of frontage on Estero Blvd. provide operable doors for public access no more than 50-feet apart, and relief from requirements that the building provide an entrance facing Estero Blvd.; 2) relief from the requirement to screen under-building parking areas; 3) relief from requirements for build to lines but rather to provide minimum setbacks for the

building on Estero Boulevard of 15 feet, a minimum building setback of 10 feet from Palm Avenue, and a minimum building setback of 30 feet from Miramar Street and; 4) an additional 18-feet in height above the Design Flood Elevation (DFE)

Subject property: See attached Master Concept Plan

Physical Address: 1836 Estero Blvd; 1840 Estero Blvd (building address)

STRAP #: 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010

FLU: Pedestrian Commercial and Recreation

Zoning: Downtown and Environmentally Critical (EC not part of rezone)

Adjacent zoning and land uses:

|        |                                             |
|--------|---------------------------------------------|
| North: | DOWNTOWN<br>Temporarily Occupied Commercial |
| South: | ENVIRONMENTALLY CRITICAL AREA (EC)<br>Beach |
| East:  | DOWNTOWN<br>Hotel                           |
| West:  | DOWNTOWN<br>Commercial/ Residential         |

## **II. BACKGROUND AND ANALYSIS**

Background:

Estero Island Beach Club was originally developed in 1981 under Lee County. The building was developed with 75 units, across two buildings that were two and three stories tall. The northernmost building on the property appears to have been very minimally seaward of the CCCL. The site contained multiple recreation facilities, like swimming pools, one of which was originally developed seaward of the CCCL. The applicant states that they will need to apply later for a Special Exception to repair the remaining pool which appears to be seaward of the control-line. The proposal for redevelopment has been designed to ensure that all new structures will be constructed landward of the 1978 CCCL.



The applicant's lot is situated in the Downtown zoning district, surrounded by a multitude of uses, including resort uses which makes the redevelopment of the 75 timeshare units in-line with the other uses in the area.

Analysis:

**Deviation #1:** Deviate from LDC §34-995(b)(1) and (4) regarding entrances requires a primary entrance and views into the first floor of commercial buildings where:

- (1) The primary entrance to all buildings shall face the street
- (4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet;

**APPLICANT JUSTIFICATION:** The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor that would dictate the needs for pedestrian interaction or entrances into storefronts.

**STAFF ANALYSIS:** The requirement to provide an entrance on Estero is less relevant when the proposed building is a condominium or timeshare since they do not plan to attract pedestrians or guests who are not renting/ occupying a unit. Not having an entrance on Estero will not largely affect their business or visitors to the island.

**Deviation #2:** Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee; to allow 50% of the under building parking area of the building façade fronting on Estero Boulevard and Palm Avenue to be fully screened and a 5-foot hedge in the unscreened areas to help hide vehicles.

**JUSTIFICATION:** The use before the storm and the current proposal is for rebuilding the pre-existing timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor because the V-Zone and the nature of the timeshare uses.

Because of the increased design flood elevations as determined by FDEP being over 20 feet from grade there is an opportunity to leave the parking area partially unscreened to allow a view through the understory parking. The conceptual enhanced landscape plan is proposing a 15-foot wide buffer along Estero Boulevard and 5-foot landscape buffer on the Palm Avenue and Miramar Avenue streets, as

well as a living walls hiding car parking areas and a minimum 60” hedge row abutting the building parking areas to hide majority of the parked cars.

**STAFF ANALYSIS:** The applicant has proposed a series of plantings around the building which will partially obscure the ground-floor area, including parked vehicles. This requirement is somewhat at-odds with the LDC requirement that ground-floors on the beach-side of Estero be developed free of obstructions to mitigate risks during a storm event. Staff believes that with the proposed landscape screening that the intent of the code has been respected, while at the same time meeting floodplain safety regulations.

**Deviation #3:** Deviate from LDC §34-674(a)(1) that requires build to lines in the Downtown District in this location be from 5 feet to 10 feet; to not require build to lines but rather minimum building setbacks for the building on Estero Boulevard of 15 feet, a minimum building setback of 10 feet from Palm Avenue, and a minimum building setback of 30 feet from Miramar Street.

**APPLICANT JUSTIFICATION:** The minimum 15-foot setback on Estero Boulevard is to provide for softening of the mass and height by providing distance from the right-of-way/property line to be used for landscaping and shade enhancement. It also allows for hedge row plantings to hide the understory parked cars from view of Estero Boulevard.

The setback on Miramar creates room for new beach access parking space, a 5-foot buffer and sidewalk and improves the setback of the building from abutting the single-family homes on the other side of the street to the extent it was prior to Hurricane Ian, which was 15-feet or less.

The setback on Palm allows for increased view corridor between the applicant’s proposed building and Diamondhead Resort and allows for flexibility for some of the façade to be greater than 10 feet from the right-of-way/property line.

**STAFF ANALYSIS:** While the requirement for newly developed commercial structures to be placed no more than 10-feet from the property lines is meant to encourage engagement from pedestrians and forces parking area to be placed behind structures, the applicant has requested a modest change to accommodate additional landscape buffers/ materials.

1. **Deviation #4:** Deviate from LDC §34-675(b)(3)c that requires a maximum height of 30 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district to allow a height of:
  - Five (5) stories [four (4) stories over ground level parking].



- 48 feet above FDEP design flood elevation (DFE)

**APPLICANT JUSTIFICATION:** The BFE at this location is 15 feet and the FDEP design flood elevation (DFE) to the Lowest Horizontal Structural Member (LHSM) is 19.5 feet (NAVD). The proposed structure is a single building of 67 feet2 inches to mean high roof in total height.

The height calculation is as follows:  $19.5' - 67.2' = 47.7'$  of height above the DFE/ FDEP required flood height. The allowed height is 30 feet above BFE so the deviation request is for 17.7 feet, rounded up 5 inches to 18 feet for flexibility in design, above what is allowed for in the LDC. **The final proposed height of the building then is 67.7 feet with the extra 5 inches for rounding.**

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.

To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.

Also, in the general vicinity are some of Fort Myers Beach’s most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities, and intensities in the Town’s Downtown area.

Finally, the revised layout uses height to create a vertical development rather than sprawled horizontal layout that significantly increase the viewsheds to the Gulf of Mexico and the beach.

**STAFF ANALYSIS:** Staff recognizes that the location of the applicant’s lot is adjacent and relatively close to multiple resorts which are both more intense and are taller than the proposed structure.

The revised designs have taken the critiques of the previous design from the wider community into account and have proposed a more modestly-tall building which will have a larger footprint compared to the previously proposed structure. While the large area of open space has been removed to meet the more sprawling design, the structure is much more “human scale” when compared to other resort-style projects in the area. While the applicant is requesting an additional 18-feet of height, the

**additional height is being utilized mainly to accommodate the 75-units which the applicant is entitled to.**

**Staff agrees that the additional height is a proper request while utilizing a Planned Development rezoning process and will retain the general scale of what existed on-site, pre-storm.**

### **III. FINDINGS AND CONDITIONS**

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

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

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

*Staff response: No errors or ambiguities exist.*

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

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

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

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

(4) The testimony of any applicant.

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

(6) The testimony of the public.

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

*Staff response: The proposed development is in compliance with the intensity of the district. If we were to apply density to the use, it would exceed the density without the Post Disaster-buildback that is requested. The new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.*

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

*Staff response: The proposed development will meet performance standards set forth in 34-2031. There are no special location standards for mixed use developments.*

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

*Staff response: The urban services exist in this location.*

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

*Staff response: The request will have no impact on environmentally critical areas and natural resources. The applicant may be required to request Special Exceptions at a later time to address at least one of the pools which existed pre-storm and which may extend further seaward of the 1978 CCCL.*

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

*Staff response: The property has provided short-term rentals (timeshare) for a number of years, without incident. The proposed redevelopment of the 75 units and the proposed site-changes to not present a hazard, nuisance or reasonably be a detriment to the wider area.*

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

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

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

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

(1) The Fort Myers Beach Comprehensive Plan.

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

(2) This chapter.

*Staff response: The proposed uses comply with this chapter except in regard to the deviations.*

(3) Any other applicable town ordinances or codes.

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

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

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

*Staff response: The proposed mix of uses is appropriate in this location, it is in the Boulevard Future Land Use category and Civic Center Mixed-Use District.*

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

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

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

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

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

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

*Staff response: Not applicable.*

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

*Staff response: The proposal is in compliance with these policies.*

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

*Staff response: The request for additional height is proposed as part of the planned development rezoning process. The requested height appears to be appropriate for the location, providing a "human scaled" structure which is relatively similar in height to the buildings which existed prior to the storm.*

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

*Staff response: Not applicable.*

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

*Staff response: Not applicable.*

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

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

#### Findings for Deviation Requests:

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

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

*Staff response: The requested deviations allow the development of the site.*

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

*Staff response: The proposed deviations preserve public health.*

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

*Staff response: The deviations are not a detriment to the public interest, additional parking may need to be provided at a later date depending on impacts to surrounding uses.*

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

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

#### **IV. STAFF RECOMMENDATIONS**

Staff has reviewed the site plans, elevations and deviations for the redevelopment of Estero Island Beach Club

Staff recommends **APPROVAL WITH CONDITIONS** of Ord. 24-13 with the four (4) deviations contained therein.

#### **V. CONDITIONS OF APPROVAL**

1. Development shall provide signage warning exiting vehicles of pedestrian traffic within the Town's Palm Ave. and Palm Ave. beach accesses.
2. The final architectural design shall be substantially similar to the design approved by the Town Council.
3. The applicant shall provide a more detailed landscaping plan utilizing a type-B buffer and using largely 'Florida Friendly' species, or other salt-tolerant plants and trees.
4. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
5. Height – The proposed structure is a single building of 67.7 feet in total height from sea level, a deviation of 18 feet above the LDC:
  - 48 feet above FDEP design flood elevation (DFE)
  - Stories – five (5) stories [four (4) stories over ground level parking]
6. Floor Area Ratio – maximum floor area is 100,000 square feet resulting in an FAR of 1.2.
7. Minimum of 75 parking spaces.
8. No access points on Estero Boulevard; one access on Miramar Street and one on Palm Avenue.

9. The applicant has submitted a list of public benefits which has been attached as Exhibit C and agrees to provide those benefits as listed.

## **VI. EXHIBITS**

Exhibit A – Schedule of Uses

Exhibit B – Master Concept Plan

Exhibit C – List of Public Benefits





## **ESTERO ISLAND BEACH CLUB CPD Request Narrative & Comprehensive Plan Compliance**

### **I. Request**

Estero Island Beach Club Association, Inc. ("Applicant") is requesting approval to rezone two (2) parcels totaling 1.92+/-acres, from the Downtown zoning district to Commercial Planned Development (CPD), while maintaining 0.78+/-acres of land seaward of the 1978 Lee County Coastal Construction Control Line (CCCL) within the EC zoning district. The CPD will allow for the post-disaster redevelopment of the site with the 75 multi-family/timeshare units, the same density existing prior to Hurricane Ian. Maximum number of stories requested is five (5) stories (four (4) stories of units over one level of parking) and a maximum height of 50 feet over 50 feet measured from FDEP Design Flood Elevation – Lowest Horizontal Structural Member (20.3 feet), a total of 70' from grade.

### **II. Property History & Existing Conditions**

The subject property is generally located on the gulf side of Estero Boulevard approximately 1/2 mile southeast of Times Square. The location is the designated "Downtown" area with the heaviest concentration of resort-tourism and commercial businesses, as well as multi-story buildings, such as the Diamond Head Beach Resort to the immediate south.

Per the LDC requirements for height, stories and floor-to-area ratio (FAR) the project is located on the south side of Estero Boulevard east of the main pedestrian crossing fronting on Estero Boulevard.

The property was developed as the Estero Island Beach Club in 1981 with 75 timeshare units in two (2) buildings. The northern structure abutting Miramar Street was three stories tall, while the southern structure abutting Palm Avenue was two stories tall. These buildings were arranged perpendicular to the gulf with an "L" shape to the southern building that limited the view corridor to the Gulf to 40+/- feet from Estero Blvd. The property included three (3) pool areas serving as private, on-site amenities for the guests, including a pool located seaward of the 1978 Lee County CCCL, and beach access.

The site has two direct access points onto Estero Blvd., multiple access points from Miramar Street, and surface parking backing out onto Palm Avenue. The site provided 87 parking spaces with direct pull in spaces on Palm Avenue.

The existing site was permitted and built prior to the incorporation of the Town of Fort Myers Beach, which resulted in the property and its improvements being legal non-conforming, as the Town adopted a maximum building height of three stories and 30 feet in the Downtown District in this location, and a maximum density of 6 units per acre. The built site density was 39 du/ac (75 DUs on 1.92 acres landward of the CCCL).

Like much of Fort Myers Beach, the site was significantly impacted due to Hurricane Ian. The buildings are not habitable and must be demolished and rebuilt. The beachfront pool and pool deck are intact, a portion of which extends beyond the 1978 Lee County CCCL. The intention is to redevelop the entire property to the prior density to current Florida Building Code and FEMA standards, while resurfacing the pool that is mostly seaward of the 1978 Lee County CCCL and replacing the pool equipment, which is landside of the 1978 Lee County CCCL.

### III. Surrounding Land Uses

The underlying future land use category ("FLU") is Pedestrian Commercial landward of the 1978 Lee County CCCL and Recreation seaward of the 1978 Lee County CCCL. The property is zoned Downtown landward of the CCCL and Environmentally Critical seaward of the 1978 Lee County CCCL. Likewise, all surrounding properties are in the Downtown zoning district, and the Pedestrian Commercial future land use category.

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.

To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.

Also, in the general vicinity are some of Fort Myers Beach's most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities and intensities in the Town's Downtown area.

**Table 1 – Surrounding Land Uses**

|              | <b>Future Land Use</b> | <b>Zoning</b>                 | <b>Existing Land Uses</b>                     |
|--------------|------------------------|-------------------------------|-----------------------------------------------|
| <b>North</b> | Pedestrian Commercial  | Downtown                      | Single Family homes                           |
| <b>South</b> | Pedestrian Commercial  | Downtown                      | Hotel / Resort<br>(Diamond Head Beach Resort) |
| <b>West</b>  | Recreation             | Environmental<br>Conservation | Gulf of Mexico                                |
| <b>East</b>  | Pedestrian Commercial  | Downtown                      | Commercial                                    |

### IV. Proposed Development

The enclosed Master Concept Plan provides the proposed layout of the redesigned site. As noted above, the Applicant is requesting post-disaster buildback of the 75 units that existed prior to Hurricane Ian in a manner that is modern/marketable, attractive, and safe. The proposed redevelopment will provide a more resilient structure to protect public health, safety, and welfare, as well as property values amidst future storm-surge and wind events.

#### HEIGHT, STORIES and FAR

Per the LDC requirements for height, stories and floor-to-area ratio (FAR) the project is located on the south side of Estero Boulevard east of the main pedestrian crossing (§34-675(b)(3)c) fronting on Estero Boulevard [§34-675(c)(2)].

### **Height**

The permitted height in the Downtown District at this location is a maximum of 30 feet above base flood elevation per LDC §34-675(b)(3)c. The BFE+1 at this location is 16 feet and the FDEP LHSM is 20'3" feet.

The proposed structure is a single building of 70 feet in total height from sea level:

- 54 feet as measured from one foot over base flood elevation (BFE+1) or
- 50 feet above FDEP design flood elevation (DFE)

### **Stories**

Per LDC §34-675(b)(3)c at this location in the Downtown District a building may be no taller than three (3) stories. The proposed building is:

- Five (5) stories [four (4) stories over ground level parking]

### **FAR**

The FAR permitted at this location in the Downtown zoning district per LDC §34-675(c)(2) is 1.2. Per LDC §34-633 the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).

The land area used in the calculation is the gross square footage within the site's private property line, minus wetlands, canals or other waterbodies, and minus any land designated "recreation" on the comprehensive plan's future land use map. The area of the subject property landward of the 1978 Lee County CCCL is 1.92 acres or 83,635.2 square feet.

- The maximum floor area is 100,000 square feet resulting in an FAR of 1.2.

It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

### **DENSITY**

The density of 75 dwelling units results in a density of 27.8 dwelling units per acre (du/ac) using the entire 2.7 acres or 39 du/ac using the 1.92 acres landward of the 1978 Lee County CCCL. This density is vested per the Post-Disaster Buildback provisions.

### **INGRESS/EGRESS**

Access and circulation are accommodated as shown on the MCP to provide improved ingress and egress when compared to existing conditions by eliminating an access point onto Estero Blvd in compliance with LDC §34-676(d)(1). Access will no longer be permitted directly to parking spaces from Palm Avenue. A single access point from Palm Avenue is now proposed to reach internal parking spaces with parking block facing Palm Avenue. Finally, the access point on Miramar Street that was closest to the Estero Boulevard intersection has been removed creating greater intersection separation and improving safety.

## PARKING

Parking will be improved. The major change is code compliance by not having parking spaces that back out into a right-of way on Palm Avenue.

The former site provided 87 parking spaces. The proposed site plan proposed 91. The parking requirements are determined in LDC §34-2020(d) for standard residential units, while timeshare units are under hotel parking in §34-1804 that requires for 1.5 spaces per unit larger than 450 square feet. The worst-case parking requirement would be 75 dwelling units x 1.5 spaces per unit = 112.5 spaces. §34-676(a) provides off-street parking reductions in the Downtown district, which in this location is by multiplying the requirement by 67 percent; therefore, the worst-case requirement would be 112.5 spaces x .67 = 75 spaces.

## EXISTING AMENITIES

The MCP proposes to maintain the existing pool that is seaward of the 1978 Lee County CCCL and only make minor cosmetic improvements such as painting, as the amenity remains structurally intact post-lan, in conformance with the LDC provisions governing post disaster buildback.

## **V. Public Benefits**

The proposed zoning requests height and stories above the maximum permitted in the current Comprehensive Plan Downtown Land Use Category and Land Development Code Regulations. According to the Town's Comprehensive Plan FLU Policy 4-C-4 states that requests for additional height can be made and "the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal."

Below are the proposed public benefits to the residents and visitors to the Beach and the Town for Fort Myers Beach overall.

### **1. Public Parking for Beach Access #30 (Miramar Street)**

- Currently there are no public parking spaces Miramar Street for the beach access along and no right-of way available. EIBC proposes to construct seven parallel spaces within the EIBC property line and establish a use easement for the Town of Fort Myers Beach.

### **2. Five-foot Sidewalk on the EIBC side of Miramar Street**

- Currently there is no sidewalk along Miramar Street and no right-of way available. EIBC proposes a public sidewalk that connects to the public sidewalk on Estero Boulevard and runs to the Lee County CCCL line.

### **3. Bike Rack for Public Beach Access #30 at end of Proposed Sidewalk**

- For those residents and visitors who are biking or using other forms of alternative transportation a bike rack will be placed at the end of the sidewalk by the Lee County CCCL line.

### **4. Extension of Miramar Street pavement**

- Lee County code did not require pavement of Miramar Street beyond the access to the abutting properties. EIBC is proposing to extend the street pavement to the Lee County CCCL line, approximately 45 feet.

### **5. Beach Accessibility – Mobi Mat for disabled person's access**

- Propose a Mobi Mat at the end new sidewalk or at the end of the extended pavement of Miramar Street for increased accessibility.

## **6. Seating and Bike Racks on Estero Boulevard**

- Nested in the landscaping proposed along Estero Boulevard will be a public seating area and bike rack that will be shaded with landscaping.

## **7. Landscape Buffers**

- The code does not require landscaping. EIBC is proposing a 15' landscaping buffer on Estero Boulevard and 5' buffers along Miramar Street and Palm Avenue according to the conceptual landscape plan.

## **VI. Infrastructure**

The subject property was developed with 75 timeshare units since 1981 and has been adequately served by public utilities and services due to its urban location and general proximity to the Town's and County's investment in infrastructure. No increase in units is proposed through this CPD, thus additional evidence of infrastructure availability is not required by the application.

## **VII. Post-Disaster Buildback Compliance**

Pursuant to LDC §34-3238(2), a property that is more than 50% damaged may be rebuilt according to the post-disaster buildback regulations in the Town's Land Development Code. Outlined below are the regulations pertaining to Post-Disaster Buildback and the CPD's compliance with the Town's requirements in LDC §34-3238(2).

### **A. The building must meet the floodplain regulations for new buildings, as provided in Article IV of Ch. 6 of this LDC.**

To comply with local, state, and federal regulations the building will be constructed to meet or exceed modern floodplain regulations. The minimum finished floor of the building will be constructed to FDEP LHSM.

### **B. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in Article III of Ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line (CCCL).**

The existing development placed all major structures landward of the 1978 Lee County CCCL, except for a beachfront pool that extends seaward of the CCCL. The proposed building will comply with this regulation and be placed entirely landward of the CCCL. The existing pool will be maintained seaward of the CCCL, as it was not damaged beyond 50 percent. Any improvements to this pool will be limited to "cosmetic" updates, pool equipment replacement and maintenance, such as repainting.

### **C. The building must comply with all current building, life safety, and accessibility codes.**

As previously noted, the newly constructed building will comply with local, state, and federal regulations. This includes the Florida Building Code, safety, and accessibility requirements. All structural modifications to the site will obtain required permits and inspections from the Town and applicable agencies.

- D. Residential buildings. A rebuilt residential building may exceed the density limits for new buildings on vacant land but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.**

This does not directly apply as the former and proposed building is a timeshare building which is a commercial use. However, the plan proposes to develop the same density (75 units) that existing prior to Hurricane Ian as documented in the recorded Declaration of Condominium documents.

- F. All buildings. The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan.**

The proposed request is to rezone the property from Downtown to a Commercial Planned Development (CPD) zoning category. The proposed development is to comply with the development regulations of the Downtown zoning district except for those identified in the deviations request for height, number of stories and design standards regarding primary entrance locations and screening of parking areas and to allow the density of the former building. Through this rezoning petition the proposed building will comply with all LDC regulations as outlined in the development standards portion of this application. Further, §VII of this request narrative provides detailed consistency between the proposed project and the town's comprehensive plan.

## **VIII. Decision-making Compliance**

The following is an analysis of the CPD's consistency with the criteria for Rezoning in the LDC §34-85(b) in bold.

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

**The rezoning of the property does not create error or ambiguity but rather prevents future discrepancy issues. The CPD zoning district allows for with specific development regulations to meet unique site designs such as those constructing a legal non-conforming use using post disaster buildback in a restrictive zoning district. The CPD allows for a unique design to promote things such as larger view corridors through greater height and unique setbacks.**

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

**The Town of Fort Myers Beach and Estero Island have been changed by Hurricane Ian. Furthermore, the building code and flood zones have changed significantly since the site was first developed over 40 years ago. The proposed CPD will allow for development of a safe and modern structure, that complies with current development standards, and is more resilient to future weather events.**

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

**N/A**

- (4) The testimony of any applicant.

**As a quasi-judicial process, the CPD zoning will allow for substantive and competent evidence to be presented to and considered by the Local Planning Agency for recommendation and Town Council for a decision or conditions for approval. The testimony presented will conclude that the request is consistent with the goals, objective and policies of the Comprehensive Plan and all applicable development regulations.**

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

**The Town Council will consider the staff report and recommendation as well as the report and recommendation of the LPA, which will be rendered after a public hearing where the staff and applicant will present evidence, the public will speak, and the LPA is permitted to ask questions of all parties.**

(6) The testimony of the public.

**During the quasi-judicial process, the public is invited to present evidence for support, concerns, or issues with the proposed development in an advertised forum according to Sunshine laws of Florida.**

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

**The proposed development considers Fort Myers Beach Comprehensive Plan and does not seek to increase density or change use. The site will comply with modern post-disaster buildback policies in the Comprehensive Plan and LDC, by meeting flood regulations and life safety and ADA requirements. The requested height increases will be compatible with surrounding building heights in this intensive Downtown core of the Town, while providing increased view corridors to the Gulf of Mexico for the benefit of the public.**

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

**The existing structures have been significantly damaged. With the ability to buildback the site under the same density and use, the development program will meet or exceed performance and locational standards. The newly constructed building will remove direct access onto Estero Boulevard helping with traffic flow and be served by the side streets as required by LDC 34-676(b)(1). It will also contribute to improved performance and functionality of the Downtown area by addressing safety, Gulf viewsheds, and an enhanced built form along Estero Blvd.**

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

**The proposed request does not increase density or intensity of the site. The 75 units have been served by adequate services and will continue to be served post-redevelopment.**

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



**The proposed development will occur on impacted portions of the site where development historically occurred. No new impacts to environmentally sensitive areas are proposed. The project will comply with all local and state regulations pertaining to the area seaward of the CCCL through compliance with the stringent EC zoning district.**

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

**The proposed development is identical in use and density with the former use of the property. The increased height and stories will be designed in such a way to not create negative impacts to the surrounding land uses by locating the building closest to Diamond Head and maximizing the setback to the single-family uses to the north. The CPD will enhance compatibility in terms of public viewsheds based on the building location.**

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

**The proposed development will serve to improve the vehicular and pedestrian access by eliminating curb cuts from Estero Boulevard improving circulation. The use will be identical to the existing density which already is served by Estero Boulevard. No TIS has been provided as the site will not generate more trips than the development that existed pre-Hurricane Ian.**

According to LDC §34-216, Planned Development Rezonings must also comply with the following criteria:

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

**The use and location are appropriate for the proposed CPD, as the same use and density has existed on the site since 1981. It has long been a multifamily timeshare development with 75 units. The proposed request will not increase the density or intensity of the site. Additionally, the proposed development is similar in height and size to those in the surrounding area.**

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

**The MCP, development standards and schedule of uses ensure there are sufficient safeguards to the public interest, relating to access, building placement, view corridors, and setbacks.**

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

**The Applicant will coordinate with Staff relating to appropriate conditions of approval for the CPD.**

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

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

**N/A**

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

**N/A**

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

**The proposed building height demonstrates consistency with the surrounding development patterns, both existing and proposed. The proposed eight (8) story structure will be located on the southernmost portion of the site adjacent to the 13-story Diamond Head Beach Resort. This will maximize separation from nearby single-family homes and also significantly increase the public viewshed of the Gulf of Mexico from Estero Blvd. Surrounding heights are analyzed on the Surrounding Heights Map to further demonstrate the proposed height will be compatible with the built form in this Downtown core of the Town.**

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

**N/A**

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

**N/A**

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

**The CPD will not result in significant traffic impacts as the site's existing density and intensity will remain the same.**

## **IX. Comprehensive Plan Consistency Narrative**

The following is an analysis of how the proposed Comprehensive Plan Amendment is consistent with the goals, objectives, and policies (GOPs) of the Town of Fort Myers Beach Comprehensive Plan. The adopted GOP headings are listed below, and the Applicant's compliance analysis is shown in **bold**.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

**The proposed CPD rezone includes enhanced pedestrian safety and streetscape aesthetics via building placement, in direct compliance with this policy, including the elimination of two driveways directly onto Estero Boulevard that have historically brought pedestrian and car traffic into conflict. The MCP will provide**

**sidewalk connectivity throughout and increase views of the Gulf of Mexico that generally improve the aesthetics of Estero Boulevard.**

POLICY 1-B-3 Identify potential mechanisms to implement and maintain special amenities such as entry features, monuments, or other special landscape projects.

**The CPD proposes a widened view shed (90-feet-wide) to the Gulf and greater focus on the public beach access #30.**

POLICY 4-A-1 Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

**The MCP and development parameters propose ground floor parking and a narrow façade with the building arranged perpendicularly to the beach and Estero Boulevard. In doing so, the pedestrian walkway along Estero boulevard will benefit from a larger view of the Gulf, which is increasing from 40 feet to 90+/- feet.**

POLICY 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.

**Uses and development in the areas waterward of the 1978 Coastal Construction Control Line (CCCL) will continue to comply with the above policy. Minor cosmetic repair to the pool seaward of the CCCL is proposed in accordance with the provisions of the LDC. Other portions of the Property are disturbed/developed. The development program will be designed and constructed to the latest South Florida Water Management District and Department of Environmental Protection standards to ensure high-quality development that protects natural resources.**

POLICY 4-B-8 "RECREATION": applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

**The proposed request takes into consideration the Recreation portion of the site and is only requesting to rezone those areas within the Downtown district zoning category. Because the Recreation category will remain, the uses and development in this area will continue to comply with the above policy based on restriction.**

**The design and scale of the proposed development has been carefully planned to remain consistent with the surrounding developments and provides a new building with softened landscaping and architectural details.**

OBJECTIVE 7-E UPGRADE ESTERO BOULEVARD.

**The proposed development increases pedestrian safety on Estero Boulevard by proposing access points off side streets rather than by direct curb cuts on Estero Boulevard.**

#### **OBJECTIVE 6-E DUNES AND BEACHES**

**The proposed development will contribute to the beach renourishment efforts by the Town and state agencies, as well as implement localized dune renourishment, as required by the Town.**

#### **POLICY 6-H-5 WATER QUALITY**

**The proposed project will abide by any required reviews by the FDEP and SFWMD to ensure water quality is maintained and the project meet the current standards will be applied.**

## **X. Conclusion**

In sum, the CPD rezoning request will allow for the redevelopment of the Estero Island Beach Club with a modern, attractive and safe structure that enhances the property's and Town's resiliency in the long-term.

The CPD will not increase the site's established density and is primarily requested to allow specific site development regulations that do not meet the requirements under the conventional Downtown zoning district.

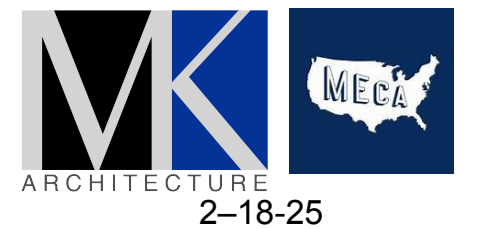
The newly constructed building will contribute to Fort Myers Beach's aesthetic character, including substantial increases to views of the Gulf, and improved community appearance and safety along Estero Blvd.

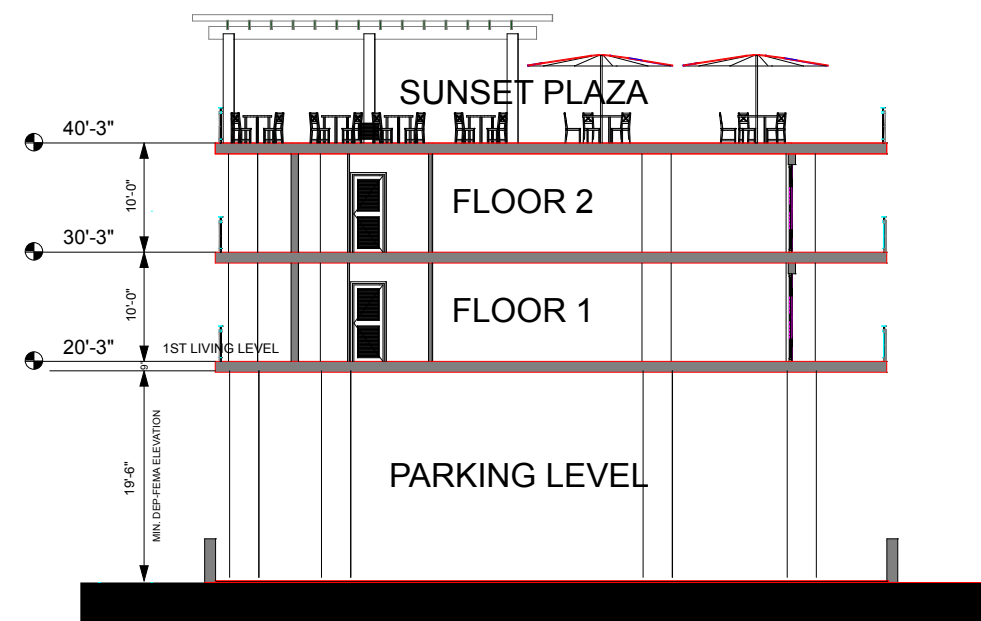
As proposed through the CPD request and the Master Concept Plan, the CPD rezoning will be consistent with the vision and implementing goals, objectives and policies of the Town's Comprehensive Plan and Land Development Code Regulations. For these reasons, the Applicant respectfully requests approval of this petition.



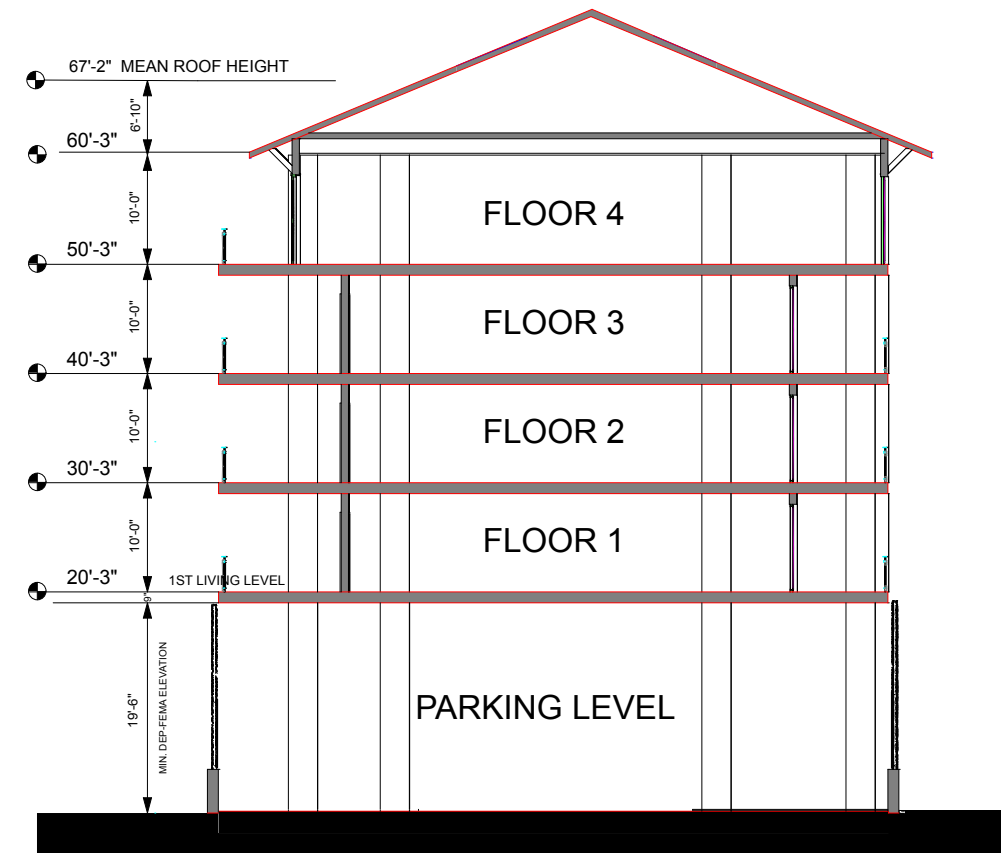
# A NEW REBUILD FOR ESTERO ISLAND BEACH CLUB FORT MYERS BEACH, FLORIDA

## VIEW CORRIDORS FROM ESTERO BOULEVARD





BUILDING SECTION AT 2-STORY OVER PARKING



BUILDING SECTION AT 4-STORY OVER PARKING

## BUILDING SECTIONS

A NEW REBUILD FOR ESTERO  
ISLAND BEACH CLUB  
FORT MYERS BEACH, FLORIDA



2-18-25



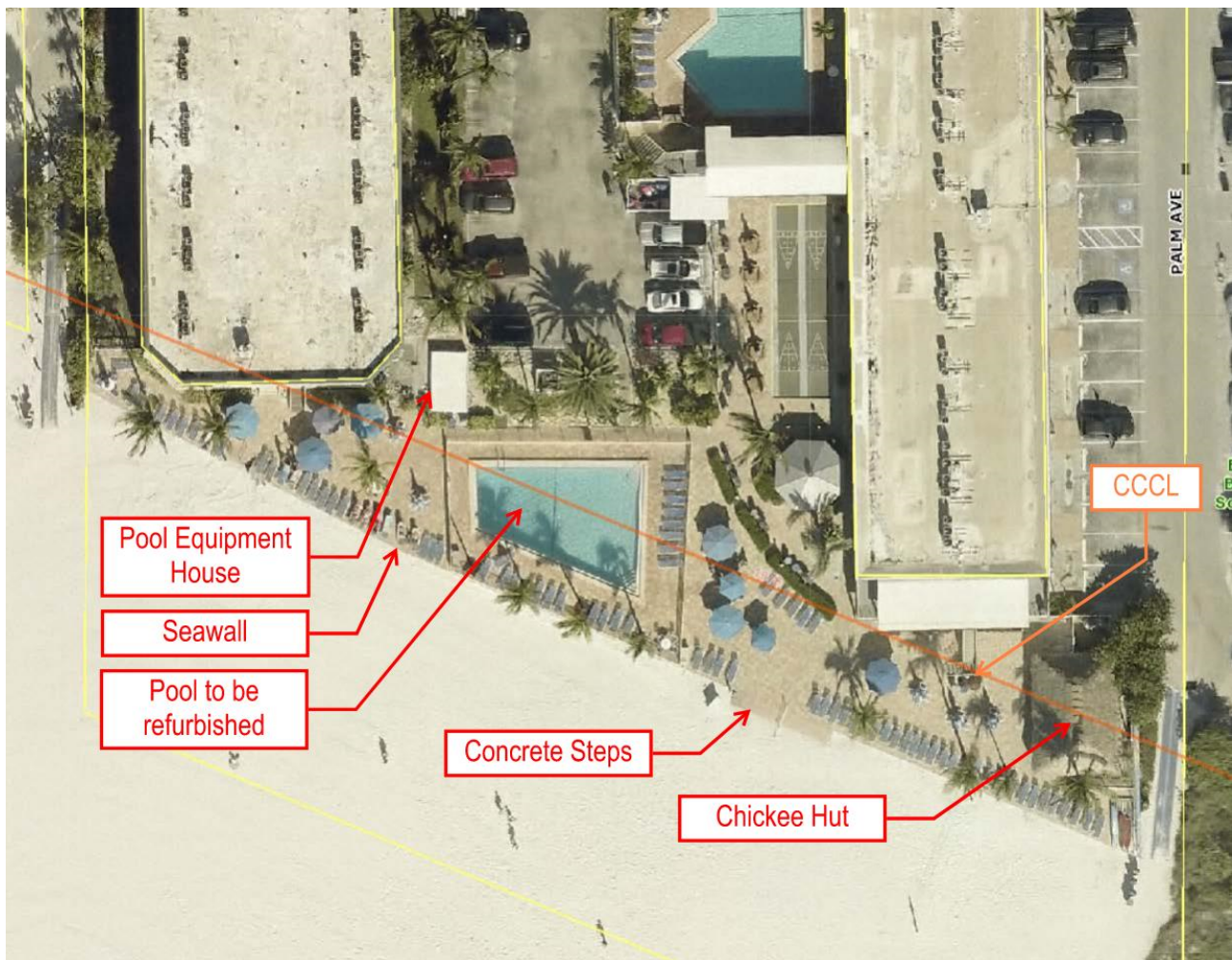
# **Estero Island Beach Club CPD Development Waterward of CCCL**

As shown in the exhibit below – an aerial from early 2022 – there was some limited development waterward of the Lee County 1978 CCCL, shown in orange on the image.

The exhibit and the Master Concept Plan (MCP) is noted to establish within the CPD that the following are permitted to be rebuilt between the CCCL and the existing retaining/sea wall:

- Decking/pavers
- Refurbishment of existing pool and pool equipment as necessary (it should be noted that the majority of the pool equipment was landward of the CCCL in the white square structure).

The chickee hut is not being pursued at this time.





## **Estero Island Beach Club CPD**

### **Schedule of Deviations and Justifications**

1. Deviate from LDC §34-995(b)(1) and (4) regarding entrances requires a primary entrance and views into the first floor of commercial buildings where:

(1) The primary entrance to all buildings shall face the street and

(4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet;

to allow the proposed timeshare residential building relief under the requirements.

**JUSTIFICATION: The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor that would dictate the needs for pedestrian interaction or entrances into storefronts.**

2. Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee; to allow 50% of the under building parking area of the building façade fronting on Estero Boulevard and Palm Avenue to be fully screened and a 5-foot hedge in the unscreened areas to help hide vehicles.

**JUSTIFICATION: The use before the storm and the current proposal is for rebuilding the pre-existing timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor because the V-Zone and the nature of the timeshare uses.**

**Because of the increased design flood elevations as determined by FDEP being over 20 feet from grade there is an opportunity to leave the parking area partially unscreened to allow a view through the understory parking. The conceptual enhanced landscape plan is proposing a 15-foot wide buffer along Estero Boulevard and 5-foot landscape buffer on the Palm Avenue and Miramar Avenue streets, as well as a living walls hiding car parking areas and a minimum 60" hedge row abutting the building parking areas to hide majority of the parked cars.**

3. Deviate from LDC §34-673(a)(1) that requires build to lines in the Downtown District in this location be from five feet to 10 feet; to not require build to lines but rather minimum building setbacks for the building on Estero Boulevard of 15 feet, a minimum building setback of 10 feet from Palm Avenue, and a minimum building setback of 30 feet from Miramar Street.

**JUSTIFICATION: The minimum 15-foot setback on Estero Boulevard is to provide for softening of the mass and height by providing distance from the right-of-way/property line to be used for landscaping and shade enhancement. It also allows for hedge row plantings to hide the understory parked cars from view of Estero Boulevard.**

**The setback on Miramar creates room for new beach access parking space, a 5-foot buffer and sidewalk and improves the setback of the building from abutting the single-family homes on the other side of the street to the extent it was prior to Hurricane Ian, which was 15-feet or less.**

**The setback on Palm allows for increased view corridor between the applicant's propose building and Diamondhead Resort and allows for flexibility for some of the façade to be greater than 10 feet from the right-of-way/property line.**

4. Deviate from LDC §34-675(b)(3)c that requires a maximum height of 30 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district to allow a height of:
  - Five (5) stories [four (4) stories over ground level parking].
  - 48.2 feet above FDEP design flood elevation (DFE)

**JUSTIFICATION: The BFE at this location is 15' and the FDEP design flood elevation (DFE) to the Lowest Horizontal Structural Member (LHSM) is 19.5 feet (NAVD). The proposed structure is a single building of 67'2" feet to mean high roof in total height.**

**The height calculation is as follows:  $19.5' - 67.2' = 47.7'$  of height above the DFE/ FDEP required flood height. The allowed height is 30' above BFE so the deviation request is for 17.7, rounded up 5 inches to 18' for flexibility in design, above what is allowed for in the LDC. The final proposed height of the building then is 67.7' with the extra 5 inches for rounding.**

**The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.**

**To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.**

**Also, in the general vicinity are some of Fort Myers Beach's most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities, and intensities in the Town's Downtown area.**

**Finally, the revised layout uses height to create a vertical development rather than sprawled horizontal layout that significantly increase the viewsheds to the Gulf of Mexico and the beach.**

# **ESTERO ISLAND BEACH CLUB**

## **IMPACT STUDY**

prepared for

**RAL PROPERTY MANAGEMENT**

**MARCH 2025, revised 5/9/25**

### About Vaike O’Grady

Vaike O'Grady brings over two decades of expertise in residential real estate to developers, builders, and industry partners.

Drawing from her extensive experience with leading organizations like Newland Communities (now Brookfield Residential) and Metrostudy (now Zonda), Vaike specializes in conducting comprehensive market research to drive strategic decision-making. Her data-driven approach helps clients optimize their market position, enhance brand awareness, and improve customer engagement across the residential real estate ecosystem.

Vaike founded Residential Marketing Resources in 2023.

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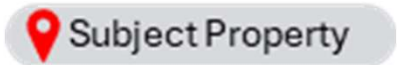
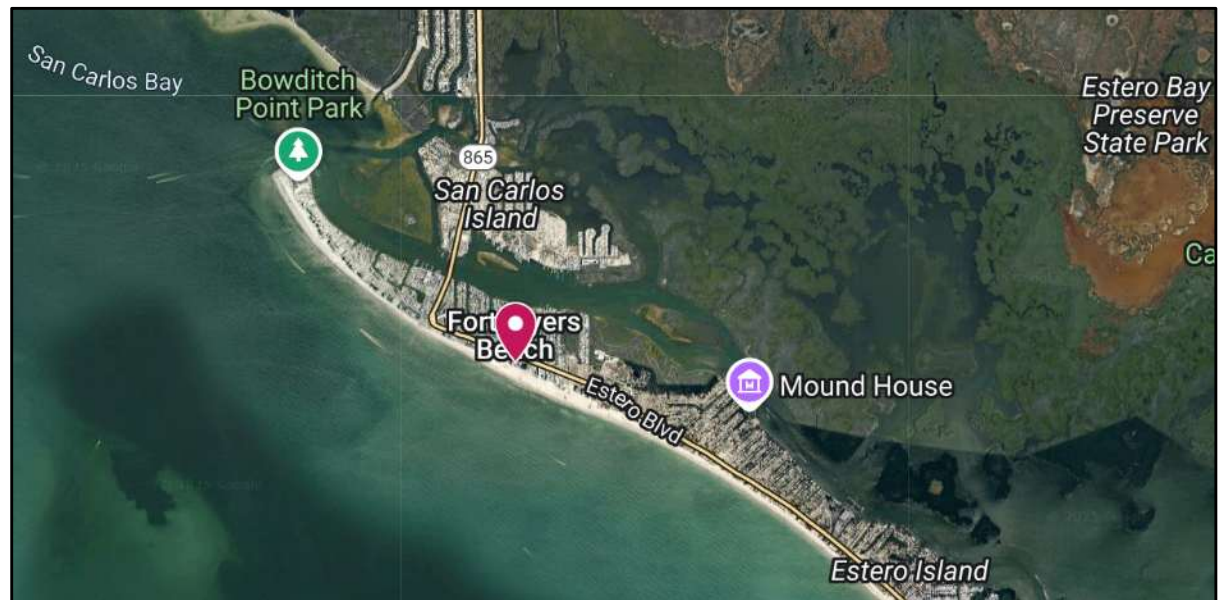
# INTRODUCTION

## Estero Island Beach Club

Estero Island Beach Club Association, Inc., 1836 Estero Boulevard, is requesting approval to rezone 1.92+/-acres, from the Downtown zoning district to Commercial Planned Development (CPD), while maintaining 0.78+/-acres of land seaward of the 1978 Lee County Coastal Construction Control Line (CCCL) within the EC zoning district.

The CPD will allow for the post-disaster redevelopment of the site with the 75 multi-family/timeshare units, the same density existing prior to Hurricane Ian.

The location of the site is along an iconic boulevard with beach frontage on the Gulf.



# INTRODUCTION

## Estero Island Beach Club

Before it was substantially destroyed by Hurricane Ian in September 2022, the Estero Island Beach Club (EIBC) offered owners and renting families the chance to make memories on the white sand beaches of Ft. Myers Beach, Florida.

Built in 1981, the resort featured 75 rooms and served approximately 3,800 owners.

Amenities on the property included 2 heated outdoor swimming pools as well as a whirlpool spa, outdoor gas grills, shuffleboard, and a children's playground.

Though attractive, the building was showing its age.

The site has since been leveled, and plans are substantially complete for a new and improved EIBC.





# EXECUTIVE SUMMARY

## Impact Study

The Estero Island Beach Club was a thriving resort community prior to late September 2022, when Hurricane Ian slammed Southwest Florida. An estimated 11,107 people enjoyed the resort and local community, adding millions to the local economy. The goal is to re-establish and reinvigorate the resort,

enabling the facility to achieve its prior high occupancy rate and restore value to its over 3,800 owners. In the process, the EIBC will make significant contributions to the economy of Fort Myers Beach.

The rebuilding of the Estero Island Beach Club is expected to generate:

- As many as **90 local jobs** during the design, permitting, and construction process
- Significant investment in services and materials, many of which are locally sourced.
- Consistent employment for 8-12 people once operational
- **11,107 owners** and visitors coming to Fort Myers Beach annually
- Potential **\$8.6 million annually** in additional revenue to local restaurants, shops, and services
- Consistent and significant property and sales taxes for the benefit of Fort Myers Beach.



Source: Regional Input-Output Modeling System (RIMS II), Bureau of Economic Analysis

# PROJECT IMPACT

# PROJECT IMPACT

## Estero Island Beach Club Design Improvements



The proposed new design of the Estero Island Beach Club significantly improves the “curb appeal” of the resort, adding value to the Fort Myers Beach area as a whole.

New design and construction standards will reflect sustainable building practices. Improvements to the site plan will benefit local area residents by providing improved public beach access, parking and accessibility, landscaping, shaded seating and bike racks.



# PROJECT IMPACT

## Estero Island Beach Club Improvements



The reconfigured elevation of the EIBC will front Estero Boulevard, providing an architecturally compelling façade while providing privacy for vacationing residents and visitors. The proposed development considers the Fort Myers Beach Comprehensive Plan and does not seek to increase density or change use. The site will comply with modern post-disaster build-back policies in the Comprehensive Plan and LDC by meeting flood regulations and life safety and ADA requirements. The requested height increases will be compatible with surrounding building heights in this intensive Downtown core of the Town, while providing view corridors to the Gulf of Mexico for the benefit of the public.

# PROJECT IMPACT

## Estero Island Beach Club Site Plan



EIBC's design elevates the building to FDEP design flood elevation with all parking under building at grade. The proposed building height is compatible with the surrounding proposed and existing development patterns. The new structure is 3 and 4 stories on Estero Boulevard and 5 stories along Palm and Miromar, much lower than the adjacent Diamond Head Resort, which is 13 stories. This will maximize separation from nearby single-family homes and significantly increase the public viewshed of the Gulf from Estero Blvd. In addition, the site plan increases pedestrian safety on Estero Boulevard with access points via side streets rather than by direct curb cuts on Estero Boulevard.

# PROJECT IMPACT

## Additional Proposed Benefits to Fort Myers Beach

### 1. **Provide Public Parking for Beach Access #31 (Miramar Street)**

Currently there are no public parking spaces Miramar Street for the beach access along and no right-of-way available. EIBC proposes to construct seven parallel spaces within the EIBC property line and establish a use easement for the Town of Fort Myers Beach.

### 2. **Construct a 5' Sidewalk on the EIBC side of Miramar Street**

Currently there is no sidewalk along Miramar Street and no right-of way available. EIBC proposes a public sidewalk that connects to the public sidewalk on Estero Boulevard and runs to the Lee County CCCL line.

### 3. **Add a Bike Rack for Public Beach Access #31 at end of Proposed Sidewalk**

For those residents and visitors who are biking or using other forms of alternative Transportation, a bike rack will be placed at the end of the sidewalk by the Lee County CCCL line.

### 4. **Extend the Miramar Street pavement**

Lee County code did not require pavement of Miramar Street beyond the access to the abutting properties. EIBC is proposing to extend the street pavement to the Lee County CCCL line, approximately 45 feet.

### 5. **Beach Accessibility – Add Mobi Mat for disabled person's access**

Propose a Mobi Mat at the end of the new sidewalk or at the end of the extended pavement of Miramar Street for increased accessibility.

### 6. **Seating and Bike Racks on Estero Boulevard**

Nested in the landscaping proposed along Estero Boulevard will be a public seating area and shaded bike rack.

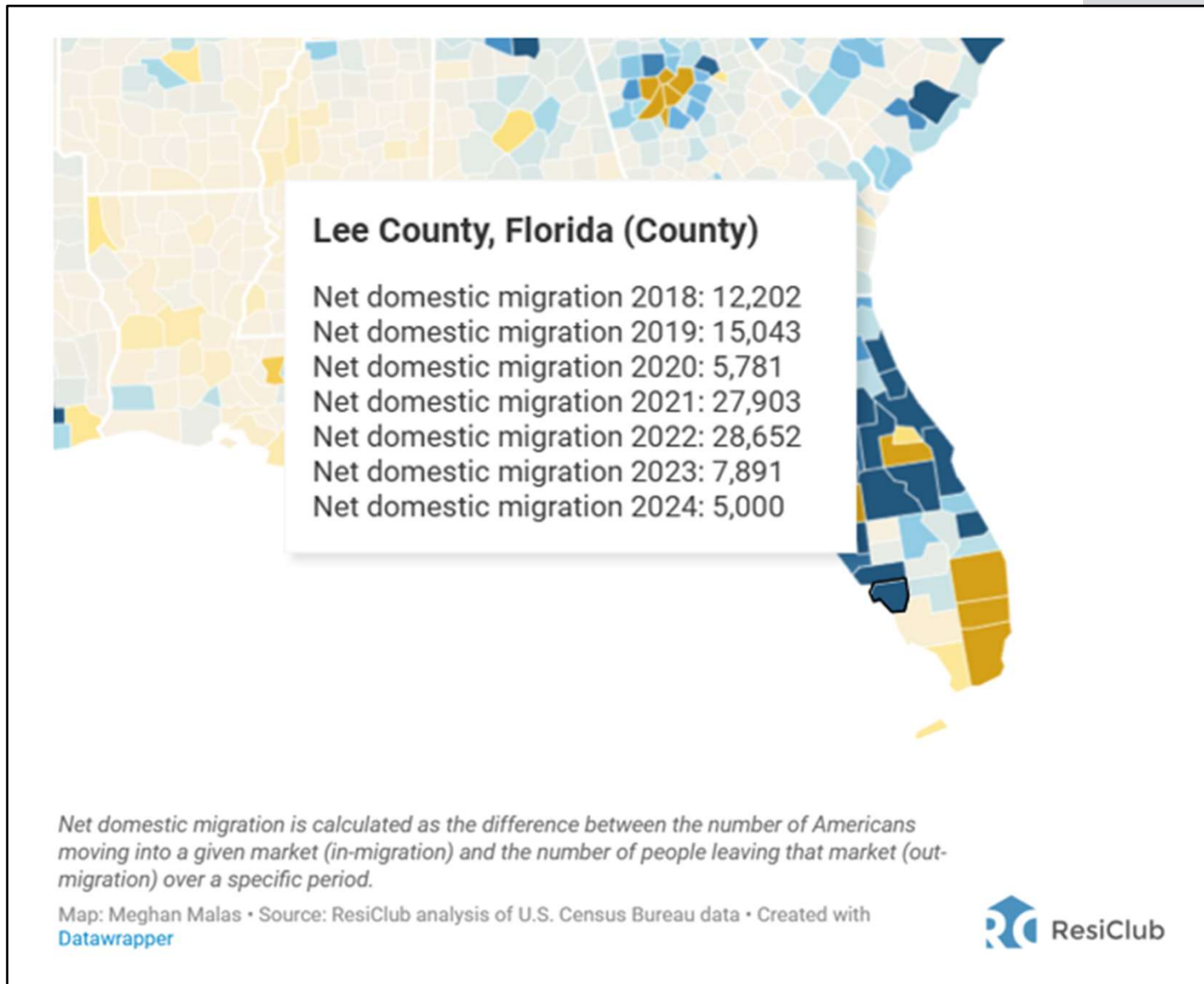
### 7. **Landscape Buffers**

The code does not require landscaping. EIBC is proposing a 15' landscaping buffer on Estero Boulevard and 5' buffers along Miramar Street and Palm Avenue according to the conceptual landscape plan.



# MIGRATION UPDATES

## While Slowing, People are Stil Moving to Lee County





# PROJECT IMPACT

## Lee County Projected Employment Growth

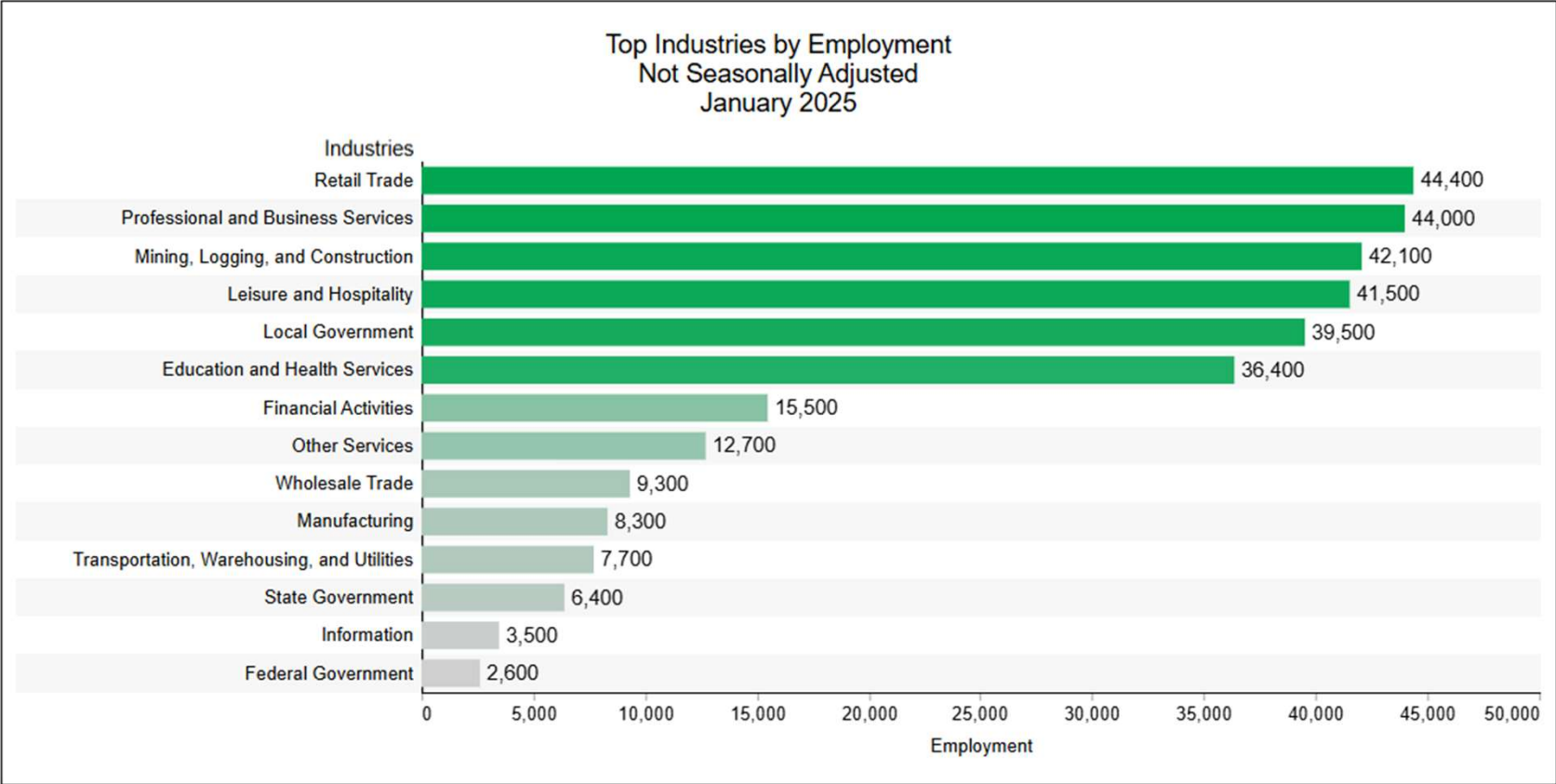
Migration continues to push job growth. Between 2023 and 2031, Lee County employment is expected to grow by 11.1 percent. Significant growth is projected in key categories related to the proposed EIBC project, including Construction (15.6%), Rental and Leasing Services (12.4%), and Administrative and Support Service (9.7%). Employment growth in Accommodation and Food Services and Drinking Places is projected to grow by 23.8% and 21.1%, respectively.

| NAICS Code | NAICS Title                               | Employment |         |        | Percent Growth |
|------------|-------------------------------------------|------------|---------|--------|----------------|
|            |                                           | 2023       | 2031    | Growth |                |
|            | <b>Total, All Industries</b>              | 329,923    | 366,626 | 36,703 | 11.1           |
| 23         | <b>Construction</b>                       | 38,924     | 43,584  | 4,660  | 12.0           |
| 236        | Construction of Buildings                 | 6,954      | 8,247   | 1,293  | 18.6           |
| 237        | Heavy and Civil Engineering Construction  | 3,052      | 3,220   | 168    | 5.5            |
| 238        | Specialty Trade Contractors               | 28,918     | 32,117  | 3,199  | 11.1           |
| 1023       | <b>Financial Activities</b>               | 15,745     | 17,546  | 1,801  | 11.4           |
| 52         | Finance and Insurance                     | 7,714      | 8,502   | 788    | 10.2           |
| 522        | Credit Intermediation & Related Activity  | 3,233      | 3,395   | 162    | 5.0            |
| 523        | Financial Investment & Related Activity   | 1,101      | 1,252   | 151    | 13.7           |
| 524        | Insurance Carriers & Related Activities   | 3,357      | 3,823   | 466    | 13.9           |
| 525        | Funds, Trusts & Other Financial Vehicles  | 23         | 32      | 9      | 39.1           |
| 53         | Real Estate and Rental and Leasing        | 8,031      | 9,044   | 1,013  | 12.6           |
| 531        | Real Estate                               | 4,909      | 5,534   | 625    | 12.7           |
| 532        | Rental and Leasing Services               | 3,081      | 3,463   | 382    | 12.4           |
| 533        | Lessors, Nonfinancial Intangible Assets   | 41         | 47      | 6      | 14.6           |
| 1024       | <b>Professional and Business Services</b> | 45,891     | 52,150  | 6,259  | 13.6           |
| 54         | Professional and Technical Services       | 20,391     | 23,701  | 3,310  | 16.2           |
| 55         | Management of Companies and Enterprises   | 2,541      | 3,173   | 632    | 24.9           |
| 56         | Administrative and Waste Services         | 22,959     | 25,276  | 2,317  | 10.1           |
| 561        | Administrative and Support Services       | 21,407     | 23,476  | 2,069  | 9.7            |
| 562        | Waste Management and Remediation Service  | 1,552      | 1,800   | 248    | 16.0           |
| 1026       | <b>Leisure and Hospitality</b>            | 42,747     | 51,051  | 8,304  | 19.4           |
| 71         | Arts, Entertainment, and Recreation       | 8,683      | 9,674   | 991    | 11.4           |
| 711        | Performing Arts and Spectator Sports      | 1,660      | 1,811   | 151    | 9.1            |
| 712        | Museums, Parks and Historical Sites       | 180        | 194     | 14     | 7.8            |
| 713        | Amusement, Gambling & Recreation Ind      | 6,843      | 7,669   | 826    | 12.1           |
| 72         | Accommodation and Food Services           | 34,064     | 41,377  | 7,313  | 21.5           |
| 721        | Accommodation                             | 4,535      | 5,615   | 1,080  | 23.8           |
| 722        | Food Services and Drinking Places         | 29,529     | 35,762  | 6,233  | 21.1           |

# PROJECT IMPACT

## Cape Coral-Fort Myers MSA: Top Industries

The Cape Coral-Fort Myers employment base is centered around tourism. When combined, Retail Trade and Leisure and Hospitality make up 85,900 jobs, or approximately one quarter of the existing labor force.

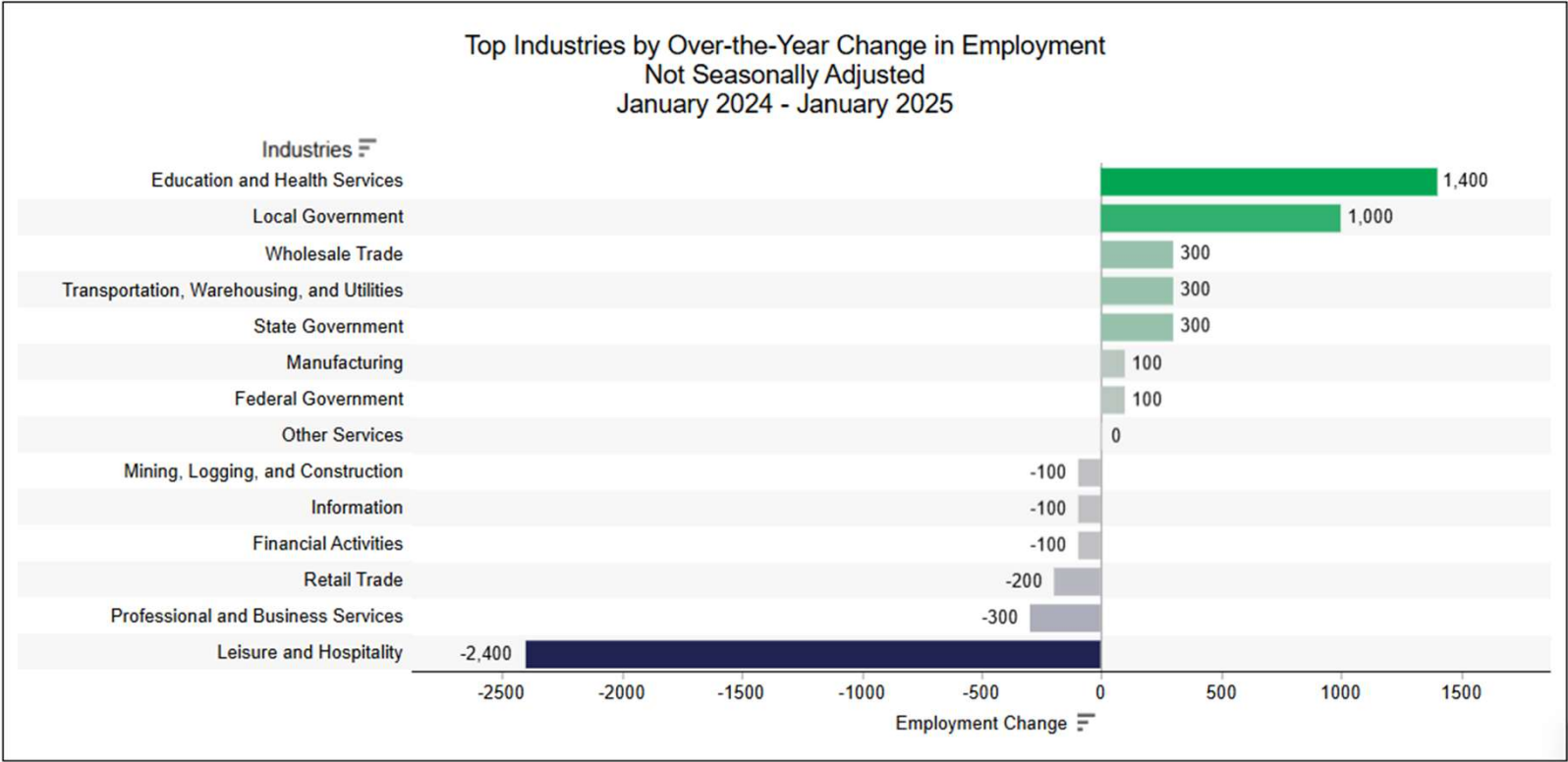


# PROJECT IMPACT

## Cape Coral-Fort Myers MSA

As of January 2025, the Cape Coral-Fort Myers MSA had an unemployment rate of 4%, slightly higher than Florida a whole (3.7%) but lower than the US overall (4.4%). The MSA lost a significant number of jobs in Leisure and Hospitality over the past year, predominantly as a lingering effect of recent hurricanes.

Upon completion, the Estero Island Beach Club is likely to employ 8-12 local Fort Myers Beach residents, in such capacities as administration, sales, maintenance, and housekeeping. The project will play a small role in reversing the job losses since Hurricane Ian.



# PROJECT IMPACT

## EIBC Building Quick Facts

- Florida Tropical design aesthetic with enhanced public view to the Gulf
- Approximately 100,000 livable square feet
- 75 rooms (consistent with prior density)
- Offers substantial public benefits
- Improved circulation by eliminating curb cuts from Estero Blvd.
- Significant sustainability updates:
  - Energy-saving feature to meet the stringent Florida Energy Code
  - Full Hurricane-Impact Windows and Doors
  - Full Concrete Construction
  - Elevated approximately 20 feet

**Estimated construction cost: \$35,581,500**





# PROJECT IMPACT

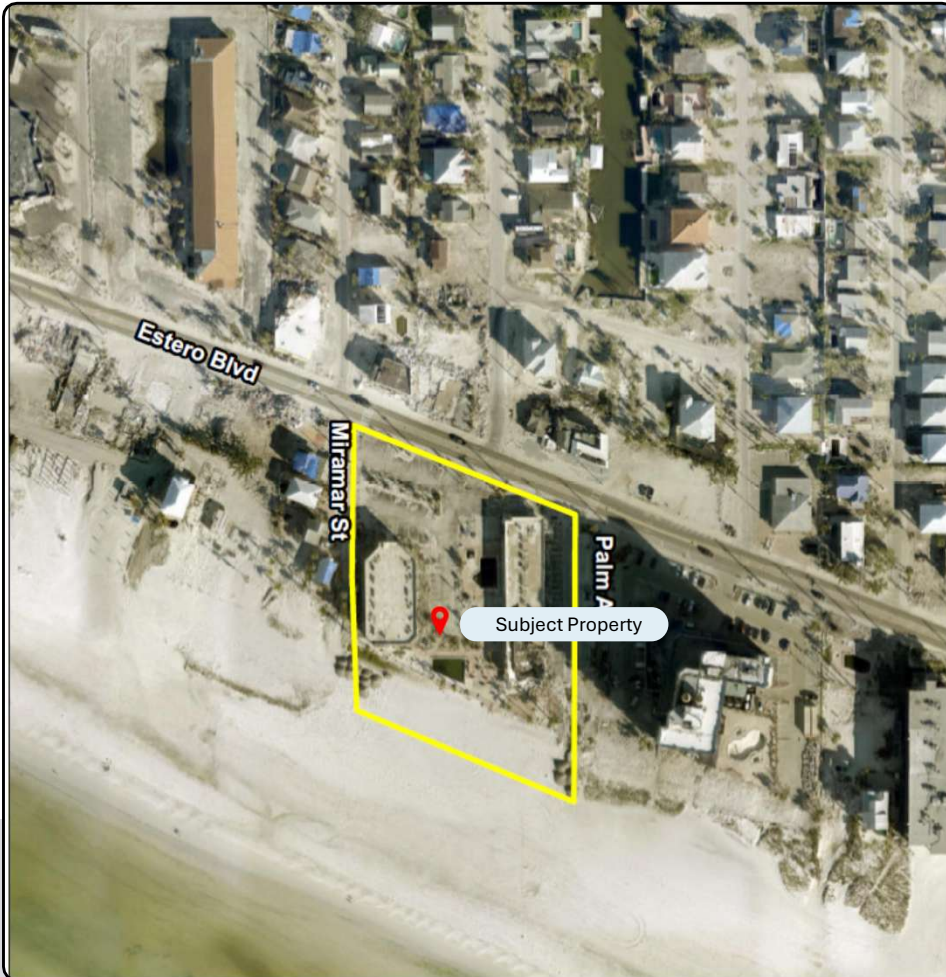
## Construction Timeline



**Once approved and permitted, the estimated Construction Timeline is 14-18 months:**

- Site preparation and foundation: 2-3 months
- Structural framing: 3-4 months
- Exterior finishing: 2-3 months
- Interior work and finishing: 5-6 months
- Amenity construction (pools, spa, courts): 2-3 months (overlapping with other phases)

This estimate assumes average construction complexity and moderate site conditions without significant challenges like difficult terrain or environmental remediation needs.



# PROJECT IMPACT

## Estimated Workforce during Construction



### Pre-construction: 15-30 workers, including:

Architects, engineers, planners, landscape architects, government workers

### Peak construction period: 40-60 workers, including:

- General laborers
- Carpenters
- Electricians
- Plumbers
- HVAC technicians
- Concrete specialists
- Tile/flooring installers
- Painters
- Pool construction specialists
- Landscapers

Design and construction of the newly-designed Estero Island Beach Club may employ as many as 90 local residents. Based upon common industry multipliers, ultimately 150 local jobs could be created before and during construction.\*

*\* For every construction job created in the Cape Coral-Fort Myers MSA, the BEA's RIMS II modeling system projects 1.64 jobs added to the local economy.*



# PROJECT IMPACT

## Materials & Services Procurement

Before and during construction, Estero Island Beach is expected to purchase significant amounts of materials, much of which will be sourced locally:

### Structural Materials

- Concrete (for foundations, floors, and structural elements)
- Steel reinforcement bars and beams
- Lumber for framing and temporary supports
- Masonry materials (bricks, blocks, mortar)
- Roofing materials (trusses, decking, underlayment, shingles/membrane)
- Prefabricated components (possibly for faster construction)

### Exterior Envelope

- Exterior wall cladding (stucco, siding, stone veneer, etc.)
- Insulation (rigid foam, spray foam, fiberglass)
- Windows and exterior doors
- Waterproofing membranes
- Flashing and weather barriers
- Sealants and caulking

### Interior Finishes

- Drywall and joint compound
- Interior doors and trim
- Flooring materials (carpet, tile, hardwood,

luxury vinyl)

- Paint, primers, and wall coverings
- Ceiling materials (acoustic tiles, drywall)
- Cabinetry and countertops
- Bathroom fixtures and accessories
- Light fixtures and switches

### MEP Systems (Mechanical, Electrical, Plumbing)

- Electrical wiring, conduit, panels, and fixtures
- Plumbing pipes, fittings, fixtures, and water heaters
- HVAC equipment (air handlers, ductwork, vents)
- Fire sprinkler systems and alarm components
- Low voltage systems (data, security, audio)

### Pool and Spa Areas

- Concrete pool shells
- Pool equipment (pumps, filters, heaters)
- Spa equipment and fixtures
- Waterproofing and tiling materials
- Pool deck materials and coping stones
- Safety equipment and signage

### Outdoor Areas

- Pavers or concrete for outdoor seating areas
- Shuffleboard court materials and equipment
- Outdoor furniture (tables, chairs, loungers)
- Landscaping materials (plants, mulch, soil)
- Irrigation components
- Outdoor lighting fixtures

### Specialty Items

- Elevator components
- Commercial kitchen equipment (if applicable)
- Signage and wayfinding materials
- Accessibility features and hardware
- Sound attenuation materials between units

### Temporary Materials

- Scaffolding and temporary supports
- Construction fencing and barriers
- Erosion control materials
- Site protection materials



# PROJECT IMPACT

## Economic Impact of Construction

The construction of the resort will generate approximately \$46 million in total economic output in the region, create 270 jobs, and contribute \$24.6 million to the regional GDP.

| Impact Type | Multiplier      | Economic Impact |
|-------------|-----------------|-----------------|
| Output      | 1.2867          | \$45.79 million |
| Earnings    | 0.4244          | \$15.1 million  |
| Employment  | 7.5903 per \$1M | 270 jobs        |
| Value Added | 0.6910          | \$24.6 million  |



Source: Regional Input-Output Modeling System (RIMS II), Bureau of Economic Analysis

# OPERATIONS IMPACT

## Economic Impact of Operations

Once operational, the EIBC will likely provide jobs for 8-12 people. However, the implications for the local area are significant.

Assuming 20% of the total investment (\$7.1 million) represents annual operational activity, and using accommodation multipliers, the ongoing operations of the timeshare resort will generate approximately \$8.6 million annually in economic output, support 49 permanent jobs, and contribute \$5.3 million annually to the regional GDP.

| <u>Impact Type</u> | <u>Multiplier</u> | <u>Economic Impact</u> |
|--------------------|-------------------|------------------------|
| Output             | 1.2119            | \$8.6 million          |
| Earnings           | 0.3182            | \$2.3 million          |
| Employment         | 6.9267 per \$1M   | 49 jobs                |
| Value Added        | 0.7487            | \$5.3 million          |



Source: Regional Input-Output Modeling System (RIMS II), Bureau of Economic Analysis

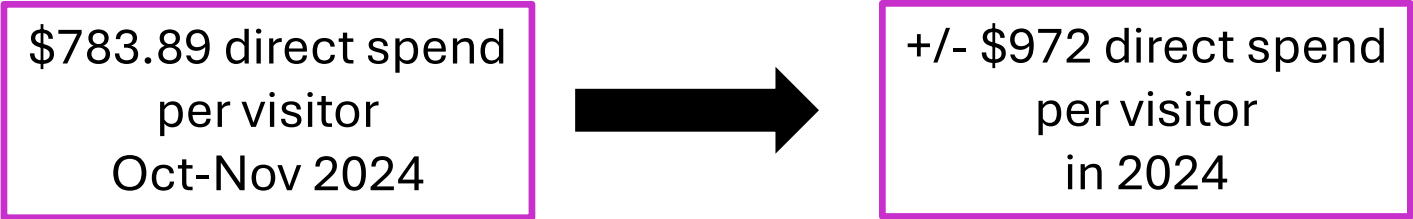
# **OWNER & VISITOR IMPACT**

# OWNER & VISITOR IMPACT

## Lee County Visitor and Convention Bureau

A recent study completed by Downs and St. Germain Research for the Fort Myers Visitors and Convention Bureau found some positive indicators for the tourism economy, showing that the area continues to recover from the aftermath of Hurricane Ian.

- Visitation in Oct - Dec 2024 was up 7.6% and room nights were up 6.1% Year-over-Year. In 2024, 3,199,500 visitors came to the area, up 15.5% year-over-year (YOY).
- Compared to Oct-Dec 2023, Direct Spending was up 3.2% to \$680 Million. In 2024, over \$3 Billion was spent in the local economy. Direct spending includes accommodations, restaurants, entertainment, shopping, transportation, groceries, and “other” expenses.
- The Total Economic Impact of Tourism was up 2.7% year-over-year to \$1.08 Billion for the quarter ended Dec 2024. In 2024, the total impact on the region was nearly \$5 Billion.



# OWNER & VISITOR IMPACT

## Hotel Comparison

Though hotel performance is improving, a resort like Estero Island Beach Club offers a distinct advantage to the economy of Fort Myers Beach.

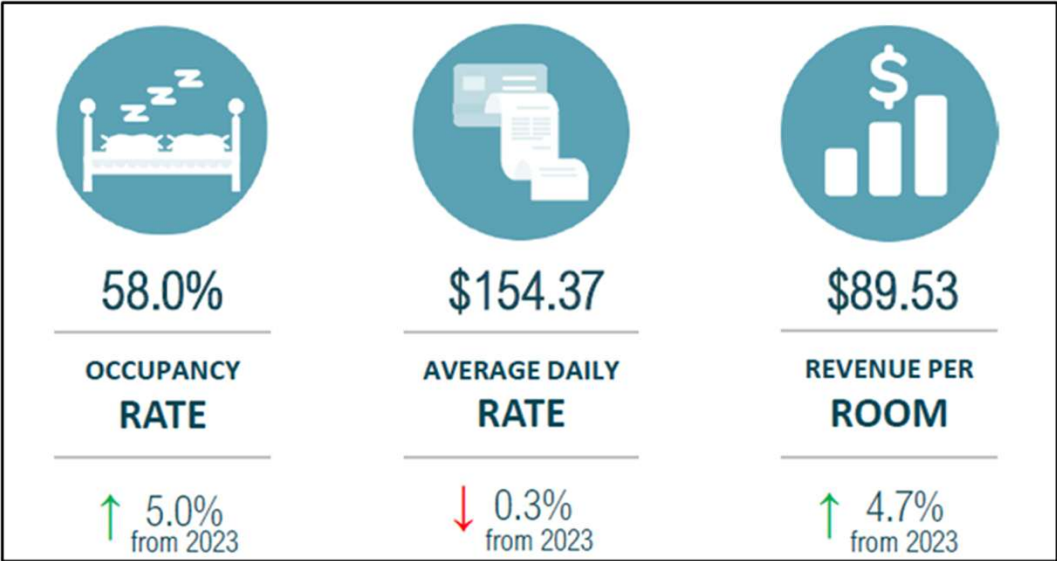
Before Hurricane Ian, the **EIBC had an average occupancy of 90 percent**, compared to the 58 percent recently cited for hotels in the area.

**EIBC has nearly 3,800 owners who regularly visit Fort Myers Beach and have a strong affinity for the area, acting as cheerleaders for the destination.**

The average party staying at the EIBC consists 3.2 people, roughly the same size as in hotels (3.0).

For visitors in paid accommodations, the average stay for visitors to the Fort Myers area from Oct-Dec 2024 was 5.6 nights. Owners at the EIBC typically visit twice per year and stay 14 nights annually.

### Hotel Performance Snapshot (Oct-Dec 2024):





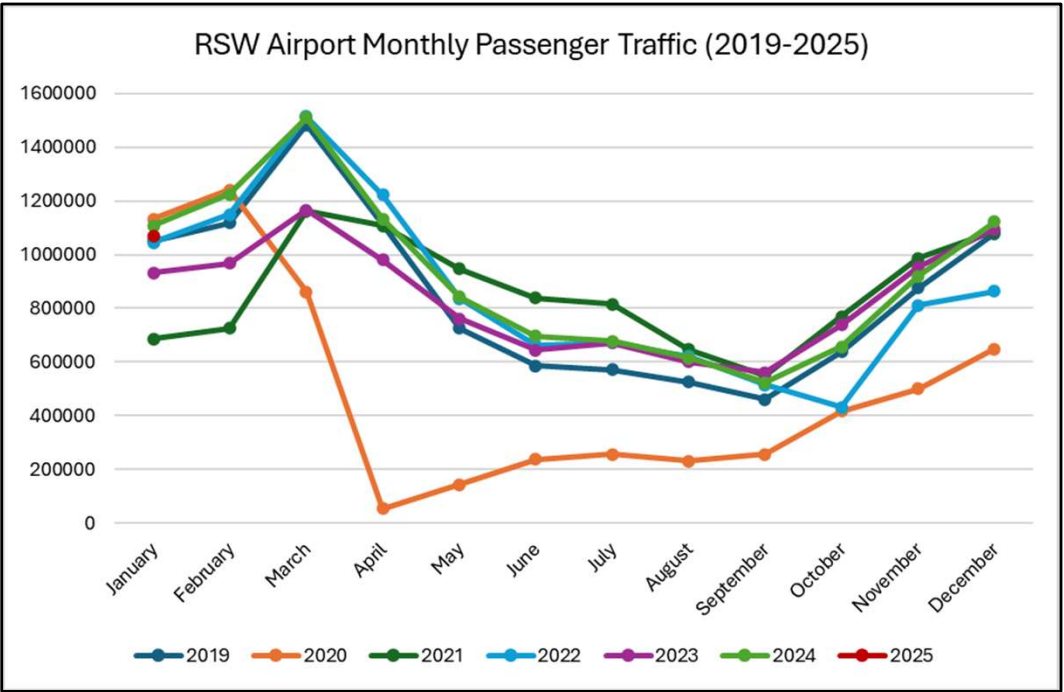
# OWNER & VISITOR IMPACT

## Seasonal Usage Patterns

According to the CVB, 71% of visitors to Southwest Florida in 2024 traveled via air, and 75% of those traveled through Southwest Florida International Airport (RSW).

RSW airport traffic ramps up in October, stays strong through the winter months, and typically peaks in March. With the notable exception of 2020, median annual airport traffic ranges between 825,000 and 880,000 per year. In January 2025, over 1 million visitors came through RSW, which is aligned with 2019, 2021, and 2023. (Hurricane Ian likely impacted January 2022 numbers.)

Source: <https://www.flylcpa.com>



## Occupancy at Estero Island Beach Club conforms with these patterns.

During the peak months of October through March, we estimate an occupancy rate of 95%, or 71 units occupied.

- At 3.2 people per household, we can expect 5,200 people to stay over 25 weeks.

During off-season, April through September, we estimate an occupancy rate of 86%, or 65 units occupied.

- At 3.2 people per household, we can expect 5,907 people to stay over 26 weeks.

**= 11,107 people staying at EIBC each year**



# OWNER & VISITOR IMPACT

## Post-Hurricane Ian, Continued Undersupply

The completion of the EIBC will help to fill a remaining gap in the available accommodations within Fort Myers Beach. As of December 2024, below 50 percent of available hotels were open for business.

| HOTEL ROOM UPDATE                      |        |        |         |                 |
|----------------------------------------|--------|--------|---------|-----------------|
| Lee County Visitor & Convention Bureau |        |        |         |                 |
| Community                              | Open   | Closed | Total   | Percentage Open |
| Boca Grande                            | 181    | 12     | 193     | 93.8%           |
| Bonita Springs                         | 1,301  | 76     | 1,377   | 94.5%           |
| Cape Coral                             | 820    | 0      | 820     | 100.0%          |
| Captiva                                | 394    | 207    | 601     | 65.6%           |
| Estero                                 | 566    | 0      | 566     | 100.0%          |
| Fort Mvers                             | 6,875  | 85     | 6,960*  | 98.8%           |
| Fort Myers Beach                       | 1,182  | 1,213  | 2,395*  | 49.4%           |
| Lehigh Acres                           | 75     | 0      | 75      | 100.0%          |
| North Fort Myers                       | 412    | 139    | 551     | 74.8%           |
| Pine Island                            | 62     | 42     | 104     | 59.6%           |
| Sanibel                                | 696    | 875    | 1,571   | 44.3%           |
| Total                                  | 12,564 | 2,649  | 15,213* | 82.6%           |

\* Includes new properties opened Post-Ian. Total Pre-Ian was 14,266.

3-7-2025



# OWNER & VISITOR IMPACT

## Repeat Visitation Effects

### Owners:

- Make recurring visits throughout the year, creating consistent economic activity
- Generally stay longer durations (average 7-9 days) compared to traditional hotel guests
- Tend to use self-catering facilities but also patronize local restaurants and attractions
- More likely to explore beyond the resort property due to familiarity with the area

### Hotel/Resort Guests:

- Concentrated during peak travel periods
- Typically shorter stays (3-5 days on average)
- More likely to spend on resort amenities and packaged experiences
- Less likely to prepare meals, resulting in higher on-property food and beverage spending

# PROJECT IMPACT:

## Estero Island Beach Resort vs. Hotels

### Employment Structure:

- Timeshare resorts maintain more consistent staffing levels year-round
- Create ongoing maintenance, housekeeping, and administrative positions
- Require regular refurbishment cycles (typically every 5-7 years), creating periodic construction work

### Local Business Support:

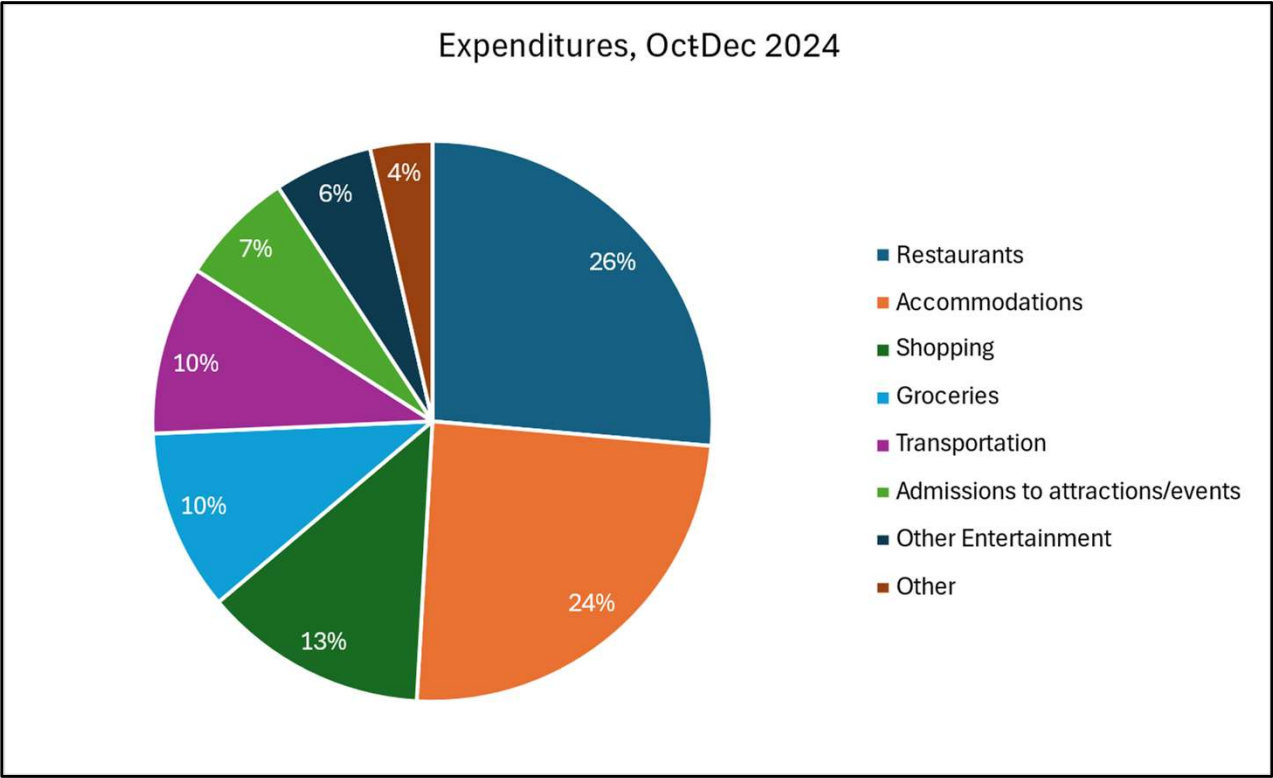
- Timeshare guests use local grocery stores, markets, and retail shops more frequently
- Owners develop relationships with local businesses over repeated visits
- More distributed spending throughout the local economy beyond tourism-focused businesses

### Tax Revenue:

- Predictable tax generation regardless of occupancy rates
- More consistent sales tax collection throughout the year

# OWNER & VISITOR IMPACT

## Spending Patterns



The pie chart above shows the typical spending pattern for visitors to the FMB area from Oct – Dec 2024, per the Downs & St. Germain study. More than a quarter of direct spend is at Restaurants. Setting aside the cost for accommodations, the next largest spend categories are Shopping (13%), Groceries and Transportation (10% each).

## OWNER & VISITOR IMPACT

### Direct Expenditures

- At completion and launch, the EIBC should return to normal occupancy, which averages 90 percent.
  - Off-peak (Apr-Sept): 65 of 75 rooms occupied (86%).
  - Peak season (Oct-Mar): 71 of 75 rooms occupied (95%).
  - 11,107 owners and visitors are expected at EIBC on a yearly basis
- Expected annual per person direct expenditures:

| Category                         | Per Person Expense | Percentage of Spend |
|----------------------------------|--------------------|---------------------|
| Restaurants                      | \$ 256.52          | 26%                 |
| Accommodations                   | \$ 237.96          | 24%                 |
| Shopping                         | \$ 125.79          | 13%                 |
| Groceries                        | \$ 101.60          | 10%                 |
| Transportation                   | \$ 94.77           | 10%                 |
| Admissions to attractions/events | \$ 64.69           | 7%                  |
| Other Entertainment              | \$ 55.39           | 6%                  |
| Other                            | \$ 34.82           | 4%                  |
| <b>Total</b>                     | <b>\$ 971.54</b>   | <b>100%</b>         |

**Potential Direct Expenditures by EIBC owners and visitors during a typical year: \$10,790,895.\***



## OWNER & VISITOR IMPACT

### Sales Taxes

Based on the projected expenditures\*, the Town of Fort Myers Beach would collect \$56.55 per person in sales taxes, or \$618,105 per year, for all EIBC visitors.

In addition, a Tourist Development Tax (or “bed tax”) of 5% per stay is remitted to Lee County whenever the owner rents a unit to a guest. A portion of that tax helps to support the Town of Fort Myers Beach.

\*does not include groceries

# CONCLUSIONS

# CONCLUSIONS

## Estero Island Beach Club

Rebuilding the Estero Island Beach Club will significantly benefit Fort Myers Beach by restoring accommodations capacity (currently at only 49.4% of pre-hurricane levels), creating jobs, generating tax revenue, and bringing consistent visitor spending to local businesses.

### Economic Impact

- Construction will generate approximately \$46 million in total economic output
- The project will create up to 90 local jobs during design, permitting, and construction
- Construction would support an estimated 270 jobs in the regional economy
- Once operational, EIBC will employ 8-12 local residents
- Annual operations will generate approximately \$8.6 million in economic output and support 49 permanent jobs

# CONCLUSIONS

## Estero Island Beach Club

### Visitor Impact

- The resort is expected to host 11,107 visitors annually with high occupancy rates (90% average)
- Visitors will generate an estimated \$10.7 million in annual spending at local businesses
- The Town will collect approximately \$618,105 in annual sales tax revenue
- EIBC owners typically stay longer and visit more frequently than hotel guests
- The timeshare model creates more consistent year-round economic activity

### Design Improvements

- The new design features Florida Tropical aesthetic with enhanced public views of the Gulf
- Design includes sustainable features: energy-saving elements, hurricane-impact windows, full concrete construction
- The building will be elevated approximately 20 feet for flood protection
- The project will add public benefits including parking spaces, a sidewalk, bike racks, and beach accessibility features



# **ASSUMPTIONS & LIMITING CONDITIONS**

# ASSUMPTIONS & LIMITING CONDITIONS

The following contingencies and limiting conditions are noted as fundamental assumptions that may affect the validity of the analysis and conclusions reached in this report:

- All information contained in this report, while based upon information obtained from the client and other sources deemed to be reliable, is in no way warranted by Residential Marketing Resources.
- The Town of Fort Myers Beach, Lee County, and the nation as a whole will not suffer any major economic shock during the time period of the forecast contained in this report.
- Population will continue to increase at or above the rate forecast.
- The sources of statistical data and demographic estimates used in this analysis are sufficiently accurate to be useful for planning purposes.
- The development will be designed, promoted, and managed in a professional manner.
- Radical changes in factors affecting the major assumptions noted above could alter the conclusions reached in this analysis or necessitate the re-evaluation of portions of this report.



**Vaie Talts O'Grady**  
**Residential Marketing Resources**  
vaie@residentialmarketingresources.com



# **Business Impact Estimate**

Proposed ordinance's title/reference:

**Ordinance 25-XX CPD Approval for the Rebuild of 75-unit Time-share**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING TO REZONE THE PROPERTY LOCATED AT 1836 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010 TO REZONE FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND REQUEST FOUR (4) DEVIATIONS FROM REQUIREMENTS TO PROVIDE 1) OPERABLE DOORS ALONG ESTERO BLVD, 2) SCREENING MATERIAL ON THE GROUND FLOOR, 3) INCREASE BUILD-TO LINE SETBACKS, AND 4) INCREASE THE MAXIMUM ALLOWED HEIGHT BY 18-FEET; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
  - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
  - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):

The proposed ordinance approves CPD with deviations to redevelop a 75-unit timeshare and requesting additional height.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

Any costs incurred by the applicant will be to further their commercial business, this has been requested by the applicant themselves.

Ordinance 25-xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The proposed approval of the applicant's CPD with deviations will be relevant only to the applicant and their lot/business.

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

N/A

**ORDINANCE 24-13**  
**(Estero Island Beach Club)**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING TO REZONE THE PROPERTY LOCATED AT 1836 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010 TO REZONE FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) AND REQUEST FOUR (4) DEVIATIONS FROM REQUIREMENTS TO PROVIDE 1) OPERABLE DOORS ALONG ESTERO BLVD, 2) SCREENING MATERIAL ON THE GROUND FLOOR, 3) INCREASE BUILD-TO LINE SETBACKS, AND 4) INCREASE THE MAXIMUM ALLOWED HEIGHT BY 18-FEET; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, Estero Island Beach Club Association, Inc., owner, and Fred Drovdlc, AICP with RVi Planning & Landscape Architecture, as agents for the owner (collectively "Applicant") of property generally located 1836 and 1840 Estero Blvd, Fort Myers Beach and identified as STRAP numbers 19-46-24-W4-03200.00CE and 19-46-24-W4-03200.1010 ("the Property"), filed an application to rezone the Property from Downtown zoning district to Commercial Planned Development, with an attached Master Concept Plan (MCP) in order to redevelop a timeshare condominium and associated facilities, on the Property's 1.92+/- acres more or less; and

**WHEREAS**, the Property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

**WHEREAS**, the applicant has indicated the subject property is under common control and Estero Island Beach Club Association serves as the managing entity listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on May 13, 2025; and

**WHEREAS**, at the May 13, 2025 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town of Fort Myers Beach Land Development Code ("LDC"); and

**WHEREAS**, at the May 13, 2025 public hearing the LPA recommended approval by a 7 to 0 vote based on a finding that the approval **is** in compliance and consistent with the Town of Fort Myers Beach Comprehensive Plan and the LDC; and

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

**WHEREAS**, on June 2, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised in the Fort Myers News-Press more than 10 days prior to the Town Council on June 16, 2025; and

**WHEREAS**, at the June 16, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, there are no outstanding fees associated with any notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, Exhibit A contains the conditions of approval associated with this proposed development and incorporated by reference into the Ordinance; and

**WHEREAS**, Exhibit B contains a Master Concept Plan associated with this proposed development and incorporated by reference into the Ordinance; and

**WHEREAS**, Exhibit C contains a Schedule of Uses associated with this proposed development and incorporated by reference into the Ordinance; and

**WHEREAS**, the Town Council finds that this request to **APPROVE/ APPROVE WITH CONDITIONS/ DENY**, is a unique and individual application which does not set precedent for future development or rezoning applications.

**WHEREAS**, approval of this request and Ordinance requires approval of the following deviations from the LDC:

**Deviation #1**

Deviate from LDC §34-995(b)(1) and (4) regarding entrances, requires a primary entrance and views into the first floor of commercial buildings where: (1)The primary entrance to all buildings shall face the street; and (4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet.

**Deviation #2**

Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee; to allow 50% of the under building parking area of the building façade fronting on Estero Boulevard and Palm Avenue to be fully screened and a 5-foot hedge in the unscreened areas to help hide vehicles.

**Deviation #3**

Deviate from LDC §34-674(a)(1) that requires build to lines in the Downtown District in this location be from five feet to 10 feet; to not require build to lines but rather minimum building setbacks for the building on Estero Boulevard of 15 feet, a minimum building setback of 10 feet from Palm Avenue, and a minimum building setback of 30 feet from Miramar Street.

**Deviation #4**

Deviate from LDC §34-675(b)(3)c that requires a maximum height of 30 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district to allow a height of: Five (5) stories [four (4) stories over ground level parking]; and 48 feet above FDEP design flood elevation (DFE).

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings of fact regarding the rezoning request before making its final decision on the Ordinance as required by Sections 34-85 and 34-216 of the LDC:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and LDC.
- d. The Town Council carefully considered the testimony of the Applicant, the recommendations of staff and of the LPA, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the Applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, LDC, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.

- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the Master Concept Plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
  - Policy 4-C-4 on building heights taller than the standard height limit
  - Policy 4-C-6 on hotel/motel densities
  - Policy 4-C-8 on density transfers
  - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the LDC (see LDC 34-216 and 34-1803):

1. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area, including building height, traffic flow, and intensity of use.
2. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
3. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
4. Granting these deviations will enhance the achievement of the objectives of the proposed development.
5. The general intent of the LDC to protect public health, safety, and welfare will be preserved and promoted with these deviations.
6. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
7. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

**WHEREAS**, the Town Council finds that this application to **APPROVE/ APPROVE WITH CONDITIONS/ DENY** Ordinance 25-13 as provided herein **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

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

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested rezoning in Ordinance No. 25-13 **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council hereby **DENIES/ APPROVES/ APPROVES WITH CONDITIONS** the requested rezoning.



Section 3. Town Ordinance 25-13 is adopted subject to the conditions of approval in Exhibit A, the Master Concept Plan in Exhibit B and the Schedule of Uses in Exhibit C, all of which are attached hereto and incorporated herein by this reference.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

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

ADOPTED this \_\_\_\_ day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

#### **TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

#### **ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE**

**AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

---

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this \_\_\_\_\_ day of June 2024.

**EXHIBITS**

Exhibit A –Conditions of Approval

Exhibit B – Master Concept Plan

Exhibit C – Schedule of Uses

## **Exhibit A; part 1: Conditions of Approval**

1. Development shall provide signage warning exiting vehicles of pedestrian traffic within the Town's Palm Ave. and Palm Ave. beach access points.
2. The final architectural design shall be substantially similar to the design approved by the Town Council.
3. The applicant shall provide a more detailed landscaping plan utilizing a type-B buffer and using largely 'Florida Friendly' species, or other salt-tolerant plants and trees.
4. Approval of this Ordinance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

1. **Request:**

**Meeting Date:** June 16, 2025

*This legislative agenda item is a 2nd First Reading and Public Hearing on proposed Ordinance 25-08.*

**ORDINANCE TITLE:**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, ~~NOTICES TO REQUIRE APPLICANTS FOR REZONINGS, DEVELOPMENT AGREEMENTS, DEVELOPMENTS OF REGIONAL IMPACT, SPECIAL EXCEPTIONS, ADMINISTRATIVE APPEALS, AND VARIANCES, INCLUSIVE OF VARIANCES OF SINGLE-FAMILY OR TWO FAMILY HOME VARIANCES TO REQUIRE THE APPLICANT TO PROVIDE PROOF OF MAILED AND POSTED PUBLIC NOTICING PRIOR TO LPA~~LOCAL PLANNING AGENCY AND TOWN COUNCIL HEARINGS; AMENDING THE MANNER OF OBTAINING INFORMATION BY CONTACTING TOWN STAFF AND THE USE OF LAYMAN'S LANGUAGE IN REQUIRED NOTICES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

The LDC at present does not require posted signs on site or dictate a timeframe for mailed notices. The code language has also been edited to include development agreements.

**What the action accomplishes:**

This action would provide clear rules for noticing that will benefit the public and provide clarity to applicants.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

At the January 2025 LPA meeting, the LPA directed staff to bring forward an ordinance to amend the Land Development Code (LDC) section regarding notice requirements.

The intent of this ordinance is to create a notice timeframe, a posted notice requirement and to require applicants to do the work of providing notice to the public. At present, Town staff mail postcards to property owners within a 500ft radius and bills the applicant for that cost. The LDC does not provide a timeframe at present and there is no requirement for posting a notice at the site. The draft ordinance sets the timeframe at 7 days ahead of the public hearing.

The LPA reviewed the ordinance at their May 13th, 2025, meeting and voted 7 to 0 to recommend approval of the ordinance to the Town Council. The LPA recommended that staff create template postcards and signs for applicants to utilize.

The Town Council approved the ordinance at first reading on June 2, 2025 with changes, which necessitated an amendment to the title of the proposed ordinance and a second first reading.

**Attachments:**

1. Rev NS June 16 Public Notice Ordinance (3)

**Financial Impact:**

At present, Town staff sends out postcards and bills the applicant, requiring the applicant to

send out the notices should be cost neutral. The cost of posted 18"x24" signs should be minimal to the applicant.

6. **Alternative Action**

Do not approve

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

Judith Frankel, Principal Planner  
Judith Frankel, Principal Planner  
Georgina Cid, Community Development Manager  
Frankie Kropacek, Community Development Director  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Approved - 6/11/2025  
Final Approval - 6/11/2025

## **ORDINANCE NO. 25-08**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, NOTICES ~~TO REQUIRE APPLICANTS FOR REZONINGS, DEVELOPMENT AGREEMENTS, DEVELOPMENTS OF REGIONAL IMPACT, SPECIAL EXCEPTIONS, ADMINISTRATIVE APPEALS, AND VARIANCES, INCLUSIVE OF VARIANCES OF SINGLE-FAMILY OR TWO FAMILY HOME VARIANCES~~ TO REQUIRE THE APPLICANT TO PROVIDE PROOF OF MAILED AND POSTED PUBLIC NOTICING PRIOR TO LPA LOCAL PLANNING AGENCY AND TOWN COUNCIL HEARINGS; AMENDING THE MANNER OF OBTAINING INFORMATION BY CONTACTING TOWN STAFF AND THE USE OF LAYMAN'S LANGUAGE IN REQUIRED NOTICES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

**WHEREAS**, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

**WHEREAS**, the proposed changes to the Land Development Code are not more restrictive or burdensome to development; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on February 11th, 2025, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7 to 0, to recommend approval of this Ordinance; and

**WHEREAS**, on June 2<sup>nd</sup>, 2025, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to adopt Ordinance 25-08 as provided herein and approved scheduling an adoption public hearing with amendments; and

**WHEREAS, in view of amendments made to the title of the proposed Ordinance, a second first reading of the Ordinance was held on June 16, 2025 at which time the Town Council gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to adopt Ordinance 25-08 as provided herein and approved scheduling an adoption public hearing; and**

**WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the \_\_\_\_ day of \_\_\_\_\_, 20245, as required by Section 166.041(4), Florida Statutes; and**

**WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the \_\_\_\_ day of \_\_\_\_\_, 2025, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 20245, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and**

**WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to adopt the proposed change.**

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:**

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

**Section 2.** LDC Sec. 34-236 is hereby amended to read as provided in Exhibit A.

**Section 3.** The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

**Section 4.** Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

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

**Section 6.** This ordinance shall become effective on September 1, 2025 following



adoption by the Town Council.

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

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2025, by the Town Council of the Town of Fort Myers Beach,  
Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, Town Attorney

The foregoing Ordinance was filed in the Office of the Town Clerk on the \_\_\_\_ day of  
\_\_\_\_\_, 2025.

Attached Exhibits  
Exhibit A – Proposed Noticing Requirements



## Exhibit A

### Sec. 34-236. Notices.

(a) Minimum required information. A notice of public hearing under this chapter shall contain the following minimum required information:

(1) Action proposed.

a. Rezoning, development agreements and developments of regional impact. All required notices shall indicate the existing zoning of the property, the proposed zoning, and the general location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.

b. Special exceptions and variances. All required notices shall indicate the existing zoning of the property; the proposed use by special exception, or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.

c. Quasi-Judicial and Administrative Appeals. The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.

(2) Time and place of hearing. The notice shall specify the date, time and place that the public hearing will be held by the local planning agency or the town council.

(3) Public availability of information. The notice shall indicate ~~where~~ that copies of the proposed amendment application may be obtained or reviewed, ~~or where the application for public hearing may be reviewed.~~ by contacting Town Hall staff.

(4) Location of record of notice. A copy of such notice shall be kept available for public inspection during the regular business hours at Town Hall ~~and at the director's office.~~

(b) Method of providing notice. Notices of hearings before the local planning agency and the town council shall be provided by the applicant or their agent in accordance with applicable statutes and subsection (a) of this section. All noticed requests shall utilize layman's language, i.e., "apartment building" rather than "multi-family dwelling," "restaurant" rather than "business zoning."

(c) Mailed notices.

a. Applications for Commercial, Institutional and Multi-family development. The property owners list and map of surrounding property owners required by §§ 34-202(a)(6) and (a)(7) of this chapter is for the purpose of mailing notice to property owners within 500 feet of the property described. ~~The notice is a courtesy only and is not jurisdictional.~~ The applicant or their agent must provide proof of mailed notices 7 calendar days prior to the scheduled public hearing date. Proof must be provided via map of 500 ft radius, list of mailing addresses and photographs of mailed notices with paid postage stamp. Accordingly, the failure to mail or to timely mail such notice, ~~or failure of any affected property owners to receive mailed notice,~~ will not constitute a defect in notice ~~or bar~~ and deny the public hearing from being heard as scheduled.

b. Single-Family or Two-Family Home variances. These applications are exempt from 34-202(a)(6) and (a)(7) The applicant or their agent must provide photographic proof of mailed notices at least 7 calendar days prior to the scheduled public hearing date. The applicant shall mail written courtesy notices to the abutting property owners and property owners parallel to the subject property line across any right-of-way or canal, of the planning and zoning board meeting date, time and location.

(d) Posted notices. The applicant or their agent is responsible for posting a notice of a public hearing on site at least 7 calendar days prior to a scheduled meeting. A professionally lettered sign must be posted at each property boundary that fronts a public right-of-way. Photographic proof must be received by the Town Clerk 7 days in advance of the scheduled

hearing with the LPA or Town Council. Failure to post the notice or to provide staff with a receipt of proof of the posted notice will constitute a defect in notice and require rescheduling of the hearing.

(1)The posted notice, 18 inches by 24 inches, must be placed in a prominent place on the property by the applicant/agent at their own expense denoting the following: application request, date and time of hearing, hearing body (i.e. LPA or Town Council), location of hearing and phone number of Town Hall directing interested parties to contact for information.

1. **Request:**

**Meeting Date:** June 16, 2025

Update on Impact Fees provided by Jason Green of Axis Infrastructure

**Why the action is necessary:**

The Impact Fee Study scope of work requires periodic updates to the Town Council.

**What the action accomplishes:**

The update will provide Town Council with a status update on the study.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

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5. **Background:**

The Axis Infrastructure Team is serving as the Town's consultant to provide an impact fee study for the Town of Fort Myers Beach. Development impact fees are not a general revenue-raising mechanism. Rather, they are a means to fund the construction of growth-related capital improvements necessary to accommodate new development.

Jason Green of Axis Infrastructure will provide an update on this study and provide handouts at the meeting.

**Attachments:**

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison  
Frankie Kropacek, Community Development Director  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/4/2025  
Approved - 6/5/2025  
Approved - 6/8/2025  
Approved - 6/9/2025  
New -

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2026 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR THEIR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT, ANY POST DISASTER QUESTIONNAIRES, AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

The program requires the approval and maintenance of the program from the Highest Authority of the Town administration and can be delegated later on.

**What the action accomplishes:**

This item will allow the Town Manager and staff to complete the required documentation and assessments associated with the FDEM program.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Freeman, Deputy Town  
Clerk / Legislative Liaison

---

5. **Background:**

Florida Recovery Obligation Calculation (F-ROC) is a newer initiative, sponsored by the Florida Division of Emergency Management (FDEM) that standardizes, streamlines, and simplifies the Public Assistance process.

The Town participated in the introductory first year and the second year of the program and is planning to opt-in for this next year as well to provide for the opportunity for increased preparedness and upfront funding in the event of an emergency situation.

For more information on the F-ROC Program, please click the following link:

<https://www.floridadisaster.org/froc/>

**Attachments:**

1. NS 25-200, 2026 F-ROC Participation
2. 2026-f-roc-participation-request-and-renewal-form

**Financial Impact:**

Provides the opportunity for faster funding of Category A (Debris Removal) and Category B (Emergency Protective Measures) projects.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**



Jason Freeman, Deputy Town Clerk / Legislative Liaison  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Final Approval - 6/10/2025

## **RESOLUTION NUMBER 25-200**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2026 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT, ANY POST DISASTER QUESTIONNAIRES, AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town of Fort Myers Beach, Florida (the “Town”) had the opportunity to participate in the first and second years of the Florida Division of Emergency Management’s Florida Recovery Obligation Calculation (F-ROC) Program (the “Program”); and

**WHEREAS**, the Town desires to continue participation in the Program to provide the Town with assistance in identifying risk in our organization and develop a clear action plan that will abate those risks, while standardizing and streamlining the Public Assistance process; and

**WHEREAS**, as part of participation of the Program, the Town must submit a signed participation and renewal request; and

**WHEREAS**, the Town Council finds and determines that it is in the best interest of the Town and its citizens to authorize the participation of the Program for the 2026 season and the administration thereof of the Program; and

**WHEREAS**, the Town desires to authorize the Town Manager or designee to submit the 2026 participation documentation and administer the Program on behalf of the Town; and

**WHEREAS**, the Town Council desires to authorize the Town Manager or designee to execute and deliver all documents necessary to participate in the Program and carry out the administration of same.

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

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

Section 2. That the Town Council hereby authorizes and instructs the Town Manager to participate in the Program for the year 2026 from the Florida Division of Emergency Management and to administer the Program on behalf of the Town.

Section 3. That Town Manager William McKannay or his designee is authorized to execute and deliver any documents necessary to opt-in, participate, and administer the Program on behalf of the Town.

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

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

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

ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_ day of \_\_\_\_\_ 2025.

**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

\_\_\_\_\_ (hereinafter referred to as the “Applicant”), requests to opt-in/renew its participation in the Florida Recovery Obligation Calculation (“F-ROC”) program. The F-ROC program is an initiative, sponsored by the Florida Division of Emergency Management (“Division”), that assists Applicants in identifying risk in their organization and develops a clear action plan that will abate those risks, while standardizing and streamlining the Public Assistance process.

|                      |  |
|----------------------|--|
| Applicant's name:    |  |
| Applicant's FEIN:    |  |
| Applicant's Address: |  |

**(1) DEFINITIONS**

1. Disaster Readiness Assessment (DRA): The DRA is a questionnaire completed prior to a disaster that evaluates the Applicant's risk of de-obligations in the Public Assistance (PA) program.
2. Post Disaster Questionnaire (PDQ): The PDQ is completed after each federally declared event to gather Applicant-specific information regarding training and utilization of forms.
3. Expedited Projects: Applicants may submit Expedited Projects to FEMA if they have an immediate need for funding to continue life-saving emergency protective measures. If approved, the Applicant will be awarded 50% of the federal portion of the FEMA-confirmed project cost based on initial documentation.
4. Obligated: FEMA obligates funding once a project meets the Stafford Act eligibility requirements.
5. De-obligated: FEMA de-obligates funding if previously obligated costs have been determined to be ineligible under the PA program.
6. Emergency Management Accreditation Program (EMAP): A voluntary “standards, assessment, and accreditation” process for disaster preparedness programs.

**(2) CONTACT**

|                             |  |
|-----------------------------|--|
| Applicant Point of Contact: |  |
| Telephone:                  |  |
| Email:                      |  |

**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

|                            |                        |
|----------------------------|------------------------|
| Division Point of Contact: | Recovery Bureau        |
| Telephone:                 | (850) 815-4400         |
| Email:                     | F-ROC@em.myflorida.com |

- a. If different representatives or addresses are designated by either party after submitting this Form, a notice with the name, telephone, and email of the new representative will be provided to the other party in writing via letter or electronic email.

**(3) TERMS AND CONDITIONS**

Upon the Applicant completing the mandatory Opt-In training course, submitting this completed Form, and submitting the mandatory Disaster Readiness Assessment, the Applicant will receive the minimum/baseline score of 10% for work-completed projects and work-to-be-completed projects.

- a. Pursuant to this Form, the opt-in/renewal will cover large, non-expedited, Category A (Debris Removal) and Category B (Emergency Protective Measures) projects. As additional categories of work are incorporated into the DRA, F-ROC funding will be applicable to those large projects. Participation in the F-ROC program will be automatically renewed on an annual basis.
- b. To complete the participation process and receive the 10% baseline, the Applicant must:
- c. Complete the Opt-In training course with a score of 100%:
  - i. Submit the signed Participation Request and Renewal Form; and
  - ii. Submit the 2026 DRA.
- d. If an Applicant wishes to increase their score, they can do so by completing the items listed below:
  - i. Complete the recommended abatement activities following submittal and review of the DRA.
  - ii. Complete the Post Disaster Questionnaire ("PDQ").
  - iii. Utilize the Division's standardized F-ROC forms.
  - iv. Training (excluding the Opt-in and Leadership courses).
- e. This Form will not apply to any Expedited Projects.
- f. The deadline to opt-in or renew participation in the 2026 term of the F-ROC program, is August 31, 2025.

**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

- g. The implementation of the F-ROC program does not guarantee funding for Applicants. Funding will remain contingent upon obligation by FEMA and the Applicant will be liable for repayment (See (7) REPAYMENTS) upon de-obligation by FEMA of any disbursed funds. Any de-obligation of funding is within FEMA's sole discretion and the Division shall not be liable for FEMA's exercise of its discretion.
- h. If the Applicant seeks to "opt-out" of F-ROC, the Applicant must make a request to that effect and submit it in writing to the Division. The request must be on the Applicant's letterhead and duly signed by an authorized representative of the Applicant.
- i. The deadline to complete the 2026 DRA, pursuant to this Form, is October 31, 2025.
- j. The deadline to complete any abatement activities shall be March 31<sup>st</sup> of the calendar year after this Form has been executed and re-occurs every year.
- k. The Applicant shall have sixty (60) days from the date their County is designated under the disaster declaration to complete the applicable PDQ. The PDQ must be completed to access additional points and increase the locked-in score for that event. If the Applicant requests an extension on completing the PDQ, such an extension request must be made prior to the obligation of funds for it to impact the Applicant's score and therefore, influence the obligation attached thereto.
- l. The Applicant and the Division shall identify the key Points of Contact (POC) respectively.
- m. The Division reserves the right to remove an Applicant from the program. Furthermore, if the Division has reason to believe that the Applicant is engaged in fraud, waste, abuse, or noncompliance of State and/or Federal laws, the Division may impose a one (1) year prohibition upon the Applicant from participation in the program.
- n. The Applicant's failure to complete the criteria set forth in this Form shall result in a default to the traditional method of disbursing obligated Public Assistance funds; meaning, the Division will consider failure to complete the requirements as the Applicant voluntarily "opting out" of the program.
- o. The opt-in participation renewal duration shall remain open-ended until the division receives a formal "opt-out" request as stated above (h).

**(4) PERIOD OF PERFORMANCE**

This Form survives and remains in effect after termination, for the herein referenced State and Federal audit requirements and required records retention periods. Work may only be performed during the timeframes established and approved by the State and/or FEMA for each Category of Work type.

**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

**(5) FUNDING**

- a. Participation in the F-ROC program does not guarantee funding and is dependent upon FEMA's obligation.
- b. By signing and returning this Form for F-ROC, Applicants have the potential to receive a score up to 80%. This score is made up of three components:
  - 1. 10% Baseline score for signing and returning this Form. Applicants will receive the baseline score upon submittal of the 2026 DRA.
  - 2. Up to a 50% score for completing the DRA and applicable abatement activities.
  - 3. Up to a 20% score for completing the PDQ.
- c. Applicants who have received EMAP accreditation will receive an additional 5%.
- d. Scores related to any activities completed because of this form shall be applied to any Presidentially declared events from July 1, 2026, through June 30, 2027. This period shall serve as the relevant timeframe for the Disaster Readiness Assessment (DRA), and the same annual timeframe shall apply in subsequent years.
- e. The Applicant may choose to receive a lesser score than the score earned through the completion of the above components on a one-time basis per disaster. The Applicant must make a request to that effect in writing to the Division, on their letterhead and duly signed by an authorized representative of the Applicant. Such a request must be made prior to the obligation of funds for it to impact the Applicant's score and therefore reflect upon the obligation attached thereto.
- f. The Applicant's score directly corresponds to the percent of the eligible obligated amount that will be disbursed to the Applicant upon obligation of the Public Assistance project. After validation of all supporting documentation is complete, the Applicant will receive the remainder of the validated, obligated amount.
- g. If the Applicant has any open receivables with the Division, those receivables must be satisfied before any disbursements are made through the F-ROC program.

**(6) PAYMENT**

- a. The payment method used by the Division is either Cost Reimbursement or an Advance Payment. Advance Payments are governed by Chapter 216, Florida Statutes. Documentation to support the F-ROC payment must be provided to the Division within 90 days of the disbursement of funds via a Request for Reimbursement in FloridaPA.org. The Division, in its sole discretion, may release funds during or after the term of this form, subject to the availability of funds.
- b. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the agreement period and



**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Applicant.

**(7) REPAYMENTS**

- a. Refunds or repayments of the obligated funds may be paid to the Division via offset with another obligated Public Assistance project, check, or a payment plan, as approved by the Department of Financial Services.
- b. All refund or repayments due to the Division under this Agreement are to be made payable to the order of "Florida Division of Emergency Management" and must include the invoice number and the applicable Disaster and Project number(s) that are the subject of the invoice, and shall be mailed directly to the following address:

Florida Division of Emergency Management Cashier  
2555 Shumard Oak Boulevard  
Tallahassee FL 32399-2100

For the purposes of execution and opt-in/renewal, this Form shall remain binding unless the Applicant decides to formally opt-out of the program. The Division reserves the right to remove an Applicant from the program. The Division and Applicant agree that all records will be maintained until the conclusion of all applicable record retention periods.

IN WITNESS WHEREOF, the Applicant hereto has executed this Form.

Applicant: \_\_\_\_\_

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2026 PARTICIPATION REQUEST AND RENEWAL FORM  
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

**ATTACHMENT A: APPLICANT POINTS OF CONTACT**

**F-ROC SMART GRANTS CONTACTS**

|                   | Name | Email Address |
|-------------------|------|---------------|
| Authorized Agent* |      |               |
| Alternate**       |      |               |
| Alternate         |      |               |
| Alternate         |      |               |
| Alternate         |      |               |
| Alternate         |      |               |
| Alternate         |      |               |

*\*All Applicants must identify an Authorized Agent or an Authorized Delegate. The Authorized Agent, or Delegate, is the only person who can submit the DRA.*

*\*\*An alternate can do all tasks within the system with the exception of submitting the DRA.*

**F-ROC COMMUNICATIONS DISTRIBUTION LIST**

| Name | Email Address |
|------|---------------|
|      |               |
|      |               |
|      |               |
|      |               |
|      |               |
|      |               |
|      |               |

*This list will be for anyone you would like to receive F-ROC communications and updates.*

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SECOND AMENDMENT TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED DECEMBER 2, 2024 WITH FLORIDA MARINE CONTRACTING & RECOVERY, LLC, WHICH WAS PREVIOUSLY RATIFIED BY THE TOWN COUNCIL ON JANUARY 8, 2025, TO FURTHER EXTEND THE TERM OF THE AGREEMENT RETROACTIVELY FROM APRIL 30, 2025 TO MAY 15, 2025 TO ALLOW FOR PAYMENT OF OUTSTANDING INVOICES FOR DEBRIS REMOVAL FROM WATERWAYS IN THE TOWN OF FORT MYERS BEACH CAUSED BY HURRICANES HELENE AND MILTON AND DISPOSAL AT AN AUTHORIZED WASTE MANAGEMENT SITE COMPLETED AFTER EXPIRATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The debris deposited into the waterways by Hurricanes Helene and Milton was far greater than expected, requiring additional time and efforts by Florida Marine Contracting and Recovery LLC to remove and dispose of submerged debris.

**What the action accomplishes:**

The action ratifies the 2nd Amendment to SPA-24-14 with Florida Marine Contracting and Recovery, LLC for removing and disposing of debris from the waterways of Fort Myers Beach extends the contract for a period of 15 days set to expire on May 15, 2025.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental  
Projects Manager

---

5. **Background:**

Hurricanes Helene and Milton caused significant storm surge within days of each other, resulting in significant damage and debris into the waterways of Fort Myers Beach.

On the 8<sup>th</sup> day of January, 2025 the Town Council ratified SPA-24-14 between the Town of Fort Myers Beach and Florida Marine Contracting and Recovery, LLC with a not-to-exceed amount of \$200,000.00 to remove debris from waterways in the Town of Fort Myers Beach caused by Hurricanes Helene and Milton and dispose of the debris at an authorized waste management facility to protect the health and welfare of the citizens and visitors of the Town of Fort Myers Beach abate the socioeconomic impacts on the Community caused by debris impairing navigable waterways, as well as to protect the financial well-being of the businesses in the Town that depend on boating and waterfront rental properties.

On the 3<sup>rd</sup> day of March 2025, the Town Council approved the 1<sup>st</sup> amendment of contract SPA-24-14-EN between the Town of Fort Myers Beach and Florida Marine Contracting and Recovery, LLC to extend the time period of the contract to April 30, 2025 and increase the not to exceed amount to \$2,000,000.00.

In order to continue needed debris removal work, the existing agreement needs to be amended to extend its term retroactive from April 30, 2025 to May 15, 2025 to provide for the payment of final bills for additional work completed during this period..

**Attachments:**

1. NS 25-206 2nd Amendment to FMCR Marine Debris SPA-24-14-EN
2. NS Exhibit A - 2nd Amendment to FMRC - Emergency Service Provider Agreement
3. SPA 24-14-EN, FMCR Marine Debris Contract SIGNED
4. 25-81, 1st Amendment FMCR Marine Debris Final for Signatures - signed

**Financial Impact:**

There is no increase to the previously approved Not to Exceed amount of \$2,000,000.00

**6. Alternative Action**

Do not approve the 2nd Amendment to SPA-24-14.

**7. Management Recommendations:**

Approve 2nd Amendment to SPA-24-14-EN.

**8. Recommended Approval:**

Chadd Chustz, Environmental Projects Manager  
Chadd Chustz, Environmental Projects Manager  
Frankie Kropacek, Community Development Director  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Approved - 6/10/2025  
Approved - 6/11/2025  
Final Approval - 6/11/2025

## **RESOLUTION NUMBER 25-XX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SECOND AMENDMENT TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED DECEMBER 2, 2024 WITH FLORIDA MARINE CONTRACTING & RECOVERY, LLC, WHICH WAS PREVIOUSLY RATIFIED BY THE TOWN COUNCIL ON JANUARY 8, 2025, TO FURTHER EXTEND THE TERM OF THE AGREEMENT RETROACTIVELY FROM APRIL 30, 2025 TO MAY 15, 2025 TO ALLOW FOR PAYMENT OF OUTSTANDING INVOICES FOR DEBRIS REMOVAL FROM WATERWAYS IN THE TOWN OF FORT MYERS BEACH CAUSED BY HURRICANES HELENE AND MILTON AND DISPOSAL AT AN AUTHORIZED WASTE MANAGEMENT SITE COMPLETED AFTER EXPIRATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, on October 5, 2024 Governor Ron DeSantis by Executive Order No. 24-214, declared a State of Emergency throughout the Emergency Area based upon the serious threat to the public health, safety, and welfare posed by developing Hurricane Milton and

**WHEREAS**, on October 6, 2024, the Florida Department of Environmental Protection issued Emergency Final Order OGC NO. 24-2580 for an Emergency Area of 61 counties including Lee County; and

**WHEREAS**, on October 6, 2024 the Florida Department of Environmental Protection issued Emergency Procurement Order OGC NO. 24-2580 to suspend, to the extent necessary to ensure said emergency response functions, the effect of any statute, rule, or order, including Chapter 255 and Sections 287.055(3)(a)-(d), 4(a)-(d), 5(a)-(c), and 287.057(3), Florida Statutes, and Chapters 60A- 1.002(4), 60A-1.021(2), and 60A-1.043(1)-(3), and 60D-5, Florida Administrative Code, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders which affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees as set forth in an established Tracker item at the Florida Emergency Operations Center, as prescribed in the State Comprehensive Emergency Management Plan, as directed by the State Coordinating Officer, or as directed by the Executive Office of the Governor; and

**WHEREAS**, on October 6, 2024 the Town of Fort Myers Beach approved Resolution 24-214 declaring a state of local emergency as authorized by Section 252.38(3), Florida Statutes, thereby waiving the procedures and formalities otherwise required of political subdivisions by; and

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

**WHEREAS**, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for emergency

purchase for the Town Manager to make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances.

**WHEREAS**, on December 2, 2024 the Town Manager entered into an Emergency Service Provider Agreement (SPA-24-14) with Florida Marine Contracting and Recovery LLC with a not-to-exceed amount of \$200,000.00 for a term of 40 days, from the 2<sup>nd</sup> day of December to the 11<sup>th</sup> day of January 2025, to remove debris from waterways in the Town of Fort Myers Beach caused by Hurricanes Helene and Milton and to dispose of the debris at an authorized waste management facility to protect the health and welfare of the citizens and visitors of the Town of Fort Myers Beach, as well as to abate the socioeconomic impacts on the community caused by debris impairing navigable waterways; and

**WHEREAS**, on the 8<sup>th</sup> day of January, 2025 the Town Council ratified contract SPA-24-14-EN between the Town of Fort Myers Beach and Florida Marine Contracting and Recovery, LLC.; and

**WHEREAS**, on the 3<sup>rd</sup> day of March 2025, the Town Council approved the 1<sup>st</sup> amendment of contract SPA-24-14-EN between the Town of Fort Myers Beach and Florida Marine Contracting and Recovery, LLC to extend the time period of the contract to April 30, 2025 and increase the not to exceed amount to \$2,000,000.00; and

**WHEREAS**, the debris deposited into the waterways by Hurricanes Helene and Milton was far greater than expected, requiring additional time and efforts by Florida Marine Contracting and Recovery LLC to remove and dispose of submerged debris, thereby prompting the need for further extension of the contract to May 15, 2025 to provide for payment for work completed from April 30, 2025 to May 15, 2025; and

**WHEREAS**, approval of the Second Amendment to SPA-24-14-EN with Florida Marine Contracting is in the best interest of the health, safety and welfare of the residents of the Town.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution approves the Second Amendment to SPA-24-14-EN with Florida Marine Contracting and Recovery, LLC attached as Exhibit A.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day \_\_\_\_\_ 2025.



**SECOND AMENDMENT TO EMERGENCY SERVICE PROVIDER AGREEMENT  
FLORIDA MARINE CONTRACTING & RECOVERY LLC**

**THIS SECOND AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and FLORIDA MARINE CONTRACTING & RECOVERY LLC hereinafter referred to as “Provider” or “Contractor”, to that certain Emergency Service Provider Agreement, dated December 2, 2024 (“Agreement”) for ongoing emergency services as ratified by the Town Council of the Town of Fort Myers Beach on Wednesday, January 8, 2025 and amended on [REDACTED].

**WITNESSETH:**

**WHEREAS**, the services provided by Provider to date have been beneficial to the Town, and as a result, the parties desire to retroactively extend the term of the agreement from April 30<sup>th</sup>, 2025 to May 15, 2025; and

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

**1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement as previously amended. In the event of a conflict between the terms of the Agreement, as previously amended, then the terms of this Amendment shall prevail.

**2. Duration of Agreement.** The term of the Agreement shall be retroactive to April 30, 2025 and expire on May 15, 2025.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Provider:**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** Florida Marine Contracting & Recovery, LLC

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

\_\_\_\_\_  
**Vose Law Firm, Town Attorney**

## EMERGENCY SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this \_\_\_\_ day of December 2024 by and between the **TOWN OF FORT MYERS BEACH**, 2731 Oak Street, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **FLORIDA MARINE CONTRACTING & RECOVERY LLC** with an address of **462 CICERO ST NW, PORT CHARLOTTE, FL 33948** (hereafter "Provider").

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

1. Scope of Services. Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. Term. The term of this Agreement is **40 days** from **2<sup>nd</sup> Day of December** to the **11<sup>th</sup> day of January 2025**.
3. Payment Obligation. The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
3. Provider's Obligations. The Provider's obligations include, but are not limited to, the following:
  - a) Licensure. The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) Provision of Services. The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.

- c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
  - d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.
  - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
  - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
  - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such Insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of

coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance.

Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; Exhibit "D"; Exhibit "E".
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Provider shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Provider shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract. If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the



Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, [FMBPUBLICRECORDS@FMBGOV.COM](mailto:FMBPUBLICRECORDS@FMBGOV.COM), 2731 OAK ST. ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.**

12. References to Town. Public Records Compliance Indemnification. Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
13. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
14. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
15. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien,

and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

a. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

b. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

c. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

17. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by



memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

18. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.
19. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

20. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.
21. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.
22. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
23. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
24. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.
25. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.
26. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

27. Additional Terms. The parties further agree as follows:

- A. Federal Emergency Management Agency Supplemental Conditions. The terms and conditions contained in the Federal Emergency Management Supplemental Conditions attached as Exhibit E are incorporated by reference herein.

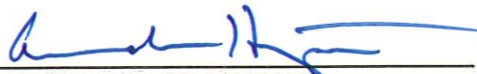
28. Miscellaneous Provisions.

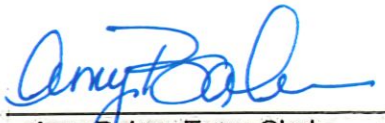
- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

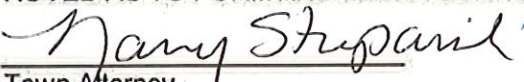
TOWN OF FORT MYERS BEACH

ATTEST:

BY:   
Andrew Hyatt, Town Manager,

BY:   
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY:   
Town Attorney

**PROVIDER: Florida Marine Contracting & Recovery LLC**

BY:   
Signature

  
Witness Signature

Stephen Lee  
Printed name of person signing

Jo Ann Stafford  
Printed name of witness

AMBR  
Title (printed)

**EXHIBIT "A"**

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE \_ \_ \_  
DAY OF DECEMBER 2024 BETWEEN THE TOWN AND PROVIDER.

**SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

The Contractor shall identify and document areas of debris impact to demonstrate a need for survey using side scan sonar. The Contractor shall survey debris impact areas confirmed to be areas of debris impact using side scan sonar as directed by the Town.

The Contractor shall remove and dispose of vegetative, construction and demolition debris necessary to eliminate the immediate threat to life, public health and safety, and improved property from the waterways of the Town of Fort Myers Beach. The Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all eligible storm-generated debris within waterways.

Within navigable waterways identified by the Town, the Contractor shall remove and dispose of debris that obstructs the passage of vessels is eligible to a maximum depth of 2 feet below the low-tide draft of the largest vessel that utilized the waterway. Any debris below this zone is ineligible for removal unless it is necessary to remove debris extending upward into an eligible zone. If a tree is still rooted to an embankment and is floating or submerged, the cost to cut the tree at the water's edge is eligible. No mangroves shall be trimmed or altered.

Within non-navigable waterways, the Contractor shall remove and dispose of debris that obstructs the waterway.

The Contractor shall coordinate with the U.S. Coast Guard (USCG) when hazardous materials such as petroleum, hazardous substances, or contaminants are identified. The USGC has specific authority to remove hazardous materials from coastal water zones. Debris removal from federally maintained navigable waterways is ineligible. USCG and the U.S. Army Corps of Engineers have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.

The Contractor shall open and operate the Debris Management Site upon request by the Town for monitoring and proper disposal of debris (both vegetative and non-vegetative) from waterways. The Contractor shall dispose of all debris at an authorized waste management site.

The Contractor shall coordinate with Town's Debris Monitoring Consultant and facilitate all debris to be properly inspected and documented to meet the requirements for FEMA reimbursement.

All work under this RFP shall be performed in accordance with FEMA rules and guidelines for federal reimbursements and with 2 CFR 200.318-326 as updated and where applicable.

**EXHIBIT "B"**

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE \_\_\_\_  
DAY OF DECEMBER 2024 BETWEEN THE TOWN AND PROVIDER.

**PAYMENT OBLIGATION**

The Town will pay the Provider as follows for all services listed in Exhibit "A":

The Town will compensate the Provider on a time and materials basis for staff labor, equipment and vehicle equipment usage, and actual disposal costs incurred in the performance of the scope of services listed in Exhibit A and at the rates identified in Exhibit D.

Only debris meeting the criteria of the Federal Emergency Management Agency's *Public Assistance Program and Policy Guide Version 4* shall be eligible for payment under the terms of this contract.

Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda FL. Tipping fees at final disposal site(s) shall be the responsibility of Vendor and passed through to the Town without mark-up, unless approved otherwise.

**Compensation under this Agreement shall not exceed \$200,000.**

**EXHIBIT "C"**

**INSURANCE:** The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
- c) Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.



**EXHIBIT "D"**

| Description                                                                                                                | Unit of Measure | Year 1 Unit Price |
|----------------------------------------------------------------------------------------------------------------------------|-----------------|-------------------|
| Debris Removal from Waterways / Canals / Natural Creeks and Hauling to Debris Management Sites (DMS)                       | CY              | \$79.90           |
| Debris Removal from Waterways / Canals / Natural Creeks and Hauling directly to Final Disposal Site (Note 1 & 2)           | CY              | \$79.90           |
| Cost per mile for alternate disposal sites outside of Lee County. (Note 1 & 2)                                             | Cost /Mile      | \$20.00           |
| Management of a Debris Management Site (DMS) (Note 4&5)                                                                    | CY              | \$1.95            |
| Processing (Grinding/Chipping) of Debris at a DMS or Final Disposal Site                                                   | CY              | \$3.50            |
| Processing (Burning) of Debris at a DMS or Final Disposal Site                                                             | CY              | \$2.00            |
| White Goods Removal from Waterways / Canals / Natural Creeks and Hauling to nearest County ROW                             | UNIT            | \$15.00           |
| Construction Debris Removal from Waterways / Canals / Natural Creeks and Hauling to a Debris Management Site (DMS)         | CY              | \$79.90           |
| Marine Property Removal from Waterways / Canals / Natural Creeks and Hauling to a Debris Management Site (DMS)             | CY              | \$79.90           |
| Non Domestic Dead Animal Collection and Transportation to final disposal.                                                  | EACH            | \$100.00          |
| Household Hazardous Waste Removal from Waterways / Canals / Natural Creeks and Hauling to Final Disposal Site (Note 1 & 2) | LB              | \$40.00           |
| Removal of Reduced Debris from Debris Management Site (DMS) to Final Disposal Site (Note 1 & 2)                            | CY              | \$3.95            |

**EXHIBIT "D"**

| Description                                                                                                                                 | Unit of Measure      | Year 1 Unit Price |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------|
| Wheel Loader w/ operator, 2.5 cy, Foreman with support vehicle and small equipment, Laborer w/ chainsaw & two (2) laborers with small tools | Hourly (entire crew) | \$325.00          |

| Description                                                                    | Unit of Measure    | Year 1 Unit Price |
|--------------------------------------------------------------------------------|--------------------|-------------------|
| Field Supervisor with truck and cell phone                                     | Hourly             | \$90.00           |
| Administrative Assistant                                                       | Hourly             | \$45.00           |
| Heavy Equipment Operator                                                       | Hourly             | \$56.00           |
| Tool Operator (Chainsaw)                                                       | Hourly             | \$45.00           |
| Laborer w/ small tools                                                         | Hourly             | \$39.00           |
| Mechanic w/ truck and tools                                                    | Hourly             | \$98.00           |
| Tree Climber w/ chainsaw and gear                                              | Hourly             | \$137.00          |
| 22' - 31' Work Boat with Captain (Inclusive of Fuel, Mooring and Mobilization) | Per Boat / Per day | \$2,800.00        |
| Services of 2 - 4 Laborers per Vessel                                          | Per Boat / Per day | \$2,800.00        |

| Description                    | Unit of Measure     | Year 1 Unit Price |
|--------------------------------|---------------------|-------------------|
| 38,000 lb Excavator with Thumb | Daily (entire crew) | \$1,900.00        |

**EXHIBIT "D"**

| Description                  | Specification | Capacity | Year 1<br>Rate Per<br>Hour |
|------------------------------|---------------|----------|----------------------------|
| Aerial Lift                  | FT            | 60       | \$95.00                    |
| Chipper                      | IN            | 19       | \$400.00                   |
| Crane                        | MT            | 70       | \$450.00                   |
| Skid Steer                   | LBS           | 6000     | \$110.00                   |
| Wheel Loader                 | CY            | 2        | \$130.00                   |
| Pavement Sweeper             | TON           | 55       | \$100.00                   |
| Lowboy Trailer and Tractor   |               |          | \$125.00                   |
| Dump Truck                   | CY            | 28       | \$100.00                   |
| Knuckle Boom Truck           |               |          | \$1,745.00                 |
| Pickup Truck                 | TON           | 0.75     | \$25.00                    |
| Truck Tractor                |               |          | \$75.00                    |
| Step-Deck or Flatbed Trailer |               |          | \$50.00                    |
| Tub or Horizontal Grinder    |               |          | \$500.00                   |
| Light Tower: Trailer Mounted | WATT          | 500      | \$80.00                    |
| All Terrain Vehicle          | CC            | 1000     | \$75.00                    |
| Water Truck                  | GAL           | 4000     | \$95.00                    |
| Marsh Buggy                  |               |          | \$300.00                   |
| Self-Loading Barge           | FT            | 30-45    | \$500.00                   |
| Air Boat                     | FT            | 15-25    | \$225.00                   |



**Access to Records:** The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**Affirmative Socioeconomic Steps** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**Changes:** To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

**DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

**Domestic Preference for Procurements 200.322** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**License and Delivery of Works Subject to Copyright and Data Rights:** The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

**No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.



#### **Prohibition on Covered Telecommunications Equipment or Services**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

#### **(b) Prohibitions.**

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

#### **(c) Exceptions.**

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

#### **(d) Reporting requirement.**

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

**Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**Rights to Inventions Made Under a Contract or Agreement:** Exempt from FEMA Public Assistance Funding

**Suspension and Debarment:** (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Procurement of Recovered Materials (§200.323) (Over \$10,000):** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated Items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**Termination for Cause and Convenience (over \$10,000):** See Standard Purchase Order and/or Contract Terms and Conditions

**Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000):** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."



Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):** Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**Clean Air Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Administrative, Contractual, or Legal Remedies (over \$250,000):** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

#### **CONSTRUCTION ACTIVITIES**

**Equal Employment Opportunity Clause (§60-1.4):** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Davis Bacon Act:** Exempt under FEMA Public Assistance Funding

**Copeland Anti-Kickback Act:** Exempt under FEMA Public Assistance Funding



## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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### STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

**Applicable Laws** - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

**Data Collection:** The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant. The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

**Equal Employment Opportunity:** No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

**Inspector General Cooperation:** The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**Lobbying:** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

**Local Preference:** Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

**Physical Access and Inspection:** Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

**Record Retention:** A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

**Statutory Notices Relating to Unauthorized Employment:** The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

**Statutory Notices Relating to Subcontracts:** Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.



FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders  
and Acknowledgement of Federal Funding**

**Certification**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Florida Marine Contracting & Recovery LLC

Date 12/9/2024

Authorized Signature Stephen Lee

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
and VOLUNTARY EXCLUSION

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

Florida Marine Contracting & Recovery LLC

By: Stephen Lee  
Signature

Stephen Lee / AMBR  
Name and Title

462 Cicero St NW  
Street Address

Port Charlotte, FL 33948  
City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

December 9, 2024  
Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD



# FEDERAL CONTRACT PROVISIONS AND ASSURANCES

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

| TOWN OF FORT MYERS BEACH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------------------------------|----------------------------|---------------------------------------------------------------------------------------------|-----------------------------|-----------|------|----------------|----|-------------------|----|-----------------|----|-------------------------|-----|------------------------|-----|--------------------|------|--------------------------------------|---|
| ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| A. PRIME VENDOR/CONTRACTOR INFORMATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| PRIME NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                | PRIME FID NUMBER                                               |                            | CONTRACT DOLLAR AMOUNT                                                                      |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MB/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                | VETERAN Y N<br>DBE? Y N<br>MBE? Y N<br>WBE? Y N<br>SDB BA? Y N |                            | IS THE ACTIVITY OF THIS CONTRACT...<br>CONSTRUCTION? Y N<br>CONSULTATION? Y N<br>OTHER? Y N |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| IS THIS SUBMISSION A REVISION?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                | Y N                                                            |                            | IF YES, REVISION NUMBER                                                                     |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| DBE /MB/WBE VETERAN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | SUBCONTRACTOR OR SUPPLIER NAME | TYPE OF WORK OR SPECIALTY                                      | ETHNICITY CODE (See Below) | SUB/SUPPLIER DOLLAR AMOUNT                                                                  | PERCENT OF CONTRACT DOLLARS |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
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| TOTALS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| NAME OF SUBMITTER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                | DATE                                                           |                            | TITLE OF SUBMITTER                                                                          |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| EMAIL ADDRESS OF PRIME (SUBMITTER)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                | TELEPHONE NUMBER                                               |                            | FAX NUMBER                                                                                  |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.                                                                                                                                                                                                                                                                                                                                                                        |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td style="text-align: center;">BA</td></tr> <tr><td>Hispanic American</td><td style="text-align: center;">HA</td></tr> <tr><td>Native American</td><td style="text-align: center;">NA</td></tr> <tr><td>Subcont. Asian American</td><td style="text-align: center;">SAA</td></tr> <tr><td>Asian-Pacific American</td><td style="text-align: center;">APA</td></tr> <tr><td>Non-Minority Woman</td><td style="text-align: center;">N/MW</td></tr> <tr><td>Other, not of any other group listed</td><td style="text-align: center;">O</td></tr> </tbody> </table> |                                |                                                                |                            |                                                                                             |                             | ETHNICITY | CODE | Black American | BA | Hispanic American | HA | Native American | NA | Subcont. Asian American | SAA | Asian-Pacific American | APA | Non-Minority Woman | N/MW | Other, not of any other group listed | O |
| ETHNICITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CODE                           |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Black American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | BA                             |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Hispanic American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | HA                             |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Native American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | NA                             |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Subcont. Asian American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | SAA                            |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Asian-Pacific American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | APA                            |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Non-Minority Woman                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | N/MW                           |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| Other, not of any other group listed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | O                              |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| DEPARTMENT NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                | FMS CONTRACT # (F & W or PO/REQ)                               |                            | GRANT PROGRAM/CONTRACT                                                                      |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |
| ACCEPTED BY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                | DATE                                                           |                            |                                                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |      |                                      |   |

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

### **LOBBYING CERTIFICATION** **(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Florida Marine Contracting & Recovery LLC  
Contractor (Firm Name)

Stephen Lee  
Signature of Contractor's Authorized Official

AMBR  
Name and Title of Contractor's Authorized Official

December 9, 2024  
Date



**FIRST AMENDMENT TO EMERGENCY SERVICE PROVIDER AGREEMENT  
FLORIDA MARINE CONTRACTING & RECOVERY LLC**

**THIS FIRST AMENDMENT** is made and entered into this 3rd day of March, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and FLORIDA MARINE CONTRACTING & RECOVERY LLC hereinafter referred to as “Provider” or “Contractor”, to that certain Emergency Service Provider Agreement, dated December 2<sup>nd</sup>, 2024 (“Agreement”) for ongoing emergency services as ratified by the Town Council of the Town of Fort Myers Beach on Wednesday, January 8, 2025.

**WITNESSETH:**

**WHEREAS**, the services provided by Provider to date have been beneficial to the Town, and as a result, the parties desire to retroactively extend the term of the agreement from January 11, 2025 to April 30<sup>th</sup>, 2025; and

**WHEREAS**, the parties further desire to increase the not-to-exceed amount of the initial Agreement from \$200,000.00 by \$1,800,000.00 for a total contract not-to-exceed amount of \$2,000,000.00 and to also modify existing terms and conditions in the Agreement as provided herein; and

**WHEREAS**, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Florida Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, including municipalities; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that

does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701, Florida Statutes related to social government and corporate activism are also added by virtue of this Amendment

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

**1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

**2. Public Records Compliance.** Provider agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Provider does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Provider or keep and maintain public records required by the public agency to perform the service. If the Provider transfers all public records to the public agency upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Florida Statue, **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER’S**



**DUTY TO PROVIDE PUBLIC RECORDS RELATING TO  
THIS AGREEMENT, CONTACT THE CUSTODIAN OF  
PUBLIC RECORDS AT:**

**TOWN HALL  
2731 OAK STREET  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
FMBPUBLICRECORDS@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Florida Statutes.** Any indemnification or agreement to defend or hold harmless by the Town specified in the Agreement shall not be construed as a waiver of the Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by the Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** The Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Provider shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Provider is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Provider will not be awarded a public contract for at least one (1) year after the



date on which the Agreement was terminated. Provider will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Provider affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Provider is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Provider requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Provider is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Provider hereby certifies that Provider is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Provider further hereby certifies that Provider is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Provider understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Provider to civil penalties, attorney's fees, and/or costs. Provider further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Provider (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

**8. Disclosure Requirements for "Foreign Countries of Concern."** Provider shall comply with the disclosure requirements set forth in section 286.101 (3) (a), Florida Statute, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest



disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statute: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statute], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

**9. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the State of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive the right to file any action, suit or proceeding in Federal Court, or remove any action, suit or proceeding to Federal Court.

**10. Attorneys’ Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

**11. Public Entities Crime or Convicted Vendor List.** Provider agrees and assumes a continuous duty to disclose to the Town if the Provider or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**12. Data Management; Notice of Breach.** Provider shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**13. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Provider based on Provider’s social, political or ideological interest. Provider agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

**14. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**15. No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:



“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**16. Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**17. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

- A. **Duration of Agreement.** The term of the Agreement shall be retroactive to January 11, 2025 and expire on April 30, 2025.
- B. **Not-to-Exceed Amount.** The not-to-exceed payment for services shall increase from \$200,000.00 to \$2,000,000.00.
- C. **Incorporation of Federal and State Requirements.** The additional state and federal terms and conditions on pages 17 to 28 of the Agreement shall be identified as Exhibit E.

**IN WITNESS WHEREOF,** the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Florida Statue, Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

**Provider:**



**Print Name:** Stephen Lee

**Title:** AMBR

**Company:** Florida Marine Contracting & Recovery, LLC

**ATTEST:**



Amy Baker (Apr 3, 2025 15:13 EDT)

**Amy Baker, Town Clerk**

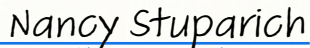
**Town of Fort Myers Beach**



Dan Allers (Apr 2, 2025 14:38 EDT)

**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**



Nancy Stuparich (Apr 2, 2025 14:52 EDT)

**Vose Law Firm, Town Attorney**

# 25-81, 1st Amendment FMCR Marine Debris Final for Signatures

Final Audit Report

2025-04-03

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2025-04-02                                   |
| By:             | Lizzette Roman (Lroman@fmbgov.com)           |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAATVDm5tmrBaEaltQH9-wa3OqglxQ9Cmxo |

## "25-81, 1st Amendment FMCR Marine Debris Final for Signature s" History

-  Document created by Lizzette Roman (Lroman@fmbgov.com)  
2025-04-02 - 6:36:58 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature  
2025-04-02 - 6:37:11 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature  
2025-04-02 - 6:37:11 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature  
2025-04-02 - 6:37:11 PM GMT
-  Email viewed by Dan Allers (allersd@fmbgov.com)  
2025-04-02 - 6:37:44 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)  
Signature Date: 2025-04-02 - 6:38:32 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)  
2025-04-02 - 6:52:31 PM GMT
-  Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)  
Signature Date: 2025-04-02 - 6:52:52 PM GMT - Time Source: server
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)  
Signature Date: 2025-04-03 - 7:13:58 PM GMT - Time Source: server
-  Agreement completed.  
2025-04-03 - 7:13:58 PM GMT

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-25-02-EN TO EARTHBALANCE CORPORATION AS THE ONLY RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND DUNE PLANTING PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE EARTHBALANCE CORPORATION IN THE AMOUNT OF \$509,859.50 OF WHICH THE TOWN SHALL EXPEND BUDGETED FUNDS IN THE AMOUNT OF \$76,988.78 AS ITS PORTION OF THE TOTAL COST WITH THE REMAINDER TO BE PAID BY A GRANT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

**Why the action is necessary:**

The following sections from the adopted Town of Fort Myers Beach Comprehensive Plan and Land Development Code (LDC) provide support and guidance for the Dune Management Plan.

- OBJECTIVE 5-D BEACHES AND DUNES — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

- o POLICY 5-D-1 ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.

OBJECTIVE 6-E DUNES AND BEACHES – Protect and improve dunes and beaches as recreation areas, valuable habitat, protection from storms, and areas of high scenic and aesthetic value. The effect of the Town's efforts may be a noticeable transition from today's manicured and compacted beach towards a naturally appearing and functioning beach. This transition will be accomplished through education, regulation, and assistance in physical restoration activities.

- o POLICY 6-E-3 The Town will implement the following measures to promote the restoration of beach and dune systems:

- o Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.

- o Require the use of indigenous plant species for public and private dune restoration or renourishment projects.

- o LDC Section 14-8

- o In areas where the beach has experienced erosion, on public land or with the consent of the owner, the Town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.

- o In areas that have not experienced erosion, the Town will encourage the establishment of a dune system but will not require same.

**What the action accomplishes:**

Awards Contract ITB-25-02-EN to the lowest responsive, responsible bidder EarthBalance Corporation in the amount of \$509,859.50.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Town Council approved the Town's "Dune Management Plan" in accordance with the Marine

and Environmental Resource Task Force committee's recommendation to replant the dunes as a part of the Estero Island Beach Nourishment Project.

The Florida Department of Environmental Protection approved the Town's Dune Management Plan under the authorization of Permit Number 0413684-001-JC.

EarthBalance Corporation was the only bid received for this project. One reason may be that the project is estimated to be over 130,000 plants. The bid was advertised in the local newspaper as well as Demandstar and, through Demandstar, the bid was broadcast to over 200 companies. The bid was released on May 6, 2025, and was due on June 4th.

**Attachments:**

1. Final NS 25-209, Award Dune Planting Earth Balance (4)
2. Exhibit A - Engineer of Record Recommendation of Award
3. Exhibit B - Draft Contract ITB-25-02-EN Estero Island Dune Planting
4. ITB-25-02-EN Estero Island Dune Planting
5. Bidding document
6. DUNE MANAGEMENT PLAN
7. FINAL ORDER
8. 23LE1\_A1 ESTERO ISLAND SHORE PROTECTION PROJECT - EXECUTED
9. D1502 MOD 1 Town of Fort Myers Beach (executed)
10. ILA Beach Renourishment Town FULLY Executed 240404
11. Planting Budget
12. PRJ\_Report\_705212\_Renourishment Project CAT G
13. 24403 Dune Planting-V2-20250409

**Financial Impact:**

Under the FDEP 23LE1 Agreement and Lee County Beach Nourishment ILA, the Town is responsible for 15.2% of the total contract cost, or \$77,498.64. However, additional grant funding will subsidize these costs to the Town.

The Estero Island Dune Planting Project is eligible for the funding provided by the FEMA Category G Public Assistance Program, the Florida Department of Environmental Protection 23LE1 Grant Agreement, the Florida Department of Emergency Management Local Agency Program Grant D1502 Agreement, and the Lee County and Town of Fort Myers Beach Estero Island Beach Nourishment Project Interlocal Agreement dated 1st of April, 2024.

**6. Alternative Action**

Do not award the Contract ITB-25-02-EN to EarthBalance Corporation.

**7. Management Recommendations:**

Accept the EarthBalance Corporation Bid, Approve the Agreement between Town and EarthBalance Corporation for the Estero Island Dune Planting Project, Authorized the Town Manager to Execute the Agreement, Expend Budgeted Funds, and Provide for an Effective Date subject to final legal approval of Construction Contract.

**8. Recommended Approval:**

Chadd Chustz, Environmental Projects Manager  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/11/2025  
Approved - 6/11/2025  
Approved - 6/11/2025  
Final Approval - 6/11/2025





## **RESOLUTION NUMBER 25-209**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-25-02-EN TO EARTHBALANCE CORPORATION AS THE ONLY RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND DUNE PLANTING PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE EARTHBALANCE CORPORATION IN THE AMOUNT OF \$509,859.50 OF WHICH THE TOWN SHALL EXPEND BUDGETED FUNDS IN THE AMOUNT OF \$76,988.78 AS ITS PORTION OF THE TOTAL COST WITH THE REMAINDER TO BE PAID BY A GRANT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town of Fort Myers Beach is seeking to maintain and restore dune vegetation in accordance with the Estero Island Beach Nourishment Project permit requirements and Dune Management Plan; and

**WHEREAS**, the Estero Island Dune Planting Project was competitively bid and advertised in accordance with the Town of Fort Myers Beach Purchasing Code Section 2-480; and

**WHEREAS**, EarthBalance Corporation is the only responsive and responsible bidder for completion of the Estero Island Dune Planting Project with a bid in the amount of \$509,859.50; and

**WHEREAS**, EarthBalance Corporation's bid satisfies the requirements set forth in ITB-25-02-EN and has been recommended by the Town's Engineer of Record (See Exhibit A); and

**WHEREAS**, the Town of Fort Myers Beach project cost share is 15.1% of the Estero Island Dune Project's total cost of \$509,859.50 and is within the Town's budget; and

**WHEREAS**, the cost of the Estero Island Dune Planting Project is eligible for the funding provided by the FEMA Category G Public Assistance Program, the Florida Department of Environmental Protection 23LE1 Grant Agreement, the Florida Department of Emergency Management Local Agency Program Grant D1502 Agreement, and the Lee County and Town of

Fort Myers Beach Estero Island Beach Nourishment Project Interlocal Agreement dated 1<sup>st</sup> of April, 2024; and

**WHEREAS**, pursuant to a competitive procurement process in compliance the Town’s Code and the requirements in ITB-25-02-EN “Estero Island Dune Plantings Project,” the Town awards the bid to EarthBalance Corporation; and

**WHEREAS**, EarthBalance Corporation has agreed to execute an agreement for the Estero Island Dune Plantings Project containing similar terms to the draft Agreement attached as Exhibit B; and

**WHEREAS**, it is in the best interest of the Town to contract with EarthBalance Corporation as provided herein.

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

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

Section 2. The Town Council hereby approves an agreement between the Town and EarthBalance Corporation for Dune Planting Work substantially similar to the Agreement attached as Exhibit A.

Section 3. The Town Manager is hereby authorized to execute the Agreement, subject to legal sign-off, and expend budgeted funds on behalf of the Town to satisfy the Town’s financial obligations under the Agreement.

Section 4. This resolution shall take effect immediately upon adoption.

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

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of \_\_\_\_\_,  
2025.

June 10, 2025

Chadd Chustz  
Environmental Project Manager  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931

**Re: Estero Island Dune Plantings Project  
Bid Review Summary, Bid No. ITB-25-02-EN  
CEC File No. 24.303/24.279**

Dear Chadd:

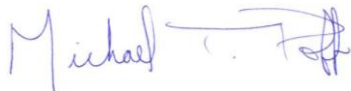
Pursuant to the Town's request and within our contracted scope, CEC reviewed the apparent low bid as you provided to us. This bid was submitted by EarthBalance Corporation and our review was to determine if they meet the requirements for the above referenced Project based on the criteria within the Bid Documents. As such, CEC reviewed the submitted bid forms and attachments which included qualifications, plant and equipment schedule, resumes, and dune project experience.

Based upon our review of the bid submittal, it is our opinion EarthBalance should have sufficient capacity and experience to construct this Project within the construction time window. EarthBalance has successfully completed numerous dune projects of a similar complexity and magnitude in Florida.

Therefore, our recommendation of contract award is to EarthBalance.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 643-2324, extension 126 or via email at [mpoff@cecifl.com](mailto:mpoff@cecifl.com).

Respectfully submitted,  
**COASTAL ENGINEERING CONSULTANTS, INC.**



Michael T. Poff, P.E.  
President

**FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM**  
(1 of 12 Pages)

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**CONSTRUCTION CONTRACT AGREEMENT**

Contract No. ITB-25-02-EN

Council Award Date: June 16, 2025

**AGREEMENT**

THIS AGREEMENT (also referred herein as "Contract") is made this 2nd day of June 2025 by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and EarthBalance Corporation, a Florida corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH:

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

**ARTICLE 1.     WORK**

The CONTRACTOR shall commence and complete all work for the Estero Island Dune Planting Project as provided in ITB-25-02-EN in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services for the EarthBalance Corporation is attached and marked as Exhibit "A".

**ARTICLE 2.     CONTRACT SUM**

2.1.     The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, not to exceed the sum of \$509,859.50 as provided in Exhibit B.

**ARTICLE 3.     PROGRESS PAYMENTS**

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

- 3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety-five percent (95%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.
- 3.2. The Town shall withhold 5% of each progress payment as retainage until the project is completed.
- 3.3. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

#### **ARTICLE 4. CONTRACT DOCUMENTS**

The Term “**Contract Documents**” shall include this Contract; Attachment A: Technical Specifications from ITB-25-02-EN (pages 29 through 38 of the ITB), the Notice to Proceed, the Public Construction Bond; the Specifications and Drawings; Special Conditions if any; all Written Amendments; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders if any. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

#### **ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. Substantial completion shall be achieved not later than the number of days specified in the Bid Response, unless the period for substantial completion is extended by written agreement of the parties.
- 5.3. Final completion shall be achieved not later than the number of days specified in the Bid Response, unless the period for final completion is extended by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Amendment. The parties also recognize that delays, expense, and difficulties involved in proving financial loss in a legal proceeding and the actual loss suffered by the TOWN occurs if the work is not completed on time. Accordingly, instead of requiring any such



proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required in 5.2 and 5.3.

The TOWN shall have the right to deduct all damages due from the final payment request as well as any retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN, which have been estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

## **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.**

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has reviewed the Contract Documents, and the nature and extent of the work required to be performed, the locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract

Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

## **ARTICLE 7. GENERAL CONDITIONS**

### **7.0 RESPONSIBILITY OF THE CONTRACTOR.**

The CONTRACTOR shall be responsible for the condition of the Dunes while planting and maintaining the Dunes until its release from its obligations.

The CONTRACTOR must follow all Florida Environmental Protection FDEP Permitting, Lee County Beach Nourishment from United States Department of Commerce – National Marine Fisheries Services and United States Department of Interior Fish and Wildlife Services.

## **ARTICLE 8. TERMINATION FOR CONVENIENCE**

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

## **ARTICLE 9. PUBLIC RECORDS**

The following provisions are required by §119.0701, Florida. Statute, and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract.

If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set

forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, [FMBPUBLICRECORDS@FMBGOV.COM](mailto:FMBPUBLICRECORDS@FMBGOV.COM), 2731 OAK STREET, FORT MYERS BEACH, FLORIDA 33931.**

Contractor further agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

The Contractor agrees to provide the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.

- 10.5. The CONTRACTOR agrees through the signing of this Agreement by an authorized party or agent that it shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection. The parties acknowledge the exchange and receipt of additional consideration for this indemnification, which shall survive the termination of this Agreement.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, litigation, or other agreed to method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be filed in the 20<sup>th</sup> Judicial Circuit in and for Lee County, Florida.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Any dispute arising out of or relating to any of the contract documents or this Agreement shall be first submitted to mediation for resolution. The parties shall mutually agree upon a mediator and equally divide the expenses of such mediation. In the event of an impasse and litigation, the parties agree to each pay their own attorney fees and costs.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract

interpretation.

- 10.13 The parties recognize that funding in whole or in part for the services authorized by this Contract may be obtained from a Florida Department of Emergency Management State-Funded LAP Grant. Contractor agrees to comply with any additional requirements that may be required related to the Town's receipt of the funding.

## **ARTICLE 11. CONTRACT TERMS REQUIRED BY FLORIDA LAW**

**11.1. Compliance/Consistency with Section 768.28, Florida Statute** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statute and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**11.2 Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**11.3 E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**11.4 Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on,

submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**11.5 Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the



Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11.6 Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**11.7 Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**11.8 No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Florida. Stat. to any person for the purpose of exploitation of that person.

**11.9 Force Majeure** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**11.10 VENUE AND JURISDICTION** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.

IN WITNESS WHEREOF, TOWN and CONTRACTOR have signed this agreement in duplicate originals. One original has been retained by the Town Clerk, and one original has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
(Secretary)

(Corporate Seal)

\_\_\_\_\_  
(EarthBalance Corporation)

BY: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

TOWN OF FORT MYERS BEACH COUNCIL  
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: \_\_\_\_\_  
Town Clerk

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Town Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Town Attorney

## **EXHIBIT "A"**

### **SCOPE OF SERVICES:**

1. The Contractor will perform the following services under this Agreement:

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits (Permits) and the Town's approved Dune Management Plan, attached to the Bid Documents and incorporated therein. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

**EXHIBIT "B"**

| Item                                                       | Unit | Quantity              | Unit Price            | Extended Price      |
|------------------------------------------------------------|------|-----------------------|-----------------------|---------------------|
| <b>ESTERO ISLAND DUNE PLANTINGS BASE BID NORTH SEGMENT</b> |      |                       |                       |                     |
| <b>1. Dune Vegetation</b>                                  |      |                       |                       |                     |
| <b>1A. Sea Oats (1-gal)</b>                                | EA   | 7,030<br>(Estimated)  | \$7.25                | \$50,967.50         |
| <b>1B. Sea Oats (4 inch)</b>                               | EA   | 2,515<br>(Estimated)  | \$2.65                | \$6,664.75          |
| <b>1C. Dune Sunflower</b>                                  | EA   | 10,196<br>(Estimated) | \$2.65                | \$27,019.40         |
| <b>1D. Dune Panic Grass</b>                                | EA   | 11,090<br>(Estimated) | \$2.65                | \$29,388.50         |
| <b>1E. Railroad Vine</b>                                   | EA   | 2,919<br>(Estimated)  | \$7.25                | \$21,162.75         |
| <b>2. Adjustments</b>                                      | EA   | 10                    | \$500.00              | \$5,000.00          |
| <b>3. Warranty</b>                                         | LS   | 1                     | \$4,000.00            | \$4,000.00          |
|                                                            |      |                       | <b>Base Bid Total</b> | <b>\$144,202.90</b> |

| Item                                                         | Unit | Quantity              | Unit Price            | Extended Price      |
|--------------------------------------------------------------|------|-----------------------|-----------------------|---------------------|
| <b>ESTERO ISLAND DUNE PLANTINGS BASE BID CENTRAL SEGMENT</b> |      |                       |                       |                     |
| <b>1. Dune Vegetation</b>                                    |      |                       |                       |                     |
| <b>1A. Sea Oats (1-gal)</b>                                  | EA   | 2,902<br>(Estimated)  | \$7.25                | \$21,039.50         |
| <b>1B. Sea Oats (4 inch)</b>                                 | EA   | 6,033<br>(Estimated)  | \$2.65                | \$15,987.45         |
| <b>1C. Dune Sunflower</b>                                    | EA   | 21,580<br>(Estimated) | \$2.65                | \$57,187.00         |
| <b>1D. Dune Panic Grass</b>                                  | EA   | 24,712<br>(Estimated) | \$2.65                | \$65,486.80         |
| <b>1E. Railroad Vine</b>                                     | EA   | 5,917<br>(Estimated)  | \$7.25                | \$82,898.25         |
| <b>2. Adjustments</b>                                        | EA   | 20                    | \$500.00              | \$10,000.00         |
| <b>3. Warranty</b>                                           | LS   | 1                     | \$4,000.00            | \$4,000.00          |
|                                                              |      |                       | <b>Base Bid Total</b> | <b>\$216,599.00</b> |

| Item                                                       | Unit | Quantity              | Unit Price            | Extended Price      |
|------------------------------------------------------------|------|-----------------------|-----------------------|---------------------|
| <b>ESTERO ISLAND DUNE PLANTINGS BASE BID SOUTH SEGMENT</b> |      |                       |                       |                     |
| <b>1. Dune Vegetation</b>                                  |      |                       |                       |                     |
| <b>1A. Sea Oats (1-gal)</b>                                | EA   | 1,969<br>(Estimated)  | \$7.25                | \$14,275.25         |
| <b>1B. Sea Oats (4 inch)</b>                               | EA   | 4,096<br>(Estimated)  | \$2.65                | \$10,854.40         |
| <b>1C. Dune Sunflower</b>                                  | EA   | 14,653<br>(Estimated) | \$2.65                | \$38,830.45         |
| <b>1D. Dune Panic Grass</b>                                | EA   | 16,780<br>(Estimated) | \$2.65                | \$44,467.50         |
| <b>1E. Railroad Vine</b>                                   | EA   | 4,018<br>(Estimated)  | \$7.25                | \$29,130.50         |
| <b>2. Adjustments</b>                                      | EA   | 15                    | \$500.00              | \$7,500.00          |
| <b>3. Warranty</b>                                         | LS   | 1                     | \$4,000.00            | \$4,000.00          |
|                                                            |      |                       | <b>Base Bid Total</b> | <b>\$149,057.60</b> |



## GRAND TOTAL

| Segment        | Extended Price      |
|----------------|---------------------|
| North          | \$144,202.90        |
| Central        | \$216,599.00        |
| South          | \$149,057.60        |
| Base Bid Total | <b>\$509,859.50</b> |

## **ATTACHMENT A**

### **ESTERO ISLAND PLANTING PROJECT TECHNICAL SPECIFICATIONS**

#### **TS-1.0 Scope of Work**

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits (Permits) and the Town's approved Dune Management Plan, attached to the Bid Documents and incorporated therein. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

#### **TS-2.0 Submittals**

##### **TS-2.1 Work Plan**

Prior to commencement of Work the Contractor shall submit to the Town and Engineer for approval, a Work Plan to cover all specified operations. The Work Plan shall include, but not be limited to, the means and methods to be employed to accomplish site access and staging; mature dune vegetation purchase and growing schedule; planting installation, fertilizing, and watering; site restoration; best management practices; storm emergency plan; health and safety plan; environmental protection plan; pollution control plan; and manufacturers' specifications and certifications. The Work Plan shall also include the Progress Schedule, Schedule of Values, Construction Sequence, Quality Control, and Order of Work. The Town and Engineer shall review the Work Plan, and the Contractor shall make necessary revisions prior to acceptance of the Work Plan.

##### **TS-2.2 Daily Reports**

The Contractor, in addition to his responsibilities as set forth in the General Provisions, shall provide to the Town, "Daily Construction" Reports. These reports shall be completed and submitted to the Town by 1:00 p.m. on the day after the Work covered by the report.

#### **TS-3.0 Construction Sequence**

##### **TS-3.1 Order of Work**

In general, the Order of Work shall be as follows. Any changes in the Order of Work must be submitted in writing and approved by the Town and Engineer prior to initiation of the specific Work activity.

- (1) Pre-construction submittals and notifications

- (2) Mobilize
- (3) Prepare site access and staging areas
- (4) Implement best management practices
- (5) Plant dune vegetation
- (6) Adjust access points for select properties
- (7) Complete site restoration and staging areas
- (8) Demobilize

The Contractor shall work cooperatively with the Town to provide public access to the beach during the Contract Time. Only one beach access shall be closed at a time unless approved otherwise in writing by the Town.

### **TS-3.2 Time of Operations**

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

### **TS-4.0 Payment**

#### **TS-4.1 Dune Vegetation**

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

#### **TS-4.2 Adjustments**

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

#### **TS-4.3 Warranty**

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

### **TS-5.0 Work Area**

#### **TS-5.1 Limits of Construction**

Areas in the vicinity of the Project area contain sensitive environmental habitats. The Contractor shall avoid these habitats and is responsible for environmental protection. All Work must be confined to the Contractor's Work area. No plant or equipment may operate or transit outside the property boundary or Work limits. All construction areas shall be restored to pre-construction conditions, or better as part of demobilization. Existing vegetation shall be disturbed to the minimum extent necessary to complete the Work within the permitted Work limits.

#### **TS-5.2 No Work Zones**

No Work Zones are shown on the Contract Plans that correspond to property owners who have not provided the Town with temporary construction easements. The Contractor shall not encroach into the No Work Zones with any work, equipment, personnel or material.

#### **TS-5.3 Security**

The Contractor is permitted to exclude the public from his immediate Work area subject to the provisions of the Construction Sequence and these Specifications as necessary to perform the Work and to operate in accordance with the General Conditions of the Contract. Enforcement shall be the Contractor's responsibility at no additional cost to the Town. The enforcement shall be coordinated with local enforcement agencies and will be subject to approval of the Town.

#### **TS-5.4 Site Access and Staging**

Site access and staging areas shall be confined to the Contractor's Work area and are shown on the Contract Plans. Procurement of any additional access routes for ingress and egress to the Work area shall be obtained by and at the expense of the Contractor. The Contractor shall confine his plant, equipment, materials, and operations of personnel to areas permitted by law, ordinances, permits and the requirements of the Contract Documents, and shall not unreasonably encumber the premises with plant, equipment, and materials. The Contractor must control noise and must control wind-blown sand, silt and dust while using the accesses. The Contractor is responsible for preparation and restoration of the site access and staging areas. The Contractor is required to submit a site access and staging area plan including restoration measures prior to their usage. The costs for, but not limited to, earthwork, grading, signage, fencing, walls, guardrails, curbing, paving, stairways, and vegetation removal and reinstallation, along with removal and installation of any other facilities are included in the lump sum price for Bid Item "Mobilization and Demobilization". Disposal of any cleared vegetation, debris and rubbish shall be in a manner acceptable to the Town and Engineer.

#### **TS-5.5 Protection of Existing Facilities**

During all phases of the Work including but not limited to staging, site access, dune vegetation planting, and site restoration, the Contractor shall implement best management practices to protect and stabilize the existing facilities within and adjacent to the Work Area and to prevent damage thereto by the Contractor's operations. Where existing facilities are damaged, they shall be immediately repaired in conformance with the best construction standards of practice.

#### **TS-5.6 Noise**

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

#### **TS-5.7 Existing Utilities**

It shall be the responsibility of the Contractor to acquaint themselves with the exact location of existing underground structures and utilities and to avoid conflict with all existing facilities. The Contractor shall be responsible for notifying, in writing and in advance of construction activities,

the Town and Engineer and all government and private agencies and entities that may have an area of responsibility, jurisdiction or involvement for any items of Work being constructed, or whom shall assume responsibility for the items after construction. This list of agencies and entities shall include, but is not limited to:

- a. Florida Power and Light
- b. Sprint
- c. Comcast
- d. Lee County Utilities

These agencies require a minimum of 48-hour written notice of activities within their jurisdiction. The Contractor shall also call Sunshine 811 before beginning any Work at the Work area.

Protection of all utilities shall be the responsibility of the Contractor who shall provide adequate protection to maintain proper service. The Contractor is to include within its line item bid prices, the costs to protect, and/or support, all underground utilities which may be in conflict with the construction of this Project. Attention is called to the Florida Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes. This act provides for a one-call center charged with helping prevent damages to underground utilities.

Any expense of utility repair or other damage caused by the Contractor's operations shall be borne by the Contractor. Where existing utilities are damaged, they shall be immediately repaired by the Contractor in accordance with the requirements of the government, private agencies, and entities that may have an area of responsibility, jurisdiction or involvement for the utilities. If the Town of the utility elects to make such repairs with his own forces, the Contractor shall make sure that specific arrangements are made to protect the Town from all damages. Where such conflicts are unavoidable, every effort shall be made to construct the Work so as to cause as little interference as possible with the services rendered by the structure disturbed.

#### **TS-6.0 Contractor's Equipment**

The Contractor agrees to keep on the job sufficient equipment to meet the requirements of the Work. The equipment shall be in satisfactory operating condition and capable of safely and efficiently performing the Work as set forth in the specifications. The equipment to be utilized by the Contractor shall be submitted by the Contractor with their Bid.

#### **TS-7.0 Transportation Facilities**

The Contractor shall make his own investigation of available roads or other means of conveyance for transportation, load limits for bridges, barges and roads, and other road or waterside conditions affecting the transportation of all equipment to the Work area.

#### **TS-8.0 Water and Sewer**

The responsibility shall be upon the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use, and to install and maintain necessary supply connections and piping for same, and necessary portable sanitary facilities but only at such locations and in such manner as may be approved by the Town and Engineer. The portable sanitary facilities shall be removed by the Contractor in like manner at his expense prior to completion of the construction and final acceptance.

#### **TS-9.0 Dune Vegetation**

##### **TS-9.1 General**

The Contractor shall purchase and grow mature, native dune vegetation in accordance with the

species, sizes, and spacing as shown on the Contract Plans and these specifications. Table 1 presents the plant list for species, sizes, and spacings. The Contractor shall provide nursery grown plants that are of Florida #1, or superior quality pursuant to the current version of the Florida Department of Agriculture and Consumer Services (FDACS) Plant Grades and Standards. All plants shall be true to the growth habit of the species, and are to be fully rooted in the container, healthy, vigorous, well branched, and densely foliated. Plants shall be free from physical damage, or conditions that would interfere with thriving growth, and free of disease, insects, or insect eggs and larvae.

The dune vegetation shall be healthy and have a vigorous form that meets or exceeds these specifications. Substitutions of plant species are allowed provided they are pre-approved by the Town and they meet the requirements of these specifications and the Warranty provisions. Seeds and/or cuttings for all species shall originate from South Florida extending to Tampa along the West Coast and to West Palm Beach along the East Coast. Prior to commencement of planting, the Contractor shall provide the Town with written documentation as to the source of the planting units. Documentation shall include collection permits or contracts from FDACS, or other comparable documents.

**Table 1. Plant List**

| <b>Common Name</b> | <b>Scientific Name</b>                  | <b>Container Size</b> | <b>Height (Minimum)</b> | <b>Spacings (On center, Maximum)</b> | <b>Quantity</b> |
|--------------------|-----------------------------------------|-----------------------|-------------------------|--------------------------------------|-----------------|
| Dune Sunflower     | <i>Helianthus debilis var. vestitus</i> | 4 inches              | 12 inches               | 18 inches                            | 46,429          |
| Dune Panic Grass   | <i>Panicum Amarum</i>                   | 4 inches              | 12 inches               | 18 inches                            | 52,582          |
| Railroad Vine      | <i>Ipomoea Pes-caprae</i>               | 1 gallon              | 12-inch runner          | 24 inches                            | 12,854          |
| Sea Oats           | <i>Uniola paniculata</i>                | 4 inches              | 18 inches               | 18 inches                            | 12,645          |
| Sea Oats           | <i>Uniola paniculata</i>                | 1 gallon              | 24 inches               | 24 inches                            | 11,900          |

The heights for species shall be measured from the top of the root ball to the tip of the longest leave and meet the minimum requirements in Table 1. Plants shall be nursery grown container stock with root development throughout the root ball. All plants shall be “healthy and vigorous” according to horticultural standards. The plants shall have a fully developed root ball, with white or light beige roots. Brown, black or rotting root balls shall be rejected. Plant roots shall be disease free, moist and milky white at the time of delivery and installation. Plants showing signs of stress, either from drought, pest infestation, disease or any visible mishandling shall be rejected. Plants not meeting these specifications will be rejected by the Town. Plants rejected under these specifications will not be considered as delivered to the site and; therefore, not eligible for payment.

The Contractor shall provide the Town with proof of achieving these specifications prior to commencement of planting. Plants can be delivered bare rooted in boxes to the site. Samples for each species shall be provided to the Town by the Contractor prior to commencement of planting. Upon approval, the samples will be used as a standard for future plants provided through the Contract. The Town shall be given appropriate notification by the Contractor prior to any and each

plant delivery to allow for plant inspection. The Contractor shall install the dune vegetation as soon as practicable but no later than 48 hours after delivery to the Work area.

The Town may inspect plantings at place of growth or at site before planting for compliance with requirements for genus, species, variety, size, and quality. The Town retains the right to further inspect plantings for size and condition of root systems, insects, injuries, and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. The rejected material will be immediately removed from site and replaced with suitable material at the Contractor's expense.

#### **TS-9.2 Variations in Estimated Quantities**

Where the quantity is an estimated quantity, and where the actual quantity of material placed by Contractor varies by more than twenty percent (20%) for each separate species, whether due to site conditions in the Work area as determined by a pre-construction survey, or at the discretion of Town, as set forth in the Contract Documents, an equitable adjustment in the unit price may be made upon demand of either party. The equitable adjustment will be applied based upon increase or decrease in costs due solely to the variations above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity individually for each separate species.



### TS-10.0 Planting

The Contractor shall price the Estero Island Dune Plantings Base Bid Spreadsheets for the North, South and Central Segments as well as the Grand Total.

### TS-10.1 General

The Contractor shall plant the dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. The Town shall provide the Contractor with the dune alignment, No Work Zones, and initial beach access points in plan view drawings in electronic format (CADD and PDF).

Prior to installation, the Contractor shall furnish to the Town a plan for installing, fertilizing, and watering the plants, how the required amounts of water and fertilizer are to be applied, and an itemized list of equipment that will be used during the watering and fertilizing operations they propose to use in order to meet the Warranty requirements of the Contract Documents.

The Contractor shall remove all existing exotic vegetation prior to installation of dune vegetation. Prior to planting, the Contractor shall hand rake planting areas as necessary to remove weeds, rocks, and construction debris. Construction debris, weeds, and rocks shall be removed and disposed of in an approved off-site disposal area by the Contractor. The Contractor shall smooth out any ruts, holes or other disturbance of the sand or ground surface to a stable, pre-planting condition.

All plants delivered and stored at the installation site shall be protected against desiccation, thermal stress, disease and physical damage. Plants deemed to have been improperly handled, packed, transported, and/or stored will be rejected by the Town upon inspection and replaced by the Contractor at no additional costs to the Town.

Vehicular traffic in support of planting activities may be conducted if consistent with local and state beach driving regulations and existing beach access points are utilized. The Contractor shall utilize low impact methods that do not alter dune topography, remove native beach-dune vegetation, require new beach access, disturb coastal wildlife, obstruct public access, cause excavation of the ground, or damage adjacent properties.

### TS-10.2 Planting Schemes

The Town has permitted their Dune Management Plan which is included in the Contract Documents and incorporated into these specifications. The Plan includes two planting schemes for the properties along Estero Island as follows.

#### Scheme #1 "Sea Oat Dune"

| Common name      | Scientific name                                    | Percentage |
|------------------|----------------------------------------------------|------------|
| Sea oats (1 Gal) | ( <i>Uniola paniculata</i> )                       | 70%        |
| Dune Sunflower   | ( <i>Helianthus debilis</i> var. <i>vestitus</i> ) | 15%        |
| Dune Panic Grass | ( <i>Panicum Amarum</i> )                          | 10%        |
| Railroad Vine    | ( <i>Ipomoea pes-caprae</i> )                      | 5%         |

#### Scheme #3 "Low Dune"

| Common name       | Scientific name                                    | Percentage |
|-------------------|----------------------------------------------------|------------|
| Dune panic grass  | ( <i>Panicum amarum</i> )                          | 40%        |
| Dune sunflower    | ( <i>Helianthus debilis</i> var. <i>vestitus</i> ) | 35%        |
| Sea Oats (1 Gal)  | ( <i>Uniola paniculata</i> )                       | 5%         |
| Sea Oats (4 inch) | ( <i>Uniola paniculata</i> )                       | 10%        |

The quantities in Table 1 reflect the planting scheme selections as shown on the Contract Plans.

### **TS-10.3 Layout**

The Contractor shall have on site at all time during the planting Work, an experienced foreman supervising the Work. The Town shall stake-out the alignment noting there are two planting schemes and two alternate alignments to be planted depending upon property owner request. The Contractor shall provide 72-hour written notice requesting stake-out for each section:

North: Stations 2+00 to 71+00

Central: Stations 71+00 to 261+00

South: Stations: 290+00 to 374+00

The Town reserves the right to adjust the planting to respond to existing beach access points, to align with existing vegetated areas, and any unanticipated site conditions. Minor adjustments to allow for site conditions and beach access points is permitted as approved by the Town. The Town shall review the planting layout with the Contractor and make necessary adjustments prior to planting.

The Contractor shall determine location of underground utilities and perform work in a manner which will avoid possible damage to underground utilities. Hand excavate planting holes as required when working around underground utilities. Maintain or restore finish grade set by others. When conditions detrimental to plant growth are encountered, such as adverse drainage conditions or obstructions, the Contractor shall notify the Town before planting so field adjustments in the layout can be determined. As necessary, the Town shall determine the preferred way to resolve drainage conditions or adjustment of the planting layout.

Supplemental plantings shall occur in areas within existing sparsely vegetated dunes.

Plantings shall be made in shore-parallel rows. The rows shall be staggered mid-way.

### **TS-10.4 Installation**

Installation, fertilizing and watering methods shall be determined by the Contractor. All fertilizing and watering required which is necessary for the proper establishment of the plants and to achieve the Warranty provisions shall be included in the Contract lump sum price for Bid Item "Planting."

When plantings are completed, the Town will, upon receipt of written request, make an inspection to determine acceptability. When inspected Work does not comply with the Contract Plans or these Specifications, the Contractor shall replace rejected Work and continue maintenance until reinspected by the Town and found to be acceptable. The Contractor shall remove rejected plants and materials promptly from the Work area.

### **TS-11.0 Adjustments**

A minimum of one 10-foot wide access shall be provided through the dune plantings per property. Some properties with longer frontage shall have more than one access. The approximate access points are shown on the Contract Plans. The Town reserves the right to adjust the access points based upon private property owners requesting reasonable changes during the Contract Time. The Town will advise the Contractor of adjustments in writing within seven (7) calendar days of the initial planting. The Contractor shall as soon as practicable remove the plants from the new access point and replant them in the original access point. The adjusted plants are subject to the same Warranty provisions.

### **TS-12.0      Warranty**

Success is defined as 90% survivability of each individual species to the density and quality described in these specifications after 6 months from date of initial planting. Upon completion and acceptance of the Work, the Contractor shall execute and deliver a written warranty covering all Work to the Town for a 6-month period.

Two months after the initial planting, the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density. Two months after the additional planting (four months after the initial planting), the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density.

Survival rates can be determined by troweling up plants and looking at the shoots and roots. Plants shall be deemed surviving if they present vigorous new leaf growth and inspection of the root zone demonstrates that new roots have migrated into the surrounding soil by no less than four inches after two months and eight inches after four months.

If the 90% success criteria for each individual species is still not achieved after 6 months, the Contractor shall propose an alternative planting plan subject to review and approval by the Town. The Contractor shall, at their expense, install the alternate planting plan within 21 calendar days after receipt of notice of Town approval.

All replanting shall be included in the Contract lump sum price for Bid Item "Warranty."

### **TS-13.0      Environmental Protection**

#### **TS-13.1      General**

For the purpose of this specification, environmental protection is defined as the retention of the environment in its natural state to the greatest possible extent during Work activities and to enhance the natural appearance in its final condition. Environmental protection requires consideration of air, water, and land, and involves noise, and solid waste management as well as other pollutants. In order to prevent any environmental pollution arising from the Work activities in the performance of this Contract, the Contractor and their Subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement.

#### **TS-13.2      Resource Protection**

The environmental resources within the project boundaries and those affected outside the limits of permanent Work under this Contract shall be protected during the entire period of this Contract. The Contractor shall confine his activities to areas defined by the Contract plans and specifications.

Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's Work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources, including trees, shrubs, vines, grasses, topsoil, and land forms without special permission from the Town and Engineer. Vegetation damaged beyond restoration shall be removed and disposed of by the Contractor in a manner approved by the Town and Engineer. Vegetation or trees that are to be removed because of damage shall be replaced at the Contractor's expense by nursery-grown plants or trees of the same species or a species approved by the Town and Engineer. The size and quality of nursery-grown plants or trees shall also be approved by the Town and Engineer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is

permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

#### **TS-13.3 Storage Facilities**

The Contractor's storage areas required in the performance of the Work shall be located upon existing cleared portions of the job site or areas to be cleared and shall require written approval of the Town. The Contractor shall not store oil or fuel on-site, or equipment that is not required for the daily Work activities. Under no condition shall oil or fuel be discharged on-site or into adjacent waters.

#### **TS-13.4 Post-Work Cleanup or Obliteration**

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer. The Project area will be restored to near natural conditions.

#### **TS-13.5 Spillage**

Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washing, herbicides and insecticides, and concrete drainage from entering public waters.

#### **TS-13.6 Disposal**

Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation.

#### **TS-13.7 Sea Turtle and Shorebird Protection**

The Town will contract with agency approved sea turtle and shorebird monitors as necessary during their respective nesting seasons to conduct daily monitoring. The Contractor is responsible for cooperating with the Town and their monitors during the Work. The Contractor shall abide by the Permits and Dune Management Plan for sea turtle and shorebird protection including but not limited to hours of operation, waiting to begin work from the landward toe of the dune seaward until daily clearance is provided by the monitors, operating vehicles on the beach and dune, equipment storage, access and staging, and heavy equipment usage.

#### **TS-14.0 Owner and Engineer's Approval of Work**

By approving any payment, the Town and Engineer shall not thereby be deemed to have represented that they made exhaustive or continuous on-site inspection to check the quality or the quantity of the Work, or that they have reviewed the means, methods and techniques, sequences, and procedures of construction, or that they have made any examination to ascertain how or for what purpose the Contractor has used the money paid or to be paid to them on account of the Agreement price. The Town and Engineer may have a representative on site at different times to observe operations of Contractor. The presence of the Town and Engineer or its designated representative(s) shall not relieve the Contractor of responsibility for the proper execution of the Work in accordance with the specifications or permits applicable to the Work. In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of Town shall be final and binding on all parties.

#### **TS-15.0 Private Property**

The Contractor shall not occupy private land outside of any easements or rights of way unless

the Contractor obtains expressed consent by the property owner. In the event that the Contractor uses private property for any purpose without first having obtained the necessary approvals from the property owner or provided the necessary agreement(s) to the Town, the Town will direct the Contractor in writing to immediately cease using such property. The Town reserves the right to require that any agreement between the Contractor and the property owner for the use of private lands be furnished in writing.

At a minimum, the written agreement should contain the lot legal description and street address and the names, addresses, and telephone numbers for both the legal lot owner and the Contractor. The written agreement must also provide times for completion, erosion control measures, and how the Contractor will completely restore to the owner's satisfaction and how the owner will approve of the Work. This written agreement shall be submitted to and approved by the Town prior to construction.

The Contractor shall restore all damages to surface and underground facilities resulting from its construction operations to a condition equal to, or better than, the original condition. Prior to application for final payment, the Contractor shall provide documentation from the property owner of each piece of private property that was utilized by the Contractor, stating that each property owner is satisfied with the manner in which the Contractor has restored the property. Final payment or reduction in retainage shall not be paid until such documentation is received by the Town.

DRAFT



TOWN of FORT MYERS BEACH

# THE TOWN OF FORT MYERS BEACH



## INVITATION TO BID

### ESTERO ISLAND DUNE PLANTING PROJECT

# ITB-25-02-EN

Issued: Monday, May 5, 2025

Proposals Due: Wednesday, June 4, 2025, at 12:30 p.m.

Prepared by:

Town of Fort Myers Beach  
2731 Oak Street  
Fort Myers Beach, FL 33931





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INVITATION TO BID

BID # ITB-25-02-EN

The TOWN OF FORT MYERS BEACH, Florida will receive **ELECTRONIC BIDS** for **ESTERO ISLAND DUNE PLANTING PROJECT, ITB-25-02-EN** electronically via Demandstar.com on or before **June 4, 2025, 12:30 P.M. local time.**

**SCOPE OF WORK:** The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

All work performed shall follow all Federal, State, Local, OSHA and department mandated regulations and specifications for associated work.

**1. PRE-BID CONFERENCE**

There will be no pre-bid conference.

**2. DESCRIPTION OF WORK AND LOCATIONS**

The description of the Work is detailed in the Construction Specifications. The locations of the work areas are shown on the Contract Plans.

The CONTRACTOR agrees to perform all the work necessary to complete all items listed below. The OWNER has the right to accept or reject any or all part of a submitted bid.

This project requires the Contractor to be licensed and insured in the State of Florida.

The TOWN will require a Public Construction Bond on this project.

Project documents and specifications can be viewed at Demandstar.com or by contacting the Town Clerk's office.

The official bid documents shall be obtained from [www.demandstar.com](http://www.demandstar.com).

The Town of Fort Myers Beach reserves the right, in its sole judgment in the best interest of the Town of Fort Myers Beach, to waive any informalities in any bids; to make award(s) including multiple awards; to waive any non-substantive, in Town's sole judgment, irregularity or technicality in bids received, and/or to reject any or all bids.



## TOWN of FORT MYERS BEACH

### Anticipated Schedule:

| Task                                                | Date                                        |
|-----------------------------------------------------|---------------------------------------------|
| Non-Mandatory Pre-Bid Meeting                       | N/A                                         |
| Questions Due                                       | Friday, May 23, 2025, by 12:30 PM           |
| Bids Due                                            | Wednesday, June 4, 2025, at 12:30PM         |
| Bid Opening                                         | Wednesday, June 4, 2025, at 2:00PM          |
| Town Council Award and Authorize Contract Execution | Monday, June 16, 2025, Town Council Meeting |



## LEGAL NOTICE TO BIDDERS

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### LEGAL NOTICE TO BIDDERS ITB-25-02-EN

#### ESTERO ISLAND DUNE PLANTING PROJECT

NOTICE IS HEREBY given that sealed, electronic bids will be received by the TOWN OF FORT MYERS BEACH through [www.demandstar.com](http://www.demandstar.com) until 12:30pm LOCAL TIME on Wednesday, June 4, 2025. Bids will be opened at 2:00pm, June 4, 2025, in the Town Council Chambers at Town Hall, 2731 Oak Street, Fort Myers Beach, FL. 33931.

#### PROJECT: ESTERO ISLAND DUNE PLANTING PROJECT

Any bid received by the Town after the above date and time shall remain unopened.

#### SCOPE OF WORK:

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

The TOWN will require a Bid Bond and a Public Construction Bond on this project.

The official bid documents and project specifications shall be obtained from [www.demandstar.com](http://www.demandstar.com). The Town of Fort Myers Beach reserves the right, in its sole judgment in the best interest of the Town of Fort Myers Beach, to waive any informalities in any bids; to make award(s) including multiple awards; to waive any non-substantive, in Town's sole judgment, irregularity or technicality in bids received, and/or to reject any or all bids.

#### **OBTAINING BIDDING DOCUMENTS**

- 2.1. **Ordering Instructions:** The official bid Documents (project specifications and drawings) shall be obtained from Demandstar.com at [www.demandstar.com](http://www.demandstar.com)
- 2.2. BIDDER must furnish the TOWN with a mailing address, e-mail address, phone number and facsimile number for contact purposes. It shall be the BIDDER'S sole responsibility to keep all such information current with the TOWN until the execution of a contract by the TOWN for this project. If the official documents are not obtained directly from Demandstar.com, or are modified in any manner, the bid **will not** be accepted for consideration by the TOWN.
- 2.3. Complete sets of Bid Documents must be used in preparing the Bid. The TOWN will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

## **SUBMITTAL OF BIDS**

### **3.1 BID SUBMITTALS MUST COMPLY WITH THE FOLLOWING TO BE VALID:**

3.1.1. Bids must be electronically submitted via Demandstar.com and identified as

#### **BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT ITB-24-08-EN**

3.1.2. Any questions regarding the use of Demandstar for submittal should be directed to Demandstar prior to proposal due date.

3.1.3. Completed Official Bid Form (#FMB:003), bid must be properly signed and, where applicable, corporate and/or notary seals attached. **The completed bid schedule must be submitted with proposal.**

**ALL REQUIRED FORMS MUST BE ELECTRONICALLY SUBMITTED THROUGH DEMANDSTAR.COM. FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE BID.**

3.2.1. Signed and notarized Affidavit of Certification Immigration Laws (#FMB:100)

3.2.2. Contractor Qualification Questionnaire (Form #FMB:004)

3.2.3. Note: A current copy of Form #FMB:004 can be placed on file with the TOWN and must be kept current every 12 months.

3.2.4. Non-Collusion (#FMB:021)

3.2.5. Materials List (#FMB:023)

3.2.6. Sub-Contractors List (#FMB:024)

3.2.7. Plant and Equipment Schedule (#FMB:025)

3.2.8. Signed Acknowledgment of Receipt of Addenda (if any).

**FAILURE TO SUBMIT ANY OF THE FOREGOING MAY RESULT IN THE BID BEING FOUND NON-RESPONSIVE.**

3.2 THE FOLLOWING MUST BE SUBMITTED WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF NOTICE TO AWARD; FAILURE TO SUBMIT MAY BE GROUNDS TO RESCIND AWARD:

3.3.1. Public Construction Bond, Letter of Credit, or Cash Bond (as provided in Part C).

3.3.2. Certificate of Insurance (as provided in Part C)

3.3 The TOWN reserves the right to waive informalities in any bids; to reject any or all bids with or without cause; and/or to accept the bid that in its judgment will be in the best interest of the TOWN.

3.4 The TOWN shall not be responsible for any cost incurred by any BIDDER in the preparation of these Bid Documents.

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## INSTRUCTIONS TO BIDDERS

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### 1. DEFINITIONS

- 1.1. "ADDENDUM" means any additional Contract provisions, in writing signed and sealed by the CONSULTANT, if applicable, issued by the TOWN prior to the receipt of Bids, which clarify, correct, change or interpret the Bidding Documents or the Contract Documents.
- 1.2. "ALTERNATE BID" means an amount stated In the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted.
- 1.3. "BASE BID" is the sum stated in the Bid for which the BIDDER offers to perform the Work described as the base, to which Work may be added or deducted for sums stated in Alternate Bid.
- 1.4. "BIDDER" is any individual, firm, partnership, joint venture, or corporation submitting a bid for this project, acting directly or through an authorized representative.
- 1.5. "BID" is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.6. "BID BOND" is a security in the form and amount required by the TOWN pledging that the BIDDER will enter into a Contract with the TOWN on the terms stated in the Bid.
- 1.7. "BIDDING OR BID DOCUMENTS" are the Request for Bids, the Notice to BIDDERS, Instructions to BIDDERS, sample forms, Addenda issued prior to receipt of Bids, the Bid Proposal Form and the proposed Contract.
- 1.8. "CONTRACT PRICE" means the total monies payable to the CONTRACTOR under the Contract Documents.
- 1.9. "TOWN" is defined as the Town of Fort Myers Beach, Fort Myers Beach, Florida, a Florida municipal corporation, its successors and assigns, also referred to as OWNER.
- 1.10. "RESPONSIBLE BIDDER" is defined as a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, relevant experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance of the contract.
- 1.11. "SUCCESSFUL BIDDER" is defined as the lowest, qualified, responsible, and responsive BIDDER to whom the Town Council makes a written award, based upon evaluation criteria contained herein.

"BIDDING DOCUMENTS" or "CONTRACT DOCUMENTS" include Request for Bids (Part A); Notice to BIDDERS (Part B); Instructions to BIDDERS (Part C); Bid Proposal (Part D); Construction Contract (Part E); Plans & Technical Specifications (Part G); all Addenda issued by the TOWN; all Change Orders or Contract Amendments; Town Purchase Order. *NOTE: Title, Subtitles, Headings, Running Headlines of Contents, and Indexes are used merely for convenience purposes.*

**1.12. "EXAMPLE FORMS" include:**

- No. FMB:003----- Bid Form
- No. FMB:001----- Bid Bond
- No. FMB:004----- Contractor Qualification Questionnaire
- No. FMB:005----- Disadvantaged Business Enterprises Participation
- No. FMB:006----- Construction Contract Agreement Form
- No. FMB:007----- Public Construction Bond
- No. FMB:008----- Clean Irrevocable Letter of Credit
- No. FMB:009----- Fort Myers Beach Proposal Request
- No. FMB:010----- Field Change Order
- No. FMB:011----- Change Order
- No. FMB:012----- Field Directive Change
- No. FMB:013----- Application for Estimate & Requisition for Payment
- No. FMB:014----- Certificate of Substantial Completion
- No. FMB:015----- Warranty
- No. FMB:016----- Owner's Representative Certificate of Final Completion
- No. FMB:017----- Disadvantaged Business Enterprise / Minority Business Participation Certification
- No. FMB:018----- Contractor Performance Evaluation
- No. FMB:019----- Public Entities Crime Form
- No. FMB:021----- Non-Collusion Affidavit
- No. FMB:022----- Trench Safety Affidavit (when applicable)
- No. FMB:023----- Materials List
- No. FMB:024----- List of Sub-Contractors
- No. FMB:025----- Plant and Equipment Schedule
- No. FMB:100----- Affidavit Certification Immigration Laws
- Certificate of Insurance (Standard Accord)

**2. BIDDER EXAMINATION/INVESTIGATION OF SITE**

- 2.1. Before submitting a bid, BIDDER should carefully examine the site of the proposed work and make all necessary investigations to inform itself thoroughly as to all difficulties involved in the completion of all work required pursuant to the requirements of this bid package. No claim of ignorance of conditions or difficulties that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work pursuant to this bid package as a result of failure to make the necessary examinations and investigations will be accepted as an excuse for any failure or omission on the part of the successful BIDDER to fulfill, in every detail, all of the requirements of the Contract Documents, nor will they be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.
- 2.2. BIDDER shall not be entitled to compensation beyond its bid price when required to incur expenses because of tolls, weight limits of trucks, access to the site, permanent or temporary power at the job site, delivery of materials, temporary utilities, or compliance with OSHA requirements when examination and/or investigation of the site conditions and access routes would have revealed the extra expense involved. *The above list is intended to be illustrative and not all-inclusive.*



**3. PREPARATION OF BID**

3.1. Each BIDDER shall submit the completed Bid Form No. FMB:003 (provided in Part D) and indicate the total lump-sum, or total unit price base bid, and any total price(s) of any alternative(s) requested as part of the bid solicitation. BIDDER must furnish all requested information in the space provided in the Bid Proposal Form (Part D). The BIDDER is solely responsible for reading and completely understanding the requirements and the specifications of the items bid.

3.2. Signatures shall be required as follows:

3.2.1. Bids by a corporation must be executed in the corporate name, by the President or Vice President (or other corporate officer, accompanied by corporate resolution authorizing that person to sign). The corporate seal must be affixed and attested by the secretary or assistant secretary. The corporate address and State of incorporation must be shown below the signature. Non-resident corporations shall furnish to the TOWN a duly certified copy of all required authorizations to transact business in the State of Florida along with the bid proposal.

3.2.2. Bids by a partnership must be executed in the partnership name and signed by a partner whose title must appear under the signature. The official address of the partnership must be shown below the signature.

3.2.3. Attorneys-in-Fact who execute bonds or other surety instruments must attach, with each bond or surety instrument, a current certified copy of their power of attorney that indicates the time period during which the power of attorney is valid.

3.2.4. All names must be typed or printed below the signature.

3.3. Bid errors shall be handled as follows:

3.3.1. Where bids have any marked corrections, each must be initialed as corrected.

3.3.2. In the case of unit price bids, if an error occurs in the extension of an item, the unit price in words (as shown in the bid) will govern. – No applicable.

3.4. Any blank spaces on the Bid Proposal Form (Part D), qualifying notes, exceptions, counter offers, lack of required submittals, signatures, or failure to submit a bid on the Town's form may cause BIDDER to be declared non-responsive.

3.5. Where required by the bid package, BIDDERS must submit (with their bid proposal) cuts, sketches, descriptive literature and/or complete specifications relative to the items proposed and offered.

3.6. The BIDDER shall comply with the Florida Sales and Use Tax Law as it may apply to this Contract. The Bid amount(s) shall include any and all Florida Sales and Use Tax payment obligations required by Florida Law of the successful BIDDER and/or its Sub-Contractors or material suppliers.



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### 4. TOWN INTERPRETATION / ADDENDA

- 4.1. No interpretation or clarification of the meaning of the plans, specifications, or other contract documents will be binding if made to any BIDDER orally. Every such request must be in writing, addressed to Town of Fort Myers Beach, Attn: Town Clerk, 2731 Oak St, Fort Myers Beach, FL 33931 or via e-mail to [bids@fmbgov.com](mailto:bids@fmbgov.com) and received no later than the question due date.
- 4.2. Any interpretations, any supplemental instructions, and/or any modifications to the Bidding Documents deemed advisable by the TOWN **will be issued as a written Addendum and made available to all known BIDDERS via Demandstar.com, prior to the date the bid is due. Questions will not be accepted after the question due date unless otherwise specified by the TOWN. All BIDDERS are encouraged to contact the TOWN before the Bid due date to verify information regarding any issued Addenda. BIDDER shall acknowledge receipt of all Addenda, by number and date, in Part D, Official Bid Form. Failure to do so may result in rejection of the bid as non-responsive. IT IS THE SOLE RESPONSIBILITY OF THE BIDDER TO ENSURE HE/SHE OBTAINS INFORMATION RELATED TO ADDENDA.**

### 5. BID SECURITY AND FORFEITURE - REQUIRED

The BIDDER shall provide Bid Security in an amount not less than **five percent (5%)** (including applicable alternatives) of the total amount of the bid. The Bid Security is to be submitted to the TOWN in triplicate (one original and two copies). The copies must be a photographic reproduction of the completed form set forth in the Contract Documents and be clearly marked "COPY".

- 5.1. The following types of Bid Security are acceptable:
  - 5.1.1. A Certified Check or a Cashier's Check, in a stated dollar amount of not less than five percent (5%) of BIDDER's total bid, including alternates if applicable. Any Certified Checks or Cashier Checks submitted in lieu of a Bid Bond shall be drawn on a solvent bank or trust company, made payable to Town of Fort Myers Beach and shall have all necessary documentary revenue stamps attached (if required by law); or
  - 5.1.2. A bid bond may be submitted on Town of Fort Myers Beach Paper Bid Bond Form No. FMB: 001, completed and signed by all required parties, of not less than five percent (5%) of BIDDER's total bid (including Alternate(s) if applicable). Contact your Surety Company to inquire if they utilize the Electronic Bid Bond form through Fort Myers Beach. The Bid Bond, whether submitted by paper or electronic format, shall be issued by a duly authorized surety authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of authority to execute the bond being submitted.
  - 5.1.3. Personal checks are not acceptable to the Town as Bid Security.
- 5.2. The Bid Security of the successful BIDDER will be retained by the Town until BIDDER has executed the contract, whereupon the Bid Security will be returned. The Bid Security of other BIDDERS whom the TOWN believes to have a reasonable chance of receiving the award may be retained by the TOWN until the effective date of the Agreement, whereupon all Bid Securities furnished by such BIDDERS will be returned.

- 5.3. If, within seven (7) calendar days after notification of the TOWN'S approval to award a contract, the successful BIDDER refuses or otherwise neglects to execute the required written contract, fails to furnish the required Public Construction Bond, or fails to submit the required Certificate of Insurance, then the TOWN may rescind the Notice of Award. The amount of the BIDDER'S bid security shall be forfeited and may be retained by the Town if BIDDER fails to execute the contract.
- 5.4. No claim of mistake or misunderstanding of the conditions of forfeiture of the Bid Security shall entitle the BIDDER to recover its bid security and shall not be a defense in any action for recovery of the bid security based upon BIDDER's neglect or refusal to execute a written Contract.

## **6. PUBLIC CONSTRUCTION BOND - REQUIRED**

- 6.1. A Public Construction Bond (on Form No. FMB:007 provided in (Part E) issued in a sum equal to one hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Fort Myers Beach and otherwise authorized to transact business in the State of Florida shall be required from the successful BIDDER. The purpose of the bond is to insure the faithful performance of the obligations imposed by the resulting contract and protect the TOWN from lawsuits for non-payment of debts incurred during the successful BIDDER'S performance under such Contract.
- 6.2. A public construction bond must be properly executed by the Surety Company and successful BIDDER when the Contract is executed by the successful BIDDER. Only the form provided with the contract documents (Form No. FMB:007 provided in Part E) will be accepted.
- 6.3. A Clean Irrevocable Letter of Credit or a Cash Bond may be accepted by the TOWN in lieu of the Public Construction Bond. Only the form provided with the contract documents (Form No. FMB:008 provided in Part E) will be accepted.

## **7. INSURANCE REQUIREMENTS**

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

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

- \$1,000,000 per occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Aggregate for Bodily Injury Liability
- \$14,000,000 products and completed operations

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

- \$2,000,000 Combined Single Limit (CSL) or
- \$1,000,000 Injury per person



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\$1,000,000 Aggregate Bodily injury per accident  
\$1,000,000 Property damage per accident

With coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

Employer's liability with a minimum limit per accident in accordance with statutory requirements.

**Workers Compensation** – Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation Insurance to comply for all employees for statutory limits in compliance with the applicable State and Federal laws.

**Error and Omission** – Coverage shall include professional liability insurance, to cover claims arising out of negligent acts, errors or omissions of professional advice, privacy and network security insurance covering for losses arising from disclosure of confidential information, or other professional services:

\$1,000,000 Per Occurrence

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

The Proposer shall provide original certificates of coverage and receive notification of approval of those certificates from the Town prior to providing services under this RFQ. The insurance coverage provided by Proposer is subject to the approval of the Town. The insurance certificates and required policies (except for worker's compensation) shall list the Town of Fort Myers Beach as ADDITIONAL INSURED and shall provide for the Town to receive no less than thirty (30) days' written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the Town if circumstances change, or adequate protection of the Town is not presented. Responder, by submitting a Response, agrees to abide by such modifications.

## 8. SUBMISSION OF BIDS

- 8.1. SUBMIT ALL BID DOCUMENTS VIA DEMANDSTAR.COM PRIOR TO THE BID CLOSING TIME.
- 8.2. The proper submission of the bid to the TOWN via Demandstar.com is solely and strictly the responsibility of the BIDDER.
- 8.3. Bids must be submitted on the forms provided. The TOWN reserves the right to modify the Bid Proposal by electronic notice, provided such notice is received prior to the time and date set for the bid opening.
- 8.4. Bids received after the time set for the bid opening will not be considered and remain unopened.

**9. WITHDRAWAL, TRANSFER OR MODIFICATION OF BIDS**

- 9.1. Bids may be withdrawn by email prior to the time fixed for the opening of bid proposals.
- 9.2. BIDDER may not withdraw its bid after the appointed bid opening time.
- 9.3. Bid modifications received after the time set for bid opening will not be considered. Modifications prior to the bid opening may be made electronically on Demandstar.com.
- 9.4. BIDDER may not assign after the bid opening time.

**10. BID OPENING**

At the time and place fixed for the opening of the bids every bid received by the TOWN from Demandstar.com will be opened and the BIDDER's name publicly read aloud, irrespective of any irregularities that may be found therein. BIDDERS and other persons interested may be present, in person or by representative. An abstract of the amounts of the base bids and major alternatives (if any) will be made available, upon request, to BIDDERS the earliest thirty (30) days after the opening of bids or when a Notice of Intent to Award is issued. At that time, a Bid tabulation will be posted on Demandstar.com.

**11. AWARD OF CONTRACT / REJECTION OF BIDS**

- 11.1 The contract will be awarded to the lowest responsive and responsible BIDDER whose bid, conforming to the Invitation to Bid, is most advantageous to the TOWN, price and other factors considered, as further explained herein. The TOWN reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Also, TOWN reserves the right to reject the Bid of any BIDDER if TOWN believes that it would not be in the best interest of the Project to make an award to that BIDDER, whether the Bid is, or is not, responsive or the BIDDER is unqualified, due to lack of relevant experience or other reasons, to perform the type of work required, or if the BIDDER is of doubtful financial ability or fails to meet any other pertinent criteria established by TOWN for the Bid. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 11.2 In evaluating Bids, the TOWN will consider the qualifications and relevant experience of the BIDDERS in performing work on similar projects (as well as their subcontractors, suppliers, or others when such entities are required to be disclosed by BIDDERS), whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. The TOWN may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work, when such data is required to be submitted prior to the Notice of Award.
- 11.3 The TOWN may conduct such investigations as the TOWN deems necessary and appropriate to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of BIDDERS, proposed Subcontractors, Suppliers and other persons and organizations proposed by BIDDER hereunder.
- 11.4 Nothing contained herein shall require the Town to reject bids or award a contract based

upon anything other than in its sole discretion as described herein. By submitting a bid, the BIDDER recognizes and accepts that the TOWN may reject the bid based upon the exercise of its sole discretion. The sole remedy of a disappointed BIDDER for the improper award of a bid by TOWN shall be recovery of bid preparation costs and TOWN shall not be liable for any lost profits or attorney's fees incurred by BIDDER as a result of an improper award.

## **12. EXECUTION OF WRITTEN CONTRACT**

- 12.1 Within ten (10) business days of notice of award, the successful BIDDER will be required to sign an Agreement (in a form similar to the document included as Part E of the Bid Documents) pursuant to the award made by the TOWN to the successful BIDDER.
- 12.2 The TOWN will issue a "Notice to Proceed" on the Project within fifteen (15) calendar days of the effective date of the Agreement as shown in the Construction Contract (Part E).

## **13. BID PROTEST PROCEDURE**

Any BIDDER that has submitted a formal bid to TOWN, and who is adversely affected by an intended decision with respect to the award of the formal bid, must file with the Town Clerk a written "Notice of Intent to File a Protest" in accordance with the bid protest procedure specified in Fort Myers Beach Purchasing Manual which is available for examination and/or copying at Fort Myers Beach Town Hall, 2545 Estero Blvd., Fort Myers Beach, FL 33931 (239) 765-0202

*"FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY TOWN OF FORT MYERS BEACH TOWN COUNCIL SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS."*

## **14. PUBLIC ENTITY CRIME AFFIDAVIT**

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the Town; may not submit a bid on a contract with the Town for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the Town; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the Town, may not transact business with the Town in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list. (Form No. FMB:019).

## **15. DRUG FREE WORKPLACE**

Whenever two or more proposals, which are equal with respect to price, quality, and service, are received for the procurement of contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the evaluation/award process. In order to have a drug-free workplace, a business shall comply with the requirements of Florida Statutes Section 287.087.

## **16. IMMIGRATION LAWS**

- 16.1. The Town of Fort Myers Beach will not intentionally award Town contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e), Section 274A(e) of the Immigration and Nationality Act ("INA).



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16.2. The Town of Fort Myers Beach shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of the contract by Town of Fort Myers Beach.

### **17. NON-COLLUSION AFFIDAVIT**

Each BIDDER shall complete the Non-Collusion Affidavit (Form No. FMB:021) contained within the Bid package and include it with the Bid.

**END OF INSTRUCTION TO BIDDER**



## FEDERAL AND STATE

### A. STATE REQUIRED CONTRACTUAL TERMS AND CONDITIONS

**VENDOR LIST CERTIFICATIONS** The Town requires a certification from Responder that their firm is not on the following Vendor List maintained by the Florida Department of Management Services. The Florida Department of Management Services prohibits the use of vendors which appear on their Vendor Lists.

#### Forced Labor Vendor List

- In accordance with Florida Statute 2887.1346, Florida Statute, “Forced labor vendor list” (list), means the list required to be created and maintained by the department pursuant to paragraph (4)(d). Paragraph 4d, the department shall create and maintain a forced labor vendor list that contains the name and address of each company that has been disqualified from the public contracting and purchasing process under this section. The department shall publish an updated version of the list quarterly. The updated quarterly list shall be electronically posted on the department’s website
- Convicted Vendor List/Public Entity Crimes
  - In accordance with Section 287.133(2)(a), Florida Statute a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; and may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.
- Discriminatory Vendor List
  - In accordance with Section 287.134, Florida Statute an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or relay on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- Suspended Vendor List
  - In accordance with Section 287.1351, Florida Statute an vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts may not submit a bid, proposal, or reply to an agency or enter into or renew a contract to provide any goods or services to an agency. The term “vendor” means a person or an entity that provides goods and services to an agency under a contract or submits a bid, proposal, or reply to provide goods or



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services to an agency.

- Antitrust Violation List
  - In accordance with Section 287.137, Florida Statute a person or an affiliate who has been placed on the antitrust violator consultant list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal or reply for any new contract to provide any goods or services,
- Anti-Lobbying Clause (Cone of Silence)
  - In accordance with Section 287.057(23), Florida Statute, respondents to this solicitation or persons acting on their behalf may not contact, communicate with and/or discuss any matter relating in any way between the release of the solicitation and the end of the agency posting. Violation of this provision may be grounds for rejecting a response.
- Scrutinized List of Prohibited Companies
  - In accordance with Section 287.135 Florida Statute, prohibits state and local government entities from contracting with companies that are on the Scrutinized Companies List. Also prohibits companies that are engaged in certain business practices from contracting with these entities.
- Federal Excluded Parties List
  - An excluded party is any individual or entity that has been suspended or debarred from doing business with federal funds. Typically, a suspended individual or entity can not receive federal funds for a set time period or until specific requirement is met.

**FLORIDA CIVIL RIGHT ACT** The Contractor shall comply with Chapter 760, Florida Statutes, which states that the contractor shall comply with the Florida Civil Rights Act of 1992, which states that individuals in the state are free from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

**AFFIRMATIVE ACTION AND NONDISCRIMINATION** Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active-Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

**EQUAL OPPORTUNITY CERTIFIED** Suppliers, Contractors and/or Vendors that operate under Disadvantage Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Small Business Enterprise (SBE) and/or Veteran Business Enterprise (VBE) should not be excluded in the bidding process,.

**LOCAL GOVERNMENT PROMPT PAYMENT ACT** In accordance with Section 218.70, Florida Statute, the Town shall make payment of all sums properly invoiced within thirty (30) days of the Town's receipt of such invoice. Town shall pay contract amount of such invoice within thirty (30) day period. If Town shall give such notice to the contractor within such fifteen (15) day period, such dispute over the proper amount of such invoices shall be resolved, and after final resolution of such disputes, Town shall promptly pay the contractor the amount so determined, less any amounts previously paid by Town with respect to such invoice, In the event it is determined that Town has overpaid such invoice, the contractor shall promptly refund to the Town the amount of such overpayment.



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**PUBLIC QUALIFICATION DISCLOSURE** Per Florida Statute 218.80, there are no permit fees for this project, therefore permitting fees to be paid by contractor is zero dollars.

**BACKGROUND SCREENING** In accordance with Florida Statute 435, all employees required by law to be screened must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

**CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED** Pursuant to Florida Statute 607.1501(1), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if:

- a. The entity is owned by the government of a foreign country of concern.
- b. The government of a foreign country of concern has a controlling interest in the entity; or
- c. The entity is organized under the laws of or has its principal place of business in a foreign country of concern; or
- d. Foreign corporations are prohibited from transacting business in Florida until the corporation obtains a certificate to do business from the state department.

Beginning January 1, 2024, a governmental entity may not accept a proposal on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c).

Beginning July 1, 2025, a governmental entity may not extend or renew a contract with an entity listed in paragraphs (2)(a)-(c) if the contract would give such entity access to an individual's personal identifying information.

Beginning July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c). The Attorney General may bring a civil action in any court of competent jurisdiction against an entity that violates this section.

**PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING** In accordance with Florida Statute 287.05701 the Town may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

**INSPECTOR GENERAL COOPERATION** In accordance with Florida Statutes § 20.055(5), it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

**BUSINESS RELATIONSHIP DISCLOSURE REQUIREMENT** Sections 112.313(3), 112.313(7) and 112.317, F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this disclosure is applicable, the Bidder must request the



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**form** entitled *"INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS"* (Required by § 112.313(12)(b), F.S.) to be completed and **returned with the Solicitation Response**. It is the **Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.**

NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.

**FORCE MAJEURE** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**PUBLIC RECORDS COMPLIANCE** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the proposer does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the proposer or keep and maintain public records required by the public agency to perform the service. If the proposer transfers all public records to the public agency upon completion of the contract, the proposer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the proposer keeps and maintains public records upon completion of the contract, the proposer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Florida Statute

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**



## TOWN of FORT MYERS BEACH

**TOWN HALL**  
**2731 OAK STREET**  
**FORT MYERS BEACH, FLORIDA 33931**  
**(239)765-0202**  
[FMBPublicrecords@fmbgov.com](mailto:FMBPublicrecords@fmbgov.com)

**PUBLIC RECORDS COMPLIANCE INDEMNIFICATION** Proposer agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the proposer's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by proposer's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Proposer authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Proposer in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**COMPLIANCE/CONSISTENCY WITH SECTION 768.28 FLORIDA STATUTE** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**NON-APPROPRIATION** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Proposer shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**E-VERIFY COMPLIANCE** By entering into this Agreement, the Proposer is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Proposer attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Proposer agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Proposer will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Proposer will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Proposer affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Proposer is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Proposer requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Proposer is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**COMPLIANCE/CONSISTENCY WITH SCRUTINIZED COMPANIES PROVISIONS OF FLORIDA STATUTES** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List,



created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Proposer is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Proposer further hereby certifies that Proposer is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Proposer understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Proposer to civil penalties, attorney's fees, and/or costs. Proposer further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Proposer (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

**DISCLOSURE REQUIREMENTS FOR "FOREIGN COUNTRIES OF CONCERN"** Proposer shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**VENUE AND JURISDICTION** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.

**ATTORNEY'S FEES AND COSTS** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

**PUBLIC ENTITIES CRIME OR CONVICTED VENDOR LIST** Proposer agrees and assumes a



## TOWN of FORT MYERS BEACH

continuous duty to disclose to the Town if the Proposer or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**DATA MANAGEMENT; NOTICE OF BREACH** Proposer shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**ENVIRONMENTAL AND SOCIAL GOVERNMENT AND CORPORATE ACTIVISM** The Town has not given preference or requested documentation from the Proposer based on Proposer's social, political or ideological interest. Proposer agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**TAXES** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**NO COERCION FOR LABOR OR SERVICES** The Proposer swears under penalty of perjury that the Proposer does not use coercion for labor or services as defined as follows:

**“Coercion” means:**

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

### **B. FEDERAL CONTRACTUAL REQUIREMENTS**

**NO LOBBYING; REQUIRED AFFIDAVIT** After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss, either in person, by phone, email or text message, any matter relating to the solicitation or the renegotiation with any Town officers, agents or employees (including the Town council and Town manager) other than the purchasing agent designated in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the designated purchasing agent or procurement official. This prohibition includes copying such persons on written communications with the purchasing agent but does not apply to presentations made to evaluation committees or at a council meeting where the council is considering approval of a proposed contract. The prohibition ends upon execution of the final contract or when the solicitation has been canceled, or the renegotiation efforts are terminated. Renegotiation





## TOWN of FORT MYERS BEACH

will be deemed to have commenced upon vote of the council directing renegotiation or on issuance of a written notice from the procurement official to the existing contractor instituting a renegotiation process. **Failure of businesses seeking to conduct business with the Town to strictly adhere to this section will result in the offender's proposal, proposal or response being disqualified from further consideration, and may also result in the suspension or debarment of the offending business.**

As part of its proposal submission, each Responder must submit the attached Affidavit acknowledging the foregoing Code provision and attesting compliance therewith.

**NON-COLLUSION AFFIDAVIT** As part of its response submission, each Responder must submit the attached Non-Collusion Affidavit.

**CONFLICT OF INTEREST DISCLOSURE** As part of its proposal submission, each Responder must submit the attached certification confirming that the proposal was not influenced by or the result of collusion with any other actual or potential Responder, and is not otherwise in violation of federal, state, associate, or agent which is also an officer or employee of the Town or of its agencies. Offerors must disclose the name of any officer or employee of the Town who owns, directly or indirectly, an interest of five percent (5%) or more in the Offeror's firm or any of its branches or affiliate companies.

**ANTI-DISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY** The successful Responder will be required, during the term of its performance, to refrain from discrimination against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin.

**REHABILITATION ACT OF 1973 SECTION 504 AS AMENDED** Contractor or Consultant shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

**AMERICANS WITH DISABILITIES ACT OF 1990** Contractor or Consultant shall comply with Public Law 101-336, Americans with Disabilities Act of 1990, which provides, subject to such Act, that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

### **NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

This project is funded in part or in whole by: U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program. Responders are required to comply in accordance with Federal Grant Requirements, 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications which apply as follows:

### **BYRD ANTI-LOBBYING AMENDMENT**

31 U.S.C. § 1352 (as amended). Contractors who responds/propose for an award of \$100,000 or more shall file the required certification (Exhibit IV). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose

any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **SUSPENSION AND DEBARMENT**

1. This contract is a covered transaction for purposes of Chapter 2 Code of Federal Regulations. As such, a contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR § 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the Town of Fort Myers Beach. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Fort Myers Beach, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The proposer or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**SUBCONTRACTS** The CONTRACTOR or sub- CONTRACTOR must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage

determination(s) in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

**ACCESS TO RECORD** The Contractor agrees to provide the Town of Fort Myers Beach, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.



## TOWN of FORT MYERS BEACH

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

In compliance with the Disaster Recovery Act of 2018, the Town of Fort Myers Beach and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS** This is an acknowledgement that ARPA and/or FEMA financial assistance/grants may be used to supplement all or a portion of the contract. If so, the proposer will comply with all 16 applicable Federal law, regulations, executive orders, FEMA and ARPA policies, procedures, and directives.

**NO OBLIGATION BY FEDERAL GOVERNMENT** The Federal Government will not be a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**CHANGES** Either party may request modification of the provisions of this Agreement including the not to exceed amount, duration, scope, and rate(s). Changes which are mutually agreed upon shall be valid only when reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

**TERMINATION FOR CAUSE** If, through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the Town of Fort Myers Beach, shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Contractor under this Contract shall become the property of the Town of Fort Myers Beach, and Contractor shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the Town of Fort Myers Beach, in its sole discretion. Notwithstanding the above, Contractor shall not be relieved of liability to the Town of Fort Myers Beach for damages sustained by the Town of Fort Myers Beach by virtue of any intentional and/or negligent act or omission or any breach of the Contract by Contractor, and the Town of Fort Myers Beach may withhold any payment for the purpose of reasonable setoff until such time as the exact amount of damages due the Town of Fort Myers Beach from Contractor is determined. Contractor agrees that the Town of Fort Myers Beach shall have all rights and remedies afforded to it at law to recover any damages sustained by the Town of Fort Myers Beach in connection with the work performed by Contractor under the Contract. In the alternative, the Town of Fort Myers Beach shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice the enforcement of any other right or remedy allowed at law or in equity.

**TERMINATION FOR CONVENIENCE** The contractor or the Town of Fort Myers Beach may terminate this contract for its convenience at any time by giving at least thirty (30) calendar days' notice in writing to the other party. If the Contract is terminated by the Town of Fort Myers Beach and/or Contractor as



## TOWN of FORT MYERS BEACH

provided herein, Contractor will be paid for the time and work properly provided, and expenses incurred up to the termination date, if such final compensation is approved by the Town of Fort Myers Beach, in its sole discretion.

**EQUAL EMPLOYMENT OPPORTUNITY** The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: "During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is



## TOWN of FORT MYERS BEACH

threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

**RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT** Pursuant to Subsection (F) of Appendix II to 2 C.F.R. Part 200, if the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient agrees to comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**DAVIS-BACON ACT** If this Contract is subject to a requirement by the Federal program legislation related to the funding award, the Contractor shall comply with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Contractor must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. The Contractor acknowledges it is in possession of a copy of the current prevailing wage determination issued by the Department of Labor. The Contractor acknowledges that the decision of the Town to award the Agreement, and Contractor’s agreement to enter a contract with any subcontractor, is conditioned upon the acceptance of the wage determination. The Town will report all suspected or reported violations to the Federal awarding agency.

The Contractor (and its subcontractors) shall also comply with the Copeland “Anti–Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he or she is otherwise entitled. The Town will report all suspected or reported violations to the Federal awarding agency.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** For contracts that are only subject to the Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where additional contract provision is required:

The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor,





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and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the Florida DEP and understands and agrees that the Florida DEP will, in turn, report each violation as required to assure notification to the Town of Fort Myers Beach, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**FEDERAL WATER POLLUTION CONTROL ACT** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the Florida DEP and understands and agrees that the Florida DEP will, in turn, report each violation as required to assure notification to the Town of Fort Myers Beach, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**LIQUIDATED DAMAGES** For each deliverable due date agreed to by the State Project Manager and Contractor, a penalty of \$500 per day will be assessed for each business day that the delivery exceeds the agreed due date. The penalty will be assessed against accounts payable to the Contractor under this Contract. The Contractor shall not be assessed a penalty for delays due to circumstances not subject to its control.

**RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES** It shall be the responsibility of the Proposer to assure compliance with all other federal, state, local laws, or regulations/requirements as they may apply. Any involvement with the Town of Fort Myers Beach shall be in accordance with but not limited to:



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### ESTERO ISLAND PLANTING PROJECT TECHNICAL SPECIFICATIONS

#### **TS-1.0 Scope of Work**

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits (Permits) and the Town's approved Dune Management Plan, attached to the Bid Documents and incorporated therein. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

#### **TS-2.0 Submittals**

##### **TS-2.1 Work Plan**

Prior to commencement of Work the Contractor shall submit to the Town and Engineer for approval, a Work Plan to cover all specified operations. The Work Plan shall include, but not be limited to, the means and methods to be employed to accomplish site access and staging; mature dune vegetation purchase and growing schedule; planting installation, fertilizing, and watering; site restoration; best management practices; storm emergency plan; health and safety plan; environmental protection plan; pollution control plan; and manufacturers' specifications and certifications. The Work Plan shall also include the Progress Schedule, Schedule of Values, Construction Sequence, Quality Control, and Order of Work. The Town and Engineer shall review the Work Plan, and the Contractor shall make necessary revisions prior to acceptance of the Work Plan.

##### **TS-2.2 Daily Reports**

The Contractor, in addition to his responsibilities as set forth in the General Provisions, shall provide to the Town, "Daily Construction" Reports. These reports shall be completed and submitted to the Town by 1:00 p.m. on the day after the Work covered by the report.

#### **TS-3.0 Construction Sequence**

##### **TS-3.1 Order of Work**

In general, the Order of Work shall be as follows. Any changes in the Order of Work must be submitted in writing and approved by the Town and Engineer prior to initiation of the specific Work activity.

- (1) Pre-construction submittals and notifications
- (2) Mobilize
- (3) Prepare site access and staging areas
- (4) Implement best management practices
- (5) Plant dune vegetation
- (6) Adjust access points for select properties
- (7) Complete site restoration and staging areas
- (8) Demobilize



The Contractor shall work cooperatively with the Town to provide public access to the beach during the Contract Time. Only one beach access shall be closed at a time unless approved otherwise in writing by the Town.

**TS-3.2 Time of Operations**

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

**TS-4.0 Payment****TS-4.1 Dune Vegetation**

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

**TS-4.2 Adjustments**

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

**TS-4.3 Warranty**

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

**TS-5.0 Work Area****TS-5.1 Limits of Construction**

Areas in the vicinity of the Project area contain sensitive environmental habitats. The Contractor shall avoid these habitats and is responsible for environmental protection. All Work must be confined to the Contractor's Work area. No plant or equipment may operate or transit outside the property boundary or Work limits. All construction areas shall be restored to pre-construction conditions, or better as part of demobilization. Existing vegetation shall be disturbed to the minimum extent necessary to complete the Work within the permitted Work limits.

**TS-5.2 No Work Zones**

No Work Zones are shown on the Contract Plans that correspond to property owners who have not provided the Town with temporary construction easements. The Contractor shall not encroach into the No Work Zones with any work, equipment, personnel or material.

**TS-5.3 Security**

The Contractor is permitted to exclude the public from his immediate Work area subject to the provisions of the Construction Sequence and these Specifications as necessary to perform the Work and to operate in accordance with the General Conditions of the Contract. Enforcement shall be the Contractor's responsibility at no additional cost to the Town. The enforcement shall be coordinated with local enforcement agencies and will be subject to approval of the Town.

**TS-5.4 Site Access and Staging**

Site access and staging areas shall be confined to the Contractor's Work area and are shown on the Contract Plans. Procurement of any additional access routes for ingress and egress to the Work area shall be obtained by and at the expense of the Contractor. The Contractor shall confine his plant, equipment, materials, and operations of personnel to areas permitted by law, ordinances, permits and the requirements of the Contract Documents, and shall not unreasonably encumber the premises with plant, equipment, and materials. The Contractor must control noise and must control wind-blown sand, silt and dust while using the accesses. The Contractor is responsible for preparation and restoration of the site access and staging areas. The Contractor is required to submit a site access and staging area plan including restoration measures prior to their usage. The costs for, but not limited to, earthwork, grading, signage, fencing, walls, guardrails, curbing, paving, stairways, and vegetation removal and reinstallation, along with removal and installation of any other facilities are included in the lump sum price for Bid Item "Mobilization and Demobilization". Disposal of any cleared vegetation, debris and rubbish shall be in a manner acceptable to the Town and Engineer.

**TS-5.5 Protection of Existing Facilities**

During all phases of the Work including but not limited to staging, site access, dune vegetation planting, and site restoration, the Contractor shall implement best management practices to protect and stabilize the existing facilities within and adjacent to the Work Area and to prevent damage thereto by the Contractor's operations. Where existing facilities are damaged, they shall be immediately repaired in conformance with the best construction standards of practice.

**TS-5.6 Noise**

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

**TS-5.7 Existing Utilities**

It shall be the responsibility of the Contractor to acquaint themselves with the exact location of existing underground structures and utilities and to avoid conflict with all existing facilities. The Contractor shall be responsible for notifying, in writing and in advance of construction activities, the Town and Engineer and all government and private agencies and entities that may have an area of responsibility, jurisdiction or involvement for any items of Work being constructed, or whom shall assume responsibility for the items after construction. This list of agencies and entities shall include, but is not limited to:

- a. Florida Power and Light
- b. Sprint
- c. Comcast
- d. Lee County Utilities

These agencies require a minimum of 48-hour written notice of activities within their jurisdiction. The Contractor shall also call Sunshine 811 before beginning any Work at the Work area.

Protection of all utilities shall be the responsibility of the Contractor who shall provide adequate protection to maintain proper service. The Contractor is to include within its line item bid prices, the

costs to protect, and/or support, all underground utilities which may be in conflict with the construction of this Project. Attention is called to the Florida Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes. This act provides for a one-call center charged with helping prevent damages to underground utilities.

Any expense of utility repair or other damage caused by the Contractor's operations shall be borne by the Contractor. Where existing utilities are damaged, they shall be immediately repaired by the Contractor in accordance with the requirements of the government, private agencies, and entities that may have an area of responsibility, jurisdiction or involvement for the utilities. If the Town of the utility elects to make such repairs with his own forces, the Contractor shall make sure that specific arrangements are made to protect the Town from all damages. Where such conflicts are unavoidable, every effort shall be made to construct the Work so as to cause as little interference as possible with the services rendered by the structure disturbed.

#### **TS-6.0 Contractor's Equipment**

The Contractor agrees to keep on the job sufficient equipment to meet the requirements of the Work. The equipment shall be in satisfactory operating condition and capable of safely and efficiently performing the Work as set forth in the specifications. The equipment to be utilized by the Contractor shall be submitted by the Contractor with their Bid.

#### **TS-7.0 Transportation Facilities**

The Contractor shall make his own investigation of available roads or other means of conveyance for transportation, load limits for bridges, barges and roads, and other road or waterside conditions affecting the transportation of all equipment to the Work area.

#### **TS-8.0 Water and Sewer**

The responsibility shall be upon the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use, and to install and maintain necessary supply connections and piping for same, and necessary portable sanitary facilities but only at such locations and in such manner as may be approved by the Town and Engineer. The portable sanitary facilities shall be removed by the Contractor in like manner at his expense prior to completion of the construction and final acceptance.

#### **TS-9.0 Dune Vegetation**

##### **TS-9.1 General**

The Contractor shall purchase and grow mature, native dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. Table 1 presents the plant list for species, sizes, and spacings. The Contractor shall provide nursery grown plants that are of Florida #1, or superior quality pursuant to the current version of the Florida Department of Agriculture and Consumer Services (FDACS) Plant Grades and Standards. All plants shall be true to the growth habit of the species, and are to be fully rooted in the container, healthy, vigorous, well branched, and densely foliated. Plants shall be free from physical damage, or conditions that would interfere with thriving growth, and free of disease, insects, or insect eggs and larvae.

The dune vegetation shall be healthy and have a vigorous form that meets or exceeds these specifications. Substitutions of plant species are allowed provided they are pre-approved by the Town and they meet the requirements of these specifications and the Warranty provisions. Seeds and/or cuttings for all species shall originate from South Florida extending to Tampa along the West Coast and to West Palm Beach along the East Coast. Prior to commencement of planting, the Contractor shall provide the Town with written documentation as to the source of the planting units. Documentation shall include collection permits or contracts from FDACS, or other comparable documents.

**Table 1. Plant List**

| Common Name      | Scientific Name                                   | Container Size | Height (Minimum) | Spacings (On center, Maximum) | Quantity |
|------------------|---------------------------------------------------|----------------|------------------|-------------------------------|----------|
| Dune Sunflower   | <i>Helianthus debilis</i><br><i>var. vestitus</i> | 4 inches       | 12 inches        | 18 inches                     | 46,429   |
| Dune Panic Grass | <i>Panicum Amarum</i>                             | 4 inches       | 12 inches        | 18 inches                     | 52,582   |
| Railroad Vine    | <i>Ipomoea Pes-caprae</i>                         | 1 gallon       | 12-inch runner   | 24 inches                     | 12,854   |
| Sea Oats         | <i>Uniola paniculata</i>                          | 4 inches       | 18 inches        | 18 inches                     | 12,645   |
| Sea Oats         | <i>Uniola paniculata</i>                          | 1 gallon       | 24 inches        | 24 inches                     | 11,900   |

The heights for species shall be measured from the top of the root ball to the tip of the longest leave and meet the minimum requirements in Table 1. Plants shall be nursery grown container stock with root development throughout the root ball. All plants shall be “healthy and vigorous” according to horticultural standards. The plants shall have a fully developed root ball, with white or light beige roots. Brown, black or rotting root balls shall be rejected. Plant roots shall be disease free, moist and milky white at the time of delivery and installation. Plants showing signs of stress, either from drought, pest infestation, disease or any visible mishandling shall be rejected. Plants not meeting these specifications will be rejected by the Town. Plants rejected under these specifications will not be considered as delivered to the site and; therefore, not eligible for payment.

The Contractor shall provide the Town with proof of achieving these specifications prior to commencement of planting. Plants can be delivered bare rooted in boxes to the site. Samples for each species shall be provided to the Town by the Contractor prior to commencement of planting. Upon approval, the samples will be used as a standard for future plants provided through the Contract. The Town shall be given appropriate notification by the Contractor prior to any and each plant delivery to allow for plant inspection. The Contractor shall install the dune vegetation as soon as practicable but no later than 48 hours after delivery to the Work area.

The Town may inspect plantings at place of growth or at site before planting for compliance with requirements for genus, species, variety, size, and quality. The Town retains the right to further inspect plantings for size and condition of root systems, insects, injuries, and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. The rejected material will be immediately removed from site and replaced with suitable material at the Contractor’s expense.

#### **TS-9.2 Variations in Estimated Quantities**

Where the quantity is an estimated quantity, and where the actual quantity of material placed by Contractor varies by more than twenty percent (20%) for each separate species, whether due to site conditions in the Work area as determined by a pre-construction survey, or at the discretion of Town, as set forth in the Contract Documents, an equitable adjustment in the unit price may be made upon demand of either party. The equitable adjustment will be applied based upon increase or decrease in costs due solely to the variations above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity individually for each separate species.

### TS-10.0 Planting

The Contractor shall price the Estero Island Dune Plantings Base Bid Spreadsheets for the North, South and Central Segments as well as the Grand Total.

### TS-10.1 General

The Contractor shall plant the dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. The Town shall provide the Contractor with the dune alignment, No Work Zones, and initial beach access points in plan view drawings in electronic format (CADD and PDF).

Prior to installation, the Contractor shall furnish to the Town a plan for installing, fertilizing, and watering the plants, how the required amounts of water and fertilizer are to be applied, and an itemized list of equipment that will be used during the watering and fertilizing operations they propose to use in order to meet the Warranty requirements of the Contract Documents.

The Contractor shall remove all existing exotic vegetation prior to installation of dune vegetation. Prior to planting, the Contractor shall hand rake planting areas as necessary to remove weeds, rocks, and construction debris. Construction debris, weeds, and rocks shall be removed and disposed of in an approved off-site disposal area by the Contractor. The Contractor shall smooth out any ruts, holes or other disturbance of the sand or ground surface to a stable, pre-planting condition.

All plants delivered and stored at the installation site shall be protected against desiccation, thermal stress, disease and physical damage. Plants deemed to have been improperly handled, packed, transported, and/or stored will be rejected by the Town upon inspection and replaced by the Contractor at no additional costs to the Town.

Vehicular traffic in support of planting activities may be conducted if consistent with local and state beach driving regulations and existing beach access points are utilized. The Contractor shall utilize low impact methods that do not alter dune topography, remove native beach-dune vegetation, require new beach access, disturb coastal wildlife, obstruct public access, cause excavation of the ground, or damage adjacent properties.

### TS-10.2 Planting Schemes

The Town has permitted their Dune Management Plan which is included in the Contract Documents and incorporated into these specifications. The Plan includes two planting schemes for the properties along Estero Island as follows.

#### Scheme #1 "Sea Oat Dune"

| Common name      | Scientific name                           | Percentage |
|------------------|-------------------------------------------|------------|
| Sea oats (1 Gal) | <i>(Uniola paniculata)</i>                | 70%        |
| Dune Sunflower   | <i>(Helianthus debilis var. vestitus)</i> | 15%        |
| Dune Panic Grass | <i>(Panicum Amarum)</i>                   | 10%        |
| Railroad Vine    | <i>(Ipomoea pes-caprae)</i>               | 5%         |

#### Scheme #3 "Low Dune"

| Common name       | Scientific name                           | Percentage |
|-------------------|-------------------------------------------|------------|
| Dune panic grass  | <i>(Panicum amarum)</i>                   | 40%        |
| Dune sunflower    | <i>(Helianthus debilis var. vestitus)</i> | 35%        |
| Sea Oats (1 Gal)  | <i>(Uniola paniculata)</i>                | 5%         |
| Sea Oats (4 inch) | <i>(Uniola paniculata)</i>                | 10%        |
| Railroad Vine     | <i>(Ipomoea pes-caprae)</i>               | 10%        |



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The quantities in Table 1 reflect the planting scheme selections as shown on the Contract Plans.

### **TS-10.3 Layout**

The Contractor shall have on site at all time during the planting Work, an experienced foreman supervising the Work. The Town shall stake-out the alignment noting there are two planting schemes and two alternate alignments to be planted depending upon property owner request. The Contractor shall provide 72-hour written notice requesting stake-out for each section:

North: Stations 2+00 to 71+00

Central: Stations 71+00 to 261+00

South: Stations: 290+00 to 374+00

The Town reserves the right to adjust the planting to respond to existing beach access points, to align with existing vegetated areas, and any unanticipated site conditions. Minor adjustments to allow for site conditions and beach access points is permitted as approved by the Town. The Town shall review the planting layout with the Contractor and make necessary adjustments prior to planting.

The Contractor shall determine location of underground utilities and perform work in a manner which will avoid possible damage to underground utilities. Hand excavate planting holes as required when working around underground utilities. Maintain or restore finish grade set by others. When conditions detrimental to plant growth are encountered, such as adverse drainage conditions or obstructions, the Contractor shall notify the Town before planting so field adjustments in the layout can be determined. As necessary, the Town shall determine the preferred way to resolve drainage conditions or adjustment of the planting layout.

Supplemental plantings shall occur in areas within existing sparsely vegetated dunes.

Plantings shall be made in shore-parallel rows. The rows shall be staggered mid-way.

### **TS-10.4 Installation**

Installation, fertilizing and watering methods shall be determined by the Contractor. All fertilizing and watering required which is necessary for the proper establishment of the plants and to achieve the Warranty provisions shall be included in the Contract lump sum price for Bid Item "Planting."

When plantings are completed, the Town will, upon receipt of written request, make an inspection to determine acceptability. When inspected Work does not comply with the Contract Plans or these Specifications, the Contractor shall replace rejected Work and continue maintenance until reinspected by the Town and found to be acceptable. The Contractor shall remove rejected plants and materials promptly from the Work area.

### **TS-11.0 Adjustments**

A minimum of one 10-foot wide access shall be provided through the dune plantings per property. Some properties with longer frontage shall have more than one access. The approximate access points are shown on the Contract Plans. The Town reserves the right to adjust the access points based upon private property owners requesting reasonable changes during the Contract Time. The Town will advise the Contractor of adjustments in writing within seven (7) calendar days of the initial planting. The Contractor shall as soon as practicable remove the plants from the new access point and replant them in the original access point. The adjusted plants are subject to the same Warranty provisions.

### **TS-12.0 Warranty**

Success is defined as 90% survivability of each individual species to the density and quality described in these specifications after 6 months from date of initial planting. Upon completion and acceptance of the Work, the Contractor shall execute and deliver a written warranty covering all Work to the Town for a 6-month period.



Two months after the initial planting, the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density. Two months after the additional planting (four months after the initial planting), the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density.

Survival rates can be determined by troweling up plants and looking at the shoots and roots. Plants shall be deemed surviving if they present vigorous new leaf growth and inspection of the root zone demonstrates that new roots have migrated into the surrounding soil by no less than four inches after two months and eight inches after four months.

If the 90% success criteria for each individual species is still not achieved after 6 months, the Contractor shall propose an alternative planting plan subject to review and approval by the Town. The Contractor shall, at their expense, install the alternate planting plan within 21 calendar days after receipt of notice of Town approval.

All replanting shall be included in the Contract lump sum price for Bid Item "Warranty."

### **TS-13.0      Environmental Protection**

#### **TS-13.1      General**

For the purpose of this specification, environmental protection is defined as the retention of the environment in its natural state to the greatest possible extent during Work activities and to enhance the natural appearance in its final condition. Environmental protection requires consideration of air, water, and land, and involves noise, and solid waste management as well as other pollutants. In order to prevent any environmental pollution arising from the Work activities in the performance of this Contract, the Contractor and their Subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement.

#### **TS-13.2      Resource Protection**

The environmental resources within the project boundaries and those affected outside the limits of permanent Work under this Contract shall be protected during the entire period of this Contract. The Contractor shall confine his activities to areas defined by the Contract plans and specifications.

Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's Work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources, including trees, shrubs, vines, grasses, topsoil, and land forms without special permission from the Town and Engineer. Vegetation damaged beyond restoration shall be removed and disposed of by the Contractor in a manner approved by the Town and Engineer. Vegetation or trees that are to be removed because of damage shall be replaced at the Contractor's expense by nursery-grown plants or trees of the same species or a species approved by the Town and Engineer. The size and quality of nursery-grown plants or trees shall also be approved by the Town and Engineer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

#### **TS-13.3      Storage Facilities**

The Contractor's storage areas required in the performance of the Work shall be located upon existing cleared portions of the job site or areas to be cleared and shall require written approval of the Town. The Contractor shall not store oil or fuel on-site, or equipment that is not required for the daily Work activities. Under no condition shall oil or fuel be discharged on-site or into adjacent waters.



**TS-13.4 Post-Work Cleanup or Obliteration**

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer. The Project area will be restored to near natural conditions.

**TS-13.5 Spillage**

Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washing, herbicides and insecticides, and concrete drainage from entering public waters.

**TS-13.6 Disposal**

Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation.

**TS-13.7 Sea Turtle and Shorebird Protection**

The Town will contract with agency approved sea turtle and shorebird monitors as necessary during their respective nesting seasons to conduct daily monitoring. The Contractor is responsible for cooperating with the Town and their monitors during the Work. The Contractor shall abide by the Permits and Dune Management Plan for sea turtle and shorebird protection including but not limited to hours of operation, waiting to begin work from the landward toe of the dune seaward until daily clearance is provided by the monitors, operating vehicles on the beach and dune, equipment storage, access and staging, and heavy equipment usage.

**TS-14.0 Owner and Engineer's Approval of Work**

By approving any payment, the Town and Engineer shall not thereby be deemed to have represented that they made exhaustive or continuous on-site inspection to check the quality or the quantity of the Work, or that they have reviewed the means, methods and techniques, sequences, and procedures of construction, or that they have made any examination to ascertain how or for what purpose the Contractor has used the money paid or to be paid to them on account of the Agreement price. The Town and Engineer may have a representative on site at different times to observe operations of Contractor. The presence of the Town and Engineer or its designated representative(s) shall not relieve the Contractor of responsibility for the proper execution of the Work in accordance with the specifications or permits applicable to the Work. In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of Town shall be final and binding on all parties.

**TS-15.0 Private Property**

The Contractor shall not occupy private land outside of any easements or rights of way unless the Contractor obtains expressed consent by the property owner. In the event that the Contractor uses private property for any purpose without first having obtained the necessary approvals from the property owner or provided the necessary agreement(s) to the Town, the Town will direct the Contractor in writing to immediately cease using such property. The Town reserves the right to require that any agreement between the Contractor and the property owner for the use of private lands be furnished in writing.

At a minimum, the written agreement should contain the lot legal description and street address and the names, addresses, and telephone numbers for both the legal lot owner and the Contractor. The written agreement must also provide times for completion, erosion control measures, and how the Contractor will completely restore to the owner's satisfaction and how the owner will approve of the Work. This written agreement shall be submitted to and approved by the Town prior to construction.



## TOWN of FORT MYERS BEACH

The Contractor shall restore all damages to surface and underground facilities resulting from its construction operations to a condition equal to, or better than, the original condition. Prior to application for final payment, the Contractor shall provide documentation from the property owner of each piece of private property that was utilized by the Contractor, stating that each property owner is satisfied with the manner in which the Contractor has restored the property. Final payment or reduction in retainage shall not be paid until such documentation is received by the Town.



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID NORTH SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 7,030<br>(Estimated)  |                       |                |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 2,515<br>(Estimated)  |                       |                |
| <b>1C. Dune Sunflower</b>    | EA   | 10,196<br>(Estimated) |                       |                |
| <b>1D. Dune Panic Grass</b>  | EA   | 11,090<br>(Estimated) |                       |                |
| <b>1E. Railroad Vine</b>     | EA   | 2,919<br>(Estimated)  |                       |                |
| <b>2. Adjustments</b>        | EA   | 10                    |                       |                |
| <b>3. Warranty</b>           | LS   | 1                     |                       |                |
|                              |      |                       | <b>Base Bid Total</b> |                |

Name of Bidder: \_\_\_\_\_  
(This form to be returned)



**TOWN of FORT MYERS BEACH**

**DUNE PLANTINGS ALTERNATIVE NORTH SEGMENT HAZARD MITIGATION PLAN**

| Item                                              | Unit | Quantity              | Unit Price | Extended Price |
|---------------------------------------------------|------|-----------------------|------------|----------------|
|                                                   |      |                       |            |                |
| <b>1. Dune Vegetation</b>                         |      |                       |            |                |
| <b>1A. Bitter Panic Grass (2 inch)</b>            | EA   | 10,414<br>(Estimated) |            |                |
| <b>1B. Sea Oats (2 inch)</b>                      | EA   | 10,386<br>(Estimated) |            |                |
| <b>1C. Railroad Vine (2 inch)</b>                 | EA   | 2,722<br>(Estimated)  |            |                |
| <b>1D. West Coast Dune Sunflower<br/>(2 inch)</b> | EA   | 9,678<br>(Estimated)  |            |                |
| <b>Adjustment</b>                                 | EA   | 10                    |            |                |
| <b>Warranty</b>                                   | LS   | 1                     |            |                |
|                                                   |      |                       |            |                |

**Note: This bid form is to establish unit pricing for 2-inch plant sizes as required by the Town's Hazard Mitigation Grant for Dune Vegetation. Pricing for 2-inch plants will not be considered in the selection process.**

Name of Bidder: \_\_\_\_\_

(This form to be returned)



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID CENTRAL SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 2,902<br>(Estimated)  |                       |                |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 6,033<br>(Estimated)  |                       |                |
| <b>1C. Dune Sunflower</b>    | EA   | 21,580<br>(Estimated) |                       |                |
| <b>1D. Dune Panic Grass</b>  | EA   | 24,712<br>(Estimated) |                       |                |
| <b>1E. Railroad Vine</b>     | EA   | 5,917<br>(Estimated)  |                       |                |
| <b>2. Adjustments</b>        | EA   | 20                    |                       |                |
| <b>3. Warranty</b>           | LS   | 1                     |                       |                |
|                              |      |                       | <b>Base Bid Total</b> |                |

Name of Bidder: \_\_\_\_\_

(This form to be returned)



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID SOUTH SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 1,969<br>(Estimated)  |                       |                |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 4,096<br>(Estimated)  |                       |                |
| <b>1C. Dune Sunflower</b>    | EA   | 14,653<br>(Estimated) |                       |                |
| <b>1D. Dune Panic Grass</b>  | EA   | 16,780<br>(Estimated) |                       |                |
| <b>1E. Railroad Vine</b>     | EA   | 4,018<br>(Estimated)  |                       |                |
| <b>2. Adjustments</b>        | EA   | 15                    |                       |                |
| <b>3. Warranty</b>           | LS   | 1                     |                       |                |
|                              |      |                       | <b>Base Bid Total</b> |                |

Name of Bidder: \_\_\_\_\_

(This form to be returned)



**TOWN of FORT MYERS BEACH**

**ESTERO ISLAND DUNE PLANTINGS**

**BASE BID**

**GRAND TOTAL**

| <b>Segment</b>        | <b>Extended Price</b> |
|-----------------------|-----------------------|
| <b>North</b>          |                       |
| <b>Central</b>        |                       |
| <b>South</b>          |                       |
| <b>Base Bid Total</b> |                       |

Name of Bidder: \_\_\_\_\_

(This form to be returned)



## **BIDDER SUBMITTAL CHECKLIST**

### **THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE BIDDER IN PREPARING A COMPLETED BID SUBMITTAL**

**I M P O R T A N T:** Please read carefully and follow each item.

Please check off each of the following items as the necessary action is completed:

- ☐ 1. No. FMB:003 Official Bid Form, pg. D-2, insert firm name at the bottom of the page
- ☐ 2. Signed copy of each addendum, if any.
- ☐ 3. No. FMB:003 Official Bid Form, pg. D-3, insert Project Cost and any Alternates (if required)
- ☐ 4. No. FMB:003 Official Bid Form, pg. D-5, all addenda issued, if any, have been acknowledged. (\*If a replacement proposal bid form or bid schedule page was issued with any addenda, replacement page is used for submitting a bid)
- ☐ 5. No. FMB:003 Official Bid Form, pg. D-5, substantial and final completion days inserted (if required)
- ☐ 6. No. FMB:003 Official Bid Form, pg. D-6, has been properly signed with the corporate seal (if applicable). Attested to by the Secretary.
- ☐ 7. No. FMB:001 Bid Bond/Cashier's Check/Certified Check have been submitted with the bid in the amount indicated. Note: Any cashier's or certified check must be received by the TOWN by the due date and time.
- ☐ 8. No. FMB:003 Official Bid Form, Bid Schedules & Disk (if applicable), have been properly completed, unit price extensions and totals have been checked for accuracy
- ☐ 9. Any other submittals required in Part B, "Legal Notice to BIDDERS, Paragraph 3. Submittal of Bids."
- ☐ 10. Erasures or other changes made to the bid have been initialed by the person signing the bid
- ☐ 11. No. FMB:004 Contractor's Qualification Questionnaire (properly completed, signed and notarized)
- ☐ 12. No. FMB:005 Schedule D, DBE Participation form; completed and signed or good faith documentation. (when applicable)
- ☐ 13. Proof of a "Good Faith Effort" in attempting to obtain DBE's for this project. (If subcontractors will be used and no DBE's are listed on Schedule D.) (when applicable)
- ☐ 14. No. FMB:019 Public Entities Crime Form
- ☐ 15. No. FMB:021 Non-Collusion Affidavit
- ☐ 16. No. FMB:022 Trench Safety Affidavit (when applicable)
- ☐ 17. No. FMB:023 Material Manufacturers
- ☐ 18. No. FMB:024 List of Sub-Contractors
- ☐ 19. No. FMB:025 Plant and Equipment Schedule
- ☐ 20. No. FMB:100 Affidavit Certification Immigration Laws (Signed and notarized)



TOWN of FORT MYERS BEACH

**FMB:003 - OFFICIAL BID FORM**

(1 of 5 Pages)

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FOR

ESTERO ISLAND DUNE PLANTING PROJECT

ITB-25-02-EN

Bids are to be submitted by  
**Monday, June 9, 2025, at 12:30pm LOCAL TIME**

to:

**TOWN OF FORT MYERS BEACH  
VIA DEMANDSTAR.COM**

BID OPENING:

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

**Monday, June 9, 2025, at 1:00pm LOCAL TIME**

BIDDER: \_\_\_\_\_  
(Individual or Firm Name)



**TOWN of FORT MYERS BEACH**

**FMB:003 - OFFICIAL BID FORM**

(2 of 5 Pages)

**Monday June 9, 2025**

(DATE)

**12:30pm. LOCAL TIME**

(TIME)

**Town Hall Council Chambers**

**2731 Oak Street**

**Fort Myers Beach, FL 33931**

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

**ESTERO ISLAND DUNE PLANTING PROJECT**

**ITB-25-02-EN**

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
  - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
  - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent



## TOWN of FORT MYERS BEACH

(100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.

(c) In the event of any conflict between the Invitation to Bid and Ordinance 24-11, the provisions of the ordinance will prevail. A copy of ordinance 24-11 is available on the TOWN'S website.



**FMB:003 - OFFICIAL BID FORM**  
(4 of 5 Pages)

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4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 135 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 150 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM

(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

\_\_\_\_\_  
(Name of License Holder)

\_\_\_\_\_  
(State Certificate No.)

\_\_\_\_\_  
Business Tax Receipt No. (*Specify jurisdiction*)

\_\_\_\_\_  
(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
By: Printed

\_\_\_\_\_  
By: Signature

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
E-mail / Contact Person

\_\_\_\_\_  
City, State, and Zip

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
(Seal)

Secretary



TOWN of FORT MYERS BEACH

**FMB:001 - BID BOND**

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KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_ as Principal, and  
(BIDDER'S Name)

\_\_\_\_\_ a Corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto TOWN OF FORT MYERS BEACH TOWN COUNCIL, LEE COUNTY, FLORIDA, a Florida municipal corporation,

in the SUM OF \$ \_\_\_\_\_  
for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 2025

WHEREAS, said Principal is herewith submitting a Bid Proposal for the construction of:

**ESTERO ISLAND DUNE PLANTING PROJECT  
ITB-25-02-EN**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the TOWN and provide other Insurance as may be required to the TOWN within such time period as the TOWN may allow, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said TOWN in money the difference between the amount of the Bid of said Principal and the amount for which said TOWN may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said TOWN if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal

(SEAL)

\_\_\_\_\_  
*By: Witness Signature*

\_\_\_\_\_  
Principal

Witness as to Surety

(SEAL)

\_\_\_\_\_  
*By: Witness Signature*

\_\_\_\_\_  
Surety's Name

\_\_\_\_\_  
By: As-Attorney-in-Fact, Surety

*Affix Corporate Seals and attach proper Power of Attorney for Surety.*





TOWN of FORT MYERS BEACH

FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(1 of 7 Pages)

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: \_\_\_\_\_

☐ CORPORATION - Date of Incorporation: \_\_\_\_\_ State of Florida  
Incorporation: \_\_\_\_\_

If Out of State Corporation, currently authorized to do business in Florida,  
give date of such authorization: \_\_\_\_\_

☐ PARTNERSHIP - Date of Organization: \_\_\_\_\_ Nature of Partnership: General ☐  
Limited ☐  
Association ☐

☐ INDIVIDUAL - Name and Address of Owner \_\_\_\_\_

☐ JOINT VENTURE - Between \_\_\_\_\_  
Name Title  
And \_\_\_\_\_  
Name Title  
Date of Agreement \_\_\_\_\_

☐ OTHER - Explain \_\_\_\_\_

Parent Company Office Address (if any): \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

Name of Project (if applicable): \_\_\_\_\_

Person to Contact: \_\_\_\_\_

Title: \_\_\_\_\_ Telephone No.: \_\_\_\_\_



**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the BIDDER.

1. How many years has your organization been in business as a \_\_\_\_\_ Contractor under your present name?

---

2. Under what other or former names has your organization operated?

---

3. List below your organizations Officers, Owners or Partners:

| NAME | TITLE | ADDRESS | DATE<br>ASSUMING POSITION |
|------|-------|---------|---------------------------|
|      |       |         |                           |
|      |       |         |                           |
|      |       |         |                           |
|      |       |         |                           |
|      |       |         |                           |



**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(3 of 7 Pages)

4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

| JURISDICTION | TRADE | STATE CERT. NO. | TOWN'S COMP. NO. | STATE REG. NO. | TOWN'S OCC. LIC. NO. | STATE PERMIT | EXPIRE DATE |
|--------------|-------|-----------------|------------------|----------------|----------------------|--------------|-------------|
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |

5. List jurisdictions in which your organization's partnership or trade name is filed:

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it?

YES ☐ NO ☐

See Sheet No. \_\_\_\_\_

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES ☐ NO ☐

See Sheet No. \_\_\_\_\_

6.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?

YES ☐ NO ☐

See Sheet No. \_\_\_\_\_

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another?

YES ☐ NO ☐

If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project?

YES ☐ NO ☐

If so, state the name of the individual, other organization, when, where and the reason therefore:



**FMB:004 - CONTRACTER QUALIFICATION QUESTIONNAIRE**  
(4 of 7 Pages)

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9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified BIDDER or Qualified BIDDER for construction contracts? YES ☐ NO ☐

If so, for what type of work? \_\_\_\_\_

Give details and reason: \_\_\_\_\_

10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:

\_\_\_\_\_  
(use extension sheet if necessary and reference sheet number herein: \_\_\_\_\_)

11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
- 11.1 Name and present position or capacity
  - 11.2 Years of construction experience, type of work, position or capacity and cost range
  - 11.3 Years of related construction experience, type of work, position or capacity and cost range
  - 11.4 Brief education and professional registrations

12. List of type of work normally provided by your own work forces:

13. Indicate type of contracting undertaken by your organization and number of years' experience:

As General Contractor \_\_\_\_\_ Years \_\_\_\_\_ Type

As Sub-Contractor \_\_\_\_\_ Years \_\_\_\_\_ Type

14. Attach the prime construction contracts your organization has underway on this date \_\_\_\_\_.

*The list shall include the following information:* (reference sheet numbers herein: \_\_\_\_\_)

- 14.1 Project Title and Location
- 14.2 Contractor or Sub-Contractor
- 14.3 Contract Amount and Date of Contract
- 14.4 Percent of Project Constructed by Sub-Contractors
- 14.5 Percent Complete
- 14.5 Project Manager or Superintendent
- 14.6 Required Completion Date
- 14.7 Name, Address and Telephone Number of Owner
- 14.8 Designing Architect/Engineer and Address



**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(5 of 7 Pages)

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15. Attach a list of the no fewer than five (5) prime construction contracts involving dune projects similar in scope, magnitude, and geographic location to this Project, completed in the past seven (7) years by your organization.

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 15.1 Project Title, Location, and Brief Description of Work Performed
- 15.2 Contractor or Sub-Contractor
- 15.3 Contract Amount and Date of Contract
- 15.4 Percent of Project Constructed by Sub-Contractors
- 15.5 Date Complete
- 15.6 Project Manager or Superintendent
- 15.7 Required Completion Date
- 15.8 Name, Address and Telephone Number of Owner
- 15.9 Designing Engineer and Address
- 15.10 Volume, Pump Distance, Monthly Production Rate

16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed.

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 16.1 Project Title and Location
- 16.2 Contractor or Sub-Contractor
- 16.3 Original Contract Amount and Date
- 16.4 Final Contract Amount
- 16.5 Percent of Project Constructed by Sub-Contractors
- 16.6 Project Manager or Superintendent
- 16.7 Required Completion Date
- 16.8 Name, Address and Telephone Number of Owner
- 16.9 Town Sponsoring Department

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

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19. List no less than three (3) and preferably five (5) financial references:

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TOWN of FORT MYERS BEACH

FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(6 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?

\_\_\_\_\_

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?

\_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 201

\_\_\_\_\_  
Name of Organization

BY: \_\_\_\_\_

\_\_\_\_\_  
Title of Person Signing

(if Corporation Affix Corporate Seal)

STATE OF FLORIDA )  
COUNTY OF LEE )

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by means of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_,  
( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida

My commission expires:



TOWN of FORT MYERS BEACH

FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

NOTE: This form must be signed by the person who will sign or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ \_\_\_\_\_

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: \_\_\_\_\_ %

CONTRACTOR NAME

SIGNATURE

DATE





TOWN of FORT MYERS BEACH

FMB:019 – PUBLIC ENTITIES CRIME FORM

(1 of 2 Pages)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to \_\_\_\_\_  
(Print name of public entity)  
by \_\_\_\_\_  
(Print individual's name and title)  
for \_\_\_\_\_  
(Print name of entity submitting sworn statement)  
whose business address is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_ - \_\_\_\_\_  
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:  
\_\_\_\_ - \_\_\_\_ - \_\_\_\_.)

2. I understand that a “public entity crime” as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that “convicted” or “conviction” as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an “affiliate” as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:

- A. A predecessor or successor of a person convicted of a public entity crime; or

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person.



## TOWN of FORT MYERS BEACH

### FMB:019 – PUBLIC ENTITIES CRIME FORM

(2 of 2 Pages)

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- B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)



TOWN of FORT MYERS BEACH

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(Signature)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by means  
of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_,  
( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public Signature

My commission expires:



TOWN of FORT MYERS BEACH

FMB:021 – NON-COLLUSION AFFIDAVIT

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_ being first duly sworn, deposes and says that:

- 1) He/she is the \_\_\_\_\_, (Owner, Partner, Officer, Representative or Agent) of \_\_\_\_\_, the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by means of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, ( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public Signature

My commission expires:



TOWN of FORT MYERS BEACH

**FMB:022 – TRENCH SAFETY AFFIDAVIT**

(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

BIDDER acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The BIDDER further identifies the costs as follows:

Trench Safety Item: \_\_\_\_\_  
(Description)

\_\_\_\_\_  
\_\_\_\_\_  
(Cost written in words)

TOTAL \$ \_\_\_\_\_

**FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE**

COMPANY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

(Print Name)

\_\_\_\_\_



TOWN of FORT MYERS BEACH

**FMB:023 – MATERIALS MANUFACTURERS LIST**

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The BIDDER is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, BIDDER shall furnish the manufacturer named in the TOWN'S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

---

The BIDDER lists the following manufacturers of the major equipment (LIST)

| <u>MATERIAL</u> | <u>MANUFACTURER</u> |
|-----------------|---------------------|
| 1. _____        | _____               |
| 2. _____        | _____               |
| 3. _____        | _____               |
| 4. _____        | _____               |
| 5. _____        | _____               |
| 6. _____        | _____               |

Signed \_\_\_\_\_

Name of BIDDER \_\_\_\_\_



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**FMB:024 - LIST OF SUB-CONTRACTORS**

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The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any BIDDER who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the BIDDER/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

\_\_\_\_\_

The BIDDER identifies the following firm as the proposed subcontractor of the:

\_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address and Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

| <u>Other Subcontractor and Address</u> | <u>Specialty</u> |
|----------------------------------------|------------------|
| 1. _____<br>_____                      | _____            |
| 2. _____<br>_____                      | _____            |
| 3. _____<br>_____                      | _____            |

Signed \_\_\_\_\_





**FMB:25 –EQUIPMENT SCHEDULE**

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\*

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\*

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\*

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

NOTE: Provide separate tables for each type of equipment including name and manufacturer. Use separate lines for each major item. Use additional pages if necessary.

**FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT**

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BID NO: **ITB-25-02-EN**

PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECTPROJECT

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

STATE OF FLORIDA)  
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by means of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_  
\_\_\_\_\_ as

\_\_\_\_\_ of \_\_\_\_\_,

( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida

My commission expires:

**The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

**SAMPLE CONTRACT – PENDING LEGAL APPROVAL**  
**FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM**  
(1 of 9 Pages)

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**SAMPLE ONLY** ~CONSTRUCTION CONTRACT AGREEMENT~ **SAMPLE ONLY**

Contract No. \_\_\_\_\_

Council Award Date: \_\_\_\_\_

**AGREEMENT**

THIS AGREEMENT (also referred herein as "Contract") is made this \_\_\_\_ day of \_\_\_\_\_ by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and \_\_\_\_\_, a corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH:

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

**ARTICLE 1.**     **WORK**

The CONTRACTOR shall commence and complete all work for PROJECT TITLE ITB-25-02-EN in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services is attached marked Exhibit "A".

**ARTICLE 2.**     **CONTRACT SUM**

2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of **NTE xx**, said amount being the **Total Base Bid Amount** as listed on the CONTRACTOR's Official Bid Proposal Form that was submitted for this project.

**ARTICLE 3.**     **PROGRESS PAYMENTS**

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

- 3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety-five percent (95%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.
- 3.2. The Town shall withhold 5% of each progress payment as retainage until the project is completed.
- 3.3. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

#### **ARTICLE 4. CONTRACT DOCUMENTS**

The Term “**Contract Documents**” shall include this Contract; addenda; CONTRACTOR’s Bid, except to the extent it conflicts with any other contractual provision; the Notice to Proceed, the Public Payment and Performance Bond(s); the Bid Package prepared and issued by the TOWN; the General Conditions; the Specifications and Drawings; any Special Conditions; all Written Amendments; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

#### **ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. Substantial completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.3. Final completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for final completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

#### **Liquidated Damages:**

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly,

instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

The TOWN shall have the right to deduct all damages due from the final payment request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

## **ARTICLE 6.      CONTRACTOR'S REPRESENTATIONS.**

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations,

test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

## **ARTICLE 7. GENERAL CONDITIONS**

### **7.1 RESPONSIBILITY OF THE CONTRACTOR.**

The CONTRACTOR shall be responsible for the condition of the Work until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Information shown on the Drawings as to the location of the existing utilities has been prepared from the most reliable data available to the TOWN. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of existing utilities. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from CONTRACTOR's activities. The location of all overhead utilities shall be verified and the TOWN notified on any conflict which might occur. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required.

Caution shall be exercised by the CONTRACTOR in grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground facility broken or dislocated during construction for which sufficient underground information has been shown on the plans.

## **ARTICLE 8. TERMINATION FOR CONVENIENCE**

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

## **ARTICLE 9. PUBLIC RECORDS**

The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure

requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract.

If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, [FMBPUBLICRECORDS@FMBGOV.COM](mailto:FMBPUBLICRECORDS@FMBGOV.COM), 2731 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.**

Contractor further agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

The Contractor agrees to provide (insert non-federal entity), (insert name of pass-through entity, if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.



- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection. The parties acknowledge the exchange and receipt of additional consideration for this indemnification, which shall survive the termination of this Agreement.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, litigation, or other agreed to method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be filed in the 20<sup>th</sup> Judicial Circuit in and for Lee County, Florida.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due

consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.

- 10.11 Any dispute arising out of or relating to any of the contract documents or this Agreement shall be first submitted to mediation for resolution. The parties shall mutually agree upon a mediator and equally divide the expenses of such mediation. In the event of an impasse and litigation, the parties agree to each pay their own attorney fees and costs.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.
- 10.13 The parties recognize that funding in whole or in part for the services authorized by this Contract will be obtained from a Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502. Contractor agrees to comply with any additional requirements that may be required related to the Town's receipt of the funding.

#### **ARTICLE 11. CONTRACT TERMS REQUIRED BY FLORIDA LAW**

**11.1. Compliance/Consistency with Section 768.28, Florida Statute** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statute and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**11.2 Non-Appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**11.3 E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an

affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**11.4 Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**11.5 Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the

Florida Department of Management Services.

**11.6 Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**11.8 Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**11.9 Force Majeure** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**11.10 Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

IN WITNESS WHEREOF, TOWN and CONTRACTOR have signed this agreement in duplicate originals. One original has been retained by the Town Clerk, and one original has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
(Correct Name of Business)

BY: \_\_\_\_\_  
(Title)

(Corporate Seal)

Date: \_\_\_\_\_

TOWN OF FORT MYERS BEACH COUNCIL  
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: \_\_\_\_\_  
Town Clerk

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Town Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Town Attorney

**EXHIBIT "A"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
BETWEEN THE TOWN AND \_\_\_\_\_, PROVIDER.

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

**ADDITIONAL TERMS – SUPPLEMENTAL FEDERAL EMERGENCY MANAGEMENT  
AGENCY SUPPLEMENTAL CONDITIONS**

**(1) FEDERAL EMERGENCY MANAGEMENT  
AGENCY PUBLIC ASSISTANCE**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

**Compliance with Federal Law, Regulations and Executive Orders:** The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally- Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

**Access to Records:** The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**Affirmative Socioeconomic Steps** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**Changes:** To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

**DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions



of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

**Domestic Preference for Procurements 200.322** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**License and Delivery of Works Subject to Copyright and Data Rights:** The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

**No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Prohibition on Covered Telecommunications Equipment or Services**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

**Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**Rights to Inventions Made Under a Contract or Agreement:** Exempt from FEMA Public Assistance Funding

**Suspension and Debarment:** (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Procurement of Recovered Materials (§200.323) (Over \$10,000):** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**Termination for Cause and Convenience (over \$10,000):** See Standard Purchase Order and/or Contract Terms and Conditions

**Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000):** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):** Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

- (2) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (3) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**Clean Air Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Administrative, Contractual, or Legal Remedies (over \$250,000):** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

#### (4) CONSTRUCTION ACTIVITIES

**Equal Employment Opportunity Clause (§60-1.4):** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

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union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Davis Bacon Act:** Exempt under FEMA Public Assistance Funding

**Copeland Anti-Kickback Act:** Exempt under FEMA Public Assistance Funding

### **STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

**Applicable Laws** - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

**Data Collection:** The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering

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consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

**Equal Employment Opportunity:** No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

**Inspector General Cooperation:** The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**Lobbying:** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

**Local Preference:** Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

**Physical Access and Inspection:** Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. TheTown shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

**Record Retention:** A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is



## **FEDERAL CONTRACT PROVISIONS AND**

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made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

**Statutory Notices Relating to Unauthorized Employment:** The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

**Statutory Notices Relating to Subcontracts:** Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

## **FEDERAL CONTRACT PROVISIONS AND**

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### **Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding**

#### **Certification**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name \_\_\_\_\_

Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

## **FEDERAL CONTRACT PROVISIONS AND**

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### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION**

#### Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

#### CONTRACTOR

---

By: \_\_\_\_\_  
Signature

---

Name and Title

---

Street Address

---

City, State, Zip

---

UEI Unique Entity Identifier (for SAM.gov verification)

---

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

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## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

| TOWN OF FORT MYERS BEACH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------|---------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------|-----------|------|----------------|----|-------------------|----|-----------------|----|-------------------------|-----|------------------------|-----|--------------------|-----|--------------------------------------|---|
| ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.                                                                                                                                                                                                                                                                                                                                                                                                                                       |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| A. PRIME VENDOR/CONTRACTOR INFORMATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| PRIME NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |       | PRIME FED NUMBER                   |                           | CONTRACT DOLLAR AMOUNT                                                                                                     |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?                                                                                                                                                                                                                                                                                                                                                                           |       | VETERAN                            |                           | IS THE ACTIVITY OF THIS CONTRACT...<br>CONSTRUCTION ?      Y      N<br>CONSULTATION?      Y      N<br>OTHER?      Y      N |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       | DBE?                               |                           |                                                                                                                            |                            |                             | Y      N  |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       | MBE?                               |                           |                                                                                                                            |                            |                             | Y      N  |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       | WBE?                               |                           |                                                                                                                            |                            |                             | Y      N  |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       | SDB BA?                            |                           |                                                                                                                            |                            |                             | Y      N  |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| IS THIS SUBMISSION A REVISION?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |       | Y      N                           |                           | IF YES, REVISION NUMBER                                                                                                    |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION                                                                                                                                                                                                                                                                                                                                                                                                                         |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| DBE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | M/WBE | SUBCONTRACTOR OR SUPPLIER NAME     | TYPE OF WORK OR SPECIALTY | ETHNICITY CODE (See Below)                                                                                                 | SUB/SUPPLIER DOLLAR AMOUNT | PERCENT OF CONTRACT DOLLARS |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| TOTALS:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| NAME OF SUBMITTER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |       | DATE                               |                           | TITLE OF SUBMITTER                                                                                                         |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| EMAIL ADDRESS OF PRIME (SUBMITTER)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |       | TELEPHONE NUMBER                   |                           | FAX NUMBER                                                                                                                 |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.                                                                                                                                                                                       |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other, not of any other group listed</td><td>O</td></tr> </tbody> </table> |       |                                    |                           |                                                                                                                            |                            |                             | ETHNICITY | CODE | Black American | BA | Hispanic American | HA | Native American | NA | Subcont. Asian American | SAA | Asian-Pacific American | APA | Non-Minority Women | NMW | Other, not of any other group listed | O |
| ETHNICITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | CODE  |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Black American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | BA    |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Hispanic American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | HA    |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Native American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | NA    |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Subcont. Asian American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | SAA   |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Asian-Pacific American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | APA   |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Non-Minority Women                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | NMW   |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Other, not of any other group listed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | O     |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| DEPARTMENT NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       | FMS CONTRACT # (IFB/RFP or PO/REQ) |                           | GRANT PROGRAM/CONTRACT                                                                                                     |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| ACCEPTED BY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |       |                                    |                           |                                                                                                                            | DATE                       |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                                    |                           |                                                                                                                            |                            |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |

**LOBBYING CERTIFICATION**  
**(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

---

Contractor (Firm Name)

---

Signature of Contractor's Authorized Official

---

Name and Title of Contractor's Authorized Official

---

Date

## **ATTACHMENT “A” – GENERAL CONDITIONS**

### **ARTICLE 1. PRELIMINARY MATTERS**

Titles, Article Headings, Section Headings, Indexes and Table of Contents are given for the sake of clarity, ease of reading and as a guide for ease of reference to specific topics within the General Conditions.

#### **Administration**

1.1 The TOWN reserves the right to make final decisions considering any TOWN Consultant's recommendations or interpretations of the Contract Documents. The TOWN's Consultant does not have authority to obligate or commit the TOWN to fund additional expenditures or approve extensions of time over the approved Contract time or price.

#### **Copies of Documents**

1.2 The TOWN shall furnish to the CONTRACTOR the number of copies of the Contract Documents specified in the Supplementary Conditions as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction which shall be paid by the CONTRACTOR.

#### **Before Starting Construction**

1.3 Before undertaking each phase of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the CONTRACTOR may discover, or other information known to the CONTRACTOR and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the OWNER'S REPRESENTATIVE, the CONTRACTOR shall assume responsibility for such performance and shall share in costs associated with correction; however, the CONTRACTOR shall not be liable to the TOWN for failure to report any conflict, error or discrepancy in the Contract Documents, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

1.4 Within ten (10) calendar days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), the CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE for review and approval:

1.4.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work:

1.4.1.1 long lead item(s) shall be identified and scheduled accordingly.

1.4.2 a preliminary schedule of Shop Drawing submission; and

1.4.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient

detail to serve as the basis for progress payments during construction on Form No. FMB:011. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission; and specify times for Application for Payment.

1.4.4 a plan of work for maintenance of traffic, when the Contract Documents require maintenance of traffic.

1.4.5 for informational purposes, a proposed listing of subcontractors to be used for the project.

#### Pre-Construction Conference

1.5 Within fifteen (15) calendar days after the Effective Date of the Agreement, but before the CONTRACTOR starts the Work at the site, a conference attended by the CONTRACTOR, the OWNER'S REPRESENTATIVE, the TOWN, and Others as appropriate, will be held to discuss the items referred to in paragraph 1.4, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to the Work.

### **ARTICLE 2. DEFINITIONS**

The following definition of terms is provided to establish a common understanding between the parties as to the intended usage, application and interpretation of such terms.

AGREEMENT means the written agreement between the TOWN and the CONTRACTOR covering the Work to be performed; the Agreement is a part of the Contract Documents.

CHANGE ORDERS are written orders to the CONTRACTOR signed by the TOWN, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract price or the Contract Time. The Contract Price and the Contract Time may be changed only by a written Change Order. A Change Order signed by the CONTRACTOR indicates his agreement therewith, including the adjustment in the Contract Price or the Contract Time.

COMPLETION (FINAL) means acceptance of the Project by the TOWN as evidenced by its signature upon a final payment Certification Form FMB:014, and approval thereof by the Town of Fort Myers Beach Town Council or their designee. The final payment Certification shall be signed only after the TOWN has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been complied with.

COMPLETION (SUBSTANTIAL) shall mean an acceptance of the Work by the TOWN when construction is sufficiently complete in accordance with the Contract Documents so the TOWN can occupy or utilize the Work or designated portion thereof for the intended use. A certificate of occupancy, issued by the Building Official, is required concurrent with or prior to issuance of the Certificate of Substantial Completion.

CONSTRUCTION is the erection, fabrication, assembly, remodeling, renovation, addition, modification, repair or demolition of any building or structure, or any appurtenances connected or attached to such buildings or structures. The term includes but is not limited to the repair, replacement modification or construction of buildings, roads, bridges, sidewalks, traffic devices, parking lots, drainage, underground and overhead utilities.

CONSULTANT is a person or entity lawfully licensed to practice Architecture or Engineering or another



profession and registered in the State of Florida, identified as such in the Construction Contract, and is referred to throughout the Contract Documents as if singular in number and masculine in genre.

The term includes the CONSULTANT's authorized representative.

CONTRACT DOCUMENTS consist of the Construction Contract, General and Special Conditions of the Contract, the Plans, the Project Manual, the Bid documents, Addenda issued prior to execution of the Contract, all written modifications issued after execution of the Contract, all provisions required by law to be inserted in this Contract whether actually inserted or not, and a Purchase Order issued by the TOWN. A Modification is:

- (1) A written Amendment to the Contract or
- (2) A Change Order or
- (3) A written interpretation necessary for the proper execution or progress of the Work issued by the OWNER'S Representative or
- (4) A Field Change Order or
- (5) A Field Directive Change.

CONTRACT PRICE means the total monies payable to the CONTRACTOR under the Contract Documents.

CONTRACT TIME means the number of Calendar days stated in the Agreement for the purpose of establishing Substantial Completion and Final Completion dates.

CONTRACTOR is the person, firm, joint venture, or corporation with whom the TOWN has contracted and who has the primary responsibility for performance of the work.

DAYS - The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. A calendar day constitutes twenty-four (24) hours measured from midnight to the next midnight.

DEFECTIVE - An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the OWNER'S REPRESENTATIVE recommendation of final payment (unless responsibility for the protection thereof has been assumed by the TOWN at Substantial Completion in accordance with paragraph 14.5 or 14.6).

EFFECTIVE DATE – The Effective Date of the Agreement is the date indicated in the Agreement on which it becomes effective, but if not such date is indicated, it means the date on which the Agreement is last signed by the last of the two parties.

FIELD CHANGE ORDER is a written change order requested by the OWNER'S Representative, accepted by the CONTRACTOR, and approved by the PROJECT MANAGER for minor changes in the Work, not involving adjustments in the Contract Sum or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

FIELD DIRECTIVE CHANGE - A written directive to the CONTRACT, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 5.2 or 5.3, or to emergencies under paragraph 7.20. A Field Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change

Order following negotiations by the parties as to its effect, if any, on the Contract Price or the Contract Time as provided in Articles 11 and 12.

FINAL ACCEPTANCE means acceptance of the Work by the TOWN upon the expiration of the warranty period as stated in the Contract Documents.

MATERIALS – Includes, but is not limited to, anything used in the process of constructing, demolishing, renovating or remodeling of any building, structure, road, bridge, recreational facility, transportation element and utility or any addition thereto utilized for this project.

NOTICE means written notice. Notice shall be served upon the CONTRACTOR either personally or by leaving the said Notice at his residence or addressed to the CONTRACTOR at the place of business stated in the Bid Proposal and deposited in the United States Mail.

NOTICE TO PROCEED is a written instrument issued by the TOWN to the CONTRACTOR, authorizing the CONTRACTOR to commence Work on the Project. The NOTICE TO PROCEED shall include the effective date of Commencement.

NOTICE OF AWARD means the written Notice given by the TOWN to the successful BIDDER.

NOTICE OF TERMINATION is a written instrument issued in accordance with the Contract Documents as stated in Section 15.2, by the TOWN to the CONTRACTOR or by the CONTRACTOR to the TOWN notifying the receiving party that the Contract is being terminated. The NOTICE shall clearly identify the effective date the Contract is to be terminated.

OWNER'S REPRESENTATIVE is the CONSULTANT contracted by the TOWN for Professional Services during the construction phase of this project or a qualified person authorized as his official representative, or in the absence of such a contract, the project Manager will be considered the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE is not authorized to issue change orders to the contract sum, contract time or scope of work without express approval of the TOWN.

PLANS AND/OR DRAWINGS are a graphic representation of the arrangement of the materials or parts of the construction of the project and are a portion of the Contract Documents.

PROJECT shall mean the entire improvement contracted for by the Town.

PROJECT MANAGER is an employee or representative of the Town Department which requested the Contract and is a designee authorized by or for that Department who is the representative of the Town Council in matters concerning this project. The project manager will act as the OWNER'S REPRESENTATIVE in the absence of a Town contract with a consultant.

The PROJECT MANAGER is not authorized to issue changes to the Contract Sum, Contract Time, or Scope of Work without express approval by the Department Director, Town Manager, or Town Council. The PROJECT MANAGER, within the authority conferred by the Town Council, acting as the TOWN'S designated representative shall initiate written Change Orders, and notification to the CONTRACTOR of any and all changes approved by the TOWN in the CONTRACTOR'S (1) compensation (2) time and/or schedule of service delivery; (3) any Amendment (s) or other change(s) relative to the WORK and ADDITIONAL SERVICES pursuant to this Contract, or AMENDMENTS, or CHANGE ORDERS pertaining thereto. Following TOWN approval, the Project Manager shall coordinate completion of any such documents. The PROJECT MANAGER or designee shall be responsible for acting on the TOWN'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements, or any AMENDMENT(S), or CHANGE ORDER(S) issued there under.

PROJECT MANUAL means the General Conditions, Supplementary General Conditions, Technical Specifications, and the Bidding Documents.

PROJECT/RESIDENT INSPECTOR - The authorized representative of the TOWN who is assigned to the project as an observer to observe the work and report back to the TOWN and CONSULTANT.

PUBLIC WORKS DIRECTOR means the person employed by the TOWN COUNCIL to serve and act on the TOWN'S behalf as the DIRECTOR of the TOWN'S Public Works Office.

SPECIFICATIONS are written documents organized into divisions, sections, and articles which provide detailed instructions to the CONTRACTOR pertaining, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade and operational data of all components to be provided by the CONTRACTOR and incorporated into the Project.

SUBCONTRACTOR is a person, firm, partnership, corporation, or entity who has a direct contract with the CONTRACTOR to perform any of the Work at the site. The term Subcontractor does not include those whose sole purpose is that of a supplier of materials. A supplier of materials shall be classified as a Subcontractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Subcontractor means a Subcontractor or its authorized representative.

SUB-Subcontractor is a person, firm, partnership, corporation, or entity who has a direct or indirect Contract with a Subcontractor to perform any of the Work at the site. The term Sub-Subcontractor means a Sub-Subcontractor or its authorized representative.

SUPPLIER - A manufacturer, fabricator, distributor, materialmen or vendor.

SURETY is the surety company or individual that is bound by Contract bond with and for the CONTRACTOR who is primarily liable and is responsible for CONTRACTOR'S acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

TOWN means the Town of Fort Myers Beach, Fort Myers Beach, Florida, a political subdivision of the State of Florida, its successors and assigns, also referred to as OWNER.

UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

WORK is the construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

### **ARTICLE 3.        STARTING THE WORK**

3.1 Written Notice to Proceed is contingent upon and will be issued subsequent to the CONTRACTOR fully satisfying the TOWN'S insurance and Bond submittal requirements. Until the CONTRACTOR receives the TOWN'S written Notice to Proceed, the CONTRACTOR is advised that the TOWN will not be liable for any expenses which the CONTRACTOR may incur before the contract is executed

and the written Notice to Proceed is issued.

3.2 The Contract time shall begin to run on the date specified in the "Notice to Proceed".

3.3 The CONTRACTOR is required, before commencing the Work, to record in the public records and deliver to the TOWN the Public Construction Bond issued by a surety insurer authorized to do business in the State of Florida as Surety. The Bond shall be in substantially the form specified by State law (Section 255.05, Fla. Stat.), must state the name and principal business address of both the principal and the Surety and must contain a description of the project sufficient to identify it. A copy of the bond shall be posted in a conspicuous place at the project site.

3.4 The TOWN will forward to the CONTRACTOR a Notice of Commencement with instructions to post in a conspicuous spot on the project site.

#### **ARTICLE 4. INTERPRETATION, INTENT, AMENDING AND REUSE OF CONTRACT DOCUMENTS.**

4.1 It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

4.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall immediately call it to the attention of the OWNER'S REPRESENTATIVE in writing before proceeding with the Work affected thereby.

4.3 Any Work that may be reasonably inferred from the specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for.

4.4 Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

4.5 In resolving conflicts, errors, and discrepancies, the order of precedence of the Contract Documents is as follows:

1. Change Order
2. Standard Form of Agreement
3. Addenda
4. Supplementary Conditions
5. General Conditions
6. Specifications
7. Drawings
8. Figure Dimensions
9. Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)

The Town may, at its sole discretion, in resolving conflicts, errors or discrepancies, opt to require that the more stringent requirement or that which the Town considers to be in its best interest shall apply, the order of precedence indicated in this paragraph 4.5 notwithstanding.

#### **AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:**

4.6 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 4.6.1 a formal Written Amendment,
- 4.6.2 a Change Order (pursuant to Article 10).
- 4.6.3 a Field Directive Change (pursuant to Article 10).

As indicated in paragraphs 11.2 and 12.1, the Contract Price and the Contract Time may only be changed by a Change Order or Written Amendment.

4.7 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations of the Work may be authorized, in one or more of the following ways:

- 4.7.1 a field Change Order (pursuant to paragraph 9.3),
- 4.7.2 The OWNER'S REPRESENTATIVE's approval of a Shop Drawing or sample (pursuant to paragraphs 7.21 through 7.25), or
- 4.7.3 The OWNER'S REPRESENTATIVE's written interpretation or clarification (pursuant to paragraph 9.2).

#### **REUSE OF DOCUMENTS:**

4.8 Neither the CONTRACTOR nor any SUBCONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the TOWN shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the TOWN or their CONSULTANT and the specific written verification or adaptation by the CONSULTANT.

### **ARTICLE 5. AVAILABILITY OF LANDS: PHYSICAL CONDITION: REFERENCE POINTS**

#### **Availability of Lands**

5.1 The TOWN will furnish, as indicated in the Contract Documents and not later than the date when needed by the CONTRACTOR, the lands upon which the Work is to be done, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained by the TOWN unless otherwise specified in the Contract Documents. If the CONTRACTOR believes that any delay in the TOWN'S furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Article 10. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise. The OWNER'S REPRESENTATIVE will, upon request, furnish to the CONTRACTOR copies of all available boundary and topographic surveys as required and sub-surface tests.

## Physical Conditions

5.2 Explorations and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. These reports are not part of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon the non-technical data, interpretations or opinions contained therein, for the completeness or accuracy thereof for the CONTRACTOR'S purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and in paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site. The technical data which will be made available only at the CONTRACTOR'S request may not be sufficient for construction purposes. Additional investigations may be necessary for the purposes of carrying out the construction project.

5.3 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 5.9) which are at or contiguous to the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings but not for the completeness thereof for the purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

5.4 Unless otherwise stated, the CONTRACTOR shall be fully responsible for the removal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. By submission of a bid, the CONTRACTOR assumes full responsibility for the expenses associated with such removal. There shall not be an increase in time or price associated with such removal.

5.5 Report of Differing Conditions: If the CONTRACTOR believes that

5.5.1 any technical data on which the CONTRACTOR is entitled to rely as provided in paragraph 5.2 and 5.3 is inaccurate, or

5.5.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.

The CONTRACTOR shall, promptly after becoming aware thereof and before performing any work in connection therewith (except in an emergency as permitted by paragraph 7.20) notify the OWNER'S REPRESENTATIVE in writing about the inaccuracy or difference.

5.6 OWNER'S REPRESENTATIVE Review: The OWNER'S REPRESENTATIVE will promptly review the pertinent conditions, determine the necessity or obtaining additional explorations or tests with respect thereto and advise the TOWN in writing (with a copy to the CONTRACTOR) of the OWNER'S REPRESENTATIVE'S findings and conclusions.

5.7 Possible Contract Documents Change: If the OWNER'S REPRESENTATIVE and the TOWN conclude that there is a material error in the Contract Documents and a change in the Contract Documents is required, a Field Directive Change, a Field Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

5.8 Possible Price and Time Adjustments: In each case of a material error in the Contract Documents, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

5.9 Physical Conditions - Underground Facilities Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to the TOWN or the CONSULTANT by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

5.9.1 The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 7.17 and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

5.10 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 7.20) identify the owner of such Underground Facility and give written notice thereof to that owner and to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and with the TOWN'S approval, the Contract Documents will be amended or supplemented to the extent necessary. During such time, the CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 7.17. The CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

#### Reference Points

5.11 The CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the TOWN. The CONTRACTOR shall report to the OWNER'S REPRESENTATIVE whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

### **ARTICLE 6.      BONDS AND INSURANCE**

#### Public Construction Bond

6.1 The CONTRACTOR will execute the Public Construction Bond as security for the faithful performance and payment of all his obligations under the Contract Documents. This Bond shall be in amounts at least equal to the Contract Price and in such form and with such securities as are



acceptable to the TOWN.

Prior to execution of the Contract Documents, the TOWN may require the CONTRACTOR to furnish such other bonds, in such form and with such sureties as it may require. If such bonds are required by written instructions given prior to opening of Bids, the Premiums shall be paid by the CONTRACTOR. If the Contract is increased by a Change Order, it shall be the CONTRACTOR'S responsibility to insure that the Public Construction Bond is amended accordingly and a copy of the amendment forwarded to CONTRACTS MANAGEMENT.

6.2 If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the CONTRACTOR shall within five (5) calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to the TOWN.

6.2.1 If the CONTRACTOR cannot obtain another bond and surety within (5) calendar days, the TOWN will accept, and the CONTRACTOR shall submit, an irrevocable letter of credit drawn on a Lee County, Florida bank until the replacement bond and surety can be obtained.

#### Qualifications of Surety Companies

6.3 In order to be acceptable to the TOWN, a surety company issuing Bid Guaranty Bonds or 100% Public Construction Bonds, called for in these specifications, shall meet and comply with the following minimum standards:

##### 6.3.1 General

6.3.1.1 All Sureties for the Town of Fort Myers Beach projects must be authorized to do business in the State of Florida and shall comply with the provisions of Florida Statute Section 255.05.

6.3.1.2 Attorneys-in-Fact who sign bid bonds or Public Construction Bonds for Town of Fort Myers Beach projects must file with such bond a certified copy of their Power of Attorney that authorizes the agent to sign such bond.

6.3.1.3 Agents of surety companies must list their name, address, and telephone number on all bonds.

6.3.1.4 All bonds provided to the Town of Fort Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment and shall include a waiver of alteration to any terms in the Contract, extensions of time and/or forbearance on the part of the TOWN.

6.3.1.4.1 The amount of the bond shall automatically be reduced from 100% of the contract price to an amount specified in the Supplemental Conditions. If not set forth in the Supplemental conditions, this amount shall be automatically reduced to 40% upon final completion and acceptance by the TOWN.

6.3.2 To be acceptable to the OWNER as Surety on projects not in excess of \$500,000.00, Surety shall comply with these minimum provisions of State Statute 287.0935 as follows:

6.3.2.1 Surety must have twice the minimum surplus and capital required by Florida Insurance Code at the time of bid solicitation.

1.3.2.2 Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9404-9308.

6.3.3 Sureties on projects in excess of \$500,000.00 shall comply with the above minimum provisions as well as being rated thru A.M. Best shall comply with the following provisions:

6.3.3.1 The Surety shall be rated as "A-" or better as to General Policyholders Rating and Class VII or better as to financial category by the most current Best's Key Rating Guide, published by A.M. Best Company.

6.3.3.2 Surety must have fulfilled all of its obligations on all other bonds previously given to the TOWN.

6.3.3.3 Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

#### Letter of Credit

6.4 At any time during the life of a letter of credit, should the rating of financial institution fall below both of the minimum ratings as indicated in the Contract Documents, or should the financial institution become insolvent, the CONTRACTOR must, within five (5) calendar days after notification by the TOWN:

6.4.1 replace the existing letter of credit with a replacement letter of credit from a financial institution with either of the minimum ratings as specified in the Contract Documents, or

6.4.2 have the existing letter of credit confirmed by a financial institution with either of the minimum ratings as specified in the Contract Documents.

6.5 At the TOWN'S option, the letter of credit may be replaced by a Public Construction Bond in accordance with the TOWN'S then-existing bond policies.

6.6 Failure to comply with this provision may result in any or all of the following actions by the TOWN:

6.6.1 suspension of the CONTRACTOR'S right to pull building permits and schedule inspections;

6.6.2 a stop work order; and/or

6.6.3 revocation of the Land Development Permit.

#### Financial Institutions/Letters of Credit

6.7 In order to be acceptable to the TOWN, a financial institution issuing 100% Letters of Credit, called for in these specifications, shall meet and comply with the following minimum standards:

6.7.1 General

6.7.1.1 The face of the letter of credit must be in a format utilizing Town of Fort Myers Beach Standard Form FMB:006 and indicate the following:

6.7.1.1.1 the letter of credit must be "clean" and "irrevocable";

6.7.1.1.2 it must contain an exact expiration date. All letters of credit provided to the Town of Fort

Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment;

6.7.1.1.3 statement of the purpose or project for which the letter of credit is issued;

6.7.1.1.4 a specific amount of the letter of credit, in U.S. dollars, which amount shall be equal to or greater than the amount of the Contract.

6.7.1.1.5 the method of disbursement of draws against the letter of credit;

6.7.1.1.6 the street address where draws against the letter of credit may be made; and

6.7.1.1.7 provide for venue in Lee County, Florida.

6.7.1.2 Verification of the status or certification of any financial institution may be made with:

Department of Insurance and Treasurer  
Bureau of Collateral Securities  
200 East Gaines Street  
Tallahassee, FL 32377-0345  
Phone (850) 922-3167

or

Town of Fort Myers Beach Risk Management  
2731 Oak Street  
Fort Myers Beach, FL 33931  
Phone (239) 765-0202

6.7.2 At the time of issuance of the letter of credit, the financial institution must have a minimum "peer group" rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.

6.7.3 Letters of Credit from financial institutions which do not meet either of the minimum ratings indicated in 6.7.2 above must be confirmed by a financial institution with either of the minimum ratings indicated in 6.7.2 above.

6.7.4 All financial institutions which issue or confirm any Letter of Credit must be authorized by the Secretary of State to do business in the State of Florida, shall show proof of same upon request by TOWN staff, and agree to venue in Lee County, Florida.

6.8 These actions shall be in effect until a satisfactory replacement bond or letter of credit is accepted by the TOWN. The CONTRACTOR agreement shall provide for replacement or confirmation in accordance with this policy.

#### Contractor's Liability Insurance

6.9 The Contractor shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims

insured by usual personal injury liability coverage; and (4) claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of the Agreement, whether such services, work and operations are performed by the Contractor, its employees, or by any Sub-Contractor(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

6.10 The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

6.11 The Contractor, throughout the time the Agreement is in effect, shall require and ensure that any and all of its Sub-Contractors and/or Sub-Contractors obtain, have, and maintain the insurance coverage required by law to be provided.

6.12 The Contractor shall obtain, have and maintain during the entire period of the Agreement, all such insurance policies as are set forth and required herein.

6.13 In the event that the Contractor engages Sub-Contractors to assist the Contractor in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Contractor shall cover all of the services or work to be provided or performed by all of the Subcontractors engaged by the Contractor. However, in the event the services or work of Sub-Contractors is not covered by the Contractor's insurance policy or policies, it shall be the responsibility of the Contractor to ensure that all Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability as required and set forth in this Article.

6.14 The insurance coverages to be obtained by the Contractor or by Sub-Contractors as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability is understood and agreed to cover any and all of the services or work set forth in the Agreement. In the event the Town shall execute and issue written Change Order(s) authorizing the Contractor to provide or perform services or work in addition to those set forth in the Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Contractor, the compensation established for the Change Order(s) shall include consideration of any increased premium cost incurred by the Contractor to obtain same.

#### Contractor Required to File Insurance Certificate(s)

6.15 The Contractor shall submit to the Town's RISK MANAGEMENT DIVISION all required insurance certificates for review and approval. After approval by the RISK MANAGER, the Town will execute the Agreement and issue a written Notice to Proceed. The Contractor may then commence any service or work pursuant to the Agreement. All such Insurance Certificates shall be attached to the Agreement and be incorporated by reference thereto.

6.16 All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

6.17 Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

6.18 Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

6.19 Each Certificate of Insurance shall specifically include all of the following:

6.19.1 The name and type of policy and coverages provided; and

6.19.2 The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

6.19.3 The date of expiration of coverage; and

6.19.4 The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Commercial General Liability Insurance and for Workers' Compensation Insurance); and

6.19.5 A specific reference to the Agreement and the Project to which it pertains. (This requirement may be excepted for Commercial General Liability Insurance).

6.20 The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above-described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

6.21 A statement indicating any services or work included in or required under the Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Contractor's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

6.22 Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

6.23 If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of the Agreement, the Contractor shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Contractor to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate the Agreement.

6.24 If any of the required insurance coverage(s) expire on the date indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Contractor shall automatically and without further notice stop performing all previously authorized services and work.

During any time period that the Contractor's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Contractor shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Contractor. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall

be made promptly by the Town.

#### Insurance Coverages Required

6.25 The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

##### 6.25.1 WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

6.25.1.1 Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

6.25.1.2 Notice of Cancellation and/or Restriction - the policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

##### 6.25.2 COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

6.25.2.1 Minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.2.2 Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

6.25.2.3 This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property damage, XCU Coverage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. Town of Fort Myers Beach, its officers and employees shall be included as an Additional Insured.

6.25.2.4 Such additional requirements as may be set forth in the Agreement.

##### 6.25.3 BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

6.25.3.1 Minimum limits of \$3,000,000 per person and \$3,000,000 per accident for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.3.2 Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

6.25.3.3 Such additional requirements as are set forth in the Agreement above.

##### 6.25.4 ALL RISK BUILDERS RISK OR INSTALLATION FLOATER (If Applicable)

All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), buildings(s), or structure(s). Any deductible is the responsibility of the CONTRACTOR. The TOWN shall be named as an additional insured.

#### 6.25.5 SUBCONTRACTORS

It shall be the responsibility of the CONTRACTOR to ensure that all subcontractors carry Automobile Liability, General Liability and Workers' Compensation in compliance with statutory limits.

6.26 The CONTRACTOR agrees that the requested insurance coverage is not intended to and shall not, in any manner, limit or reduce the liabilities and obligations assumed by the CONTRACTOR, its agents, employees, subcontractors, etc.

### **ARTICLE 7. CONTRACTOR'S RESPONSIBILITIES**

#### **Supervision and Superintendence**

7.1 The CONTRACTOR will supervise and direct the Work efficiently. CONTRACTOR will be solely responsible for the means, methods, techniques, sequences, safety, and procedure of construction, unless otherwise specified. The CONTRACTOR will be responsible to see that the finished Work complies with the Contract Documents.

7.2 The CONTRACTOR will keep on the site at all times when work is being performed, a competent, resident superintendent who shall not be replaced without prior written notice to the OWNER'S REPRESENTATIVE. The superintendent will be the CONTRACTOR'S representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be binding as if given to the CONTRACTOR.

#### **Labor Material and Equipment**

7.3 The CONTRACTOR will provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents and will at all times maintain good discipline and order at the site.

7.4 The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, heat, light, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work unless otherwise specified.

7.5 All materials and equipment will be new except as otherwise provided in the Contract Documents. If required by the OWNER'S REPRESENTATIVE, the CONTRACTOR will furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

7.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricator or processors except as otherwise provided in the Contract Documents.

7.7 In instances where applicable due to the nature of the bid, all material, equipment, etc., as proposed and offered by CONTRACTOR must meet and conform to all O.S.H.A. requirements; the



CONTRACTOR'S signature upon the bid proposal form (Part D) being by this reference considered a certification of such fact.

#### Adjusting the Progress Schedule

7.8 The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE, for acceptance, any adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and, in addition, will comply with any provisions of the Contract Documents applicable thereto. The TOWN reserves the right to reject any progress schedule from the CONTRACTOR which, in its judgment, does not appear to devote sufficient resources or manpower to enable the timely completion of the project. If the Town requests that the progress schedule be adjusted, the CONTRACTOR shall do so and perform the work according to the adjusted schedule at no additional cost to the TOWN.

#### Substitute Materials or Equipment

7.9 If it is indicated in the specifications that the CONTRACTOR may furnish or use a substitute that is equal to any material or equipment specified, and if the CONTRACTOR wishes to furnish or use a proposed substitute, he will, within thirty (30) calendar days after the award of the Contract, make written application to the OWNER'S REPRESENTATIVE for approval of such a substitute, certifying in writing that the proposed substitute will perform adequately the requirements imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the TOWN who shall be the sole judge of quality. Whether or not the TOWN accepts a proposed substitute, the CONTRACTOR shall reimburse the TOWN for any charges or cost for evaluating any proposed substitute.

#### Concerning Subcontractors

7.10 The CONTRACTOR will be fully responsible for all acts and omissions of his SUBCONTRACTORS and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the

Contract Documents shall create any contractual relationship between any SUBCONTRACTOR and the TOWN. The TOWN may, upon request, furnish to any SUBCONTRACTOR, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done.T

7.10.1 The divisions and sections of the specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among SUBCONTRACTORS or delineating the Work to be performed by any specific trade.

7.10.2 The CONTRACTOR agrees to specifically bind every SUBCONTRACTOR to the applicable terms and conditions of these Contract Documents for the benefit of the TOWN.

7.10.3 All Work performed for the CONTRACTOR by a SUBCONTRACTOR shall be pursuant to an appropriate written agreement between the CONTRACTOR and the SUBCONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the TOWN as trustee.

#### Patent Fees and Royalties

7.11 The costs involved in fees, royalties, or claims for any patented invention, article, process or method that may be used upon, or in a manner connected with the work under the contract, shall be paid by the CONTRACTOR. The CONTRACTOR and its sureties, together with its officers, agents, and employees, shall protect and hold the TOWN harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent. Before final payment is made on the account of this Contract, the CONTRACTOR shall, if requested by the TOWN, furnish acceptable proof of a proper release from all such fees or claims.

7.11.1 Should the CONTRACTOR, its agents, employee, or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under this contract, the CONTRACTOR shall promptly pay such royalties and secure the requisite licenses; or, subject to acceptance by the TOWN, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the contract. Descriptive information of these substitutions shall be submitted to the OWNER'S REPRESENTATIVE for determination of general conformance to the design concept and the construction contract. Should the TOWN elect to use the substitution, the CONTRACTOR agrees to pay such royalties and secure such valid licenses as may be requisite for the TOWN, its officers, agents, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

#### Permits

7.12 Unless otherwise specified herein, the CONTRACTOR will secure and pay for all permits, impact fees, and licenses and will pay all governmental charges and inspections' fees necessary for the prosecution of the Work which are applicable at the time of the bid. The CONTRACTOR will also pay all public utility charges and connection fees except as provided for in the Contract Documents. Permits and licenses of regulatory agencies which are necessary to be maintained after completion of the guarantee period shall be secured and paid for by the TOWN.

7.12.1 Pursuant to the requirements of F.S. 218.80, the following Town permits and fees are required to be obtained by the contractor.

Building Permit - Fees Paid by Town of Fort Myers Beach

Vehicles on the Beach Permit – Fees Paid by Town of Fort Myers Beach

This is a disclosure of permits and fees required by the Town of Fort Myers Beach for this project and does not relieve the CONTRACTOR of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.

7.13 The CONTRACTOR will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at a variance therewith, CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the OWNER'S REPRESENTATIVE, CONTRACTOR will bear all cost arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

#### Licenses

7.14 The CONTRACTOR must be properly licensed and have the proper business tax receipt, within the jurisdiction where the project is to be constructed, to perform the work specified in the Scope of Work at the time of bid submittal.

#### Use of Premises

7.15 The CONTRACTOR will confine its equipment, the storage of materials and equipment, and the operations of its workmen to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

#### Record Drawings

7.16 The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order, and annotated to show all changes made during the construction process or addition and exact location of underground or otherwise concealed components such as, but not limited to, plumbing, air conditioning, electric, and conduit which were not installed exactly as shown on the contract drawings. These shall be available to the OWNER'S REPRESENTATIVE and shall be verified by the OWNER'S REPRESENTATIVE at 30%, 60%, and 100% completion of the Project. The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE one (1) complete dated set of all changes made during Construction entitled "Record Drawings". Submittals shall be made in accordance with the above and shall be submitted at the time of substantial completion.

#### Safety and Protection

7.17 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:

7.17.1 All employees on the Project and other persons who may be affected thereby;

7.17.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

7.17.3 Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

7.18 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. CONTRACTOR will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection and, in addition, CONTRACTOR will comply with all applicable recommendations of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc.; "Roadway and Traffic Design Standards" latest edition published by the Florida Department of Transportation, specifically Index 600-650; and Occupational Safety and Health Administration published by the United States Department of Labor. CONTRACTOR will notify owners of adjacent utilities when prosecution of the Work may affect them.

All damage, injury or loss to any property referred to in 7.17.2 and 7.17.3 caused directly or indirectly, in whole or in part by the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable will be remedied by the CONTRACTOR; except any damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the TOWN, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the CONTRACTOR.

7.19 The CONTRACTOR will designate a member of his organization whose responsibility will be to plan for the prevention of accidents at the site. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE.

### Emergencies

7.20 In the event of emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the TOWN, is obligated to act at its discretion to prevent threatened damage, injury or loss. CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the TOWN and the OWNER'S REPRESENTATIVE determine that a change to the Contract Documents is required because of the action taken in response to an emergency, a Field Directive Change or Change Order shall thereupon be issued covering the changes and deviations involved.

### Shop Drawings and Samples

7.21 After checking and verifying all field measurements, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies (or at the option of the OWNER'S REPRESENTATIVE, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER'S REPRESENTATIVE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OWNER'S REPRESENTATIVE to review the information as required.

7.22 The CONTRACTOR will also submit to the OWNER'S REPRESENTATIVE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

7.22.1 At the time of each submission, the CONTRACTOR will, in writing, call the OWNER'S REPRESENTATIVE'S attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

7.23 The OWNER'S REPRESENTATIVE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the OWNER'S REPRESENTATIVE and will return the required number of corrected copies of Shop Drawings and re-submit new samples until approved.

All cost incurred by the TOWN for the review of a shop drawing in excess of two (2) reviews shall be the CONTRACTOR'S responsibility. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER'S REPRESENTATIVE that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or CONTRACTOR assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

7.24 No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the OWNER'S REPRESENTATIVE. Any related Work performed prior to review and approval by the TOWN of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER'S REPRESENTATIVE.

7.25 The OWNER'S REPRESENTATIVE's approval of Shop Drawings or samples shall not relieve the CONTRACTOR from its responsibility for any deviations from the requirements of the Contract Documents, unless the CONTRACTOR has in writing called the OWNER'S REPRESENTATIVE's attention to such deviation at the time of submission and the TOWN and the OWNER'S REPRESENTATIVE have given written approval to the specific deviation; nor shall any approval by the OWNER'S REPRESENTATIVE relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

#### Indemnification

7.26 The CONTRACTOR shall indemnify and hold harmless the TOWN, its officers, agents, and employees from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.

7.27 The CONTRACTOR shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CONTRACTOR agrees to repair, restore or rebuild any damages CONTRACTOR causes to any property of the TOWN. CONTRACTOR shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CONTRACTOR shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. CONTRACTOR shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

7.28 The CONTRACTOR will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work CONTRACTOR will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the TOWN. The CONTRACTOR will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

7.28.1 Storm Preparation – The CONTRACTOR shall case all construction activities and prepare the project site when a storm event is anticipated to affect the locality. The CONTRACTOR shall respond immediately to the notice given by the TOWN for such preparation. Site preparation shall consist of but not limited to the following

- a. Remove all construction signs
- b. Portable latrines should be removed from the site. If the latrines cannot be removed from the site, they must be laid down on their right side (looking from the front) to prevent waste from leaking out.
- c. The construction site must be clear of all loose tools, lumber, metal, aluminum and any other miscellaneous items that could create a hazard during strong wind conditions and/or storm surges. All other construction materials shall be adequately secured on-site.
- d. All chains, poles and weights used to block off construction sites, vacant lots and parking lots shall be removed as to not create a hazard during strong wind conditions and/or storm surges.
- e. Silt fence posts shall be secured in the ground ten inches (10") as to reduce the potential hazard of the post being uprooted, the silt fence meshing must be a minimum of four inches (4") below ground properly back filled. Other erosion control devices shall be adequately secured so as to not wash out or become a hazard.

7.28.2 If the CONTRACTOR fails to secure the site as provided in the Contract Documents, the TOWN may do so and the cost thereof shall be deducted from the final retainage due the CONTRACTOR.

#### Continuing the Work

7.29 The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the TOWN. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 13.7 (The TOWN May Stop Work) or as the CONTRACTOR and the TOWN may otherwise agree in writing.

#### Anti-Discrimination

7.30 The CONTRACTOR for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:

7.30.1 In the furnishing of services to the TOWN hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the grounds of race, religion, color, age, sex, national origin, handicap or marital status.

7.30.2 The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The CONTRACTOR will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

7.30.3 CONTRACTOR agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

7.30.4 CONTRACTOR will provide all information and reports required by relevant regulations and/or applicable directives.

In addition, the CONTRACTOR shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN to be pertinent to ascertain compliance. The CONTRACTOR shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the TOWN its efforts made toward obtaining said information. The CONTRACTOR shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this CONTRACT.

7.30.5 In the event of breach of any of the above anti-discrimination covenants, the TOWN shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the CONTRACTOR or canceling, terminating or suspending this CONTRACT, in whole or in part.

Additionally, the CONTRACTOR may be declared ineligible for further TOWN contracts by rule, regulation or order of the Town of Fort Myers Beach, or as otherwise provided by law.

7.30.6 The CONTRACTOR will send to each labor union, or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the CONTRACTOR'S commitments under this assurance and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

7.30.7 The CONTRACTOR will include the provisions of paragraphs 7.30.1 through 7.30.6 in every sub-contract under this contract to ensure its provisions will be binding upon each Subcontractor. The CONTRACTOR will take such action with respect to any Subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

#### Misplaced Material

7.31 Should the CONTRACTOR, during the progress of the Work, lose, dump, throw overboard, sink, or misplace any material, plant, or equipment, which in the opinion of the TOWN may be dangerous to, or obstruct navigation, the CONTRACTOR shall recover and remove the same with the utmost dispatch. The CONTRACTOR shall give immediate notice, with description and location of such obstructions, to the U.S. Coast Guard, TOWN and when required, shall mark or buoy such obstructions until the same are removed. In the event of refusal, neglect, or delay in compliance with the above requirements, such obstructions may be removed by the TOWN, and the cost of such removal may be deducted from any money due or to become due to the CONTRACTOR or may be recovered under his bond.

### **ARTICLE 8.      WORK BY OTHERS**

8.1 The TOWN may perform additional Work related to the Project by itself, or it may let other direct contracts which shall contain General Conditions similar to these.

8.2 The CONTRACTOR will afford the other Contractors who are parties to such direct contracts (or the TOWN, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this



Contract, the CONTRACTOR will coordinate and cooperate with the applicable entity responsible for this portion of the work.

8.3 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners at their expense, unless otherwise provided in the Contract. It is understood and agreed that the CONTRACTOR has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconveniences, or damage sustained to it due to any interference from the said utility appurtenances or the operation of moving them. If any part of the CONTRACTOR'S work depends (for proper execution) upon the Work of any such other Contractor (or the TOWN), the CONTRACTOR will inspect and promptly report to the OWNER'S REPRESENTATIVE in writing, any defects, deficiencies or delays in such Work that render it unsuitable for such proper execution and results. CONTRACTOR's failure to report shall constitute an acceptance of the Work, except as to defects, deficiencies and delays which may appear in the other Work after the execution of his Work.

8.4 The CONTRACTOR will do all cutting, fitting and patching of its Work, which is consistent with the Contract Documents that may be required to make its several parts come together properly and enable it to receive or be received by such other Work. The CONTRACTOR will not endanger any Work of others by cutting, excavating or otherwise altering such other Work and will only cut or alter such other work with the written consent of the OWNER'S REPRESENTATIVE.

8.5 If the performance of additional Work by other Contractors or the TOWN is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional Work.

## **ARTICLE 9. OWNER'S REPRESENTATIVE STATUS DURING CONSTRUCTION**

### **Town's Representatives**

9.1 The TOWN shall issue all communications to the CONTRACTOR.

### **Clarifications and Interpretations**

9.2 The TOWN will issue, with reasonable promptness, such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the TOWN may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, the CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

### **Authorized Variations in Work**

9.3 The OWNER'S REPRESENTATIVE may authorize, with prior approval from the TOWN, minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order on form FMB:010 and the CONTRACTOR shall perform the Work involved promptly. If the CONTRACTOR believes that a Field Change Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may

make a claim therefore as provided in Article 11 or Article 12.

#### **ARTICLE 10. CHANGES IN WORK**

10.1 Without invalidating the Agreement, the TOWN may unilaterally and at any time or from time-to-time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order on form FMB:009 or Field Directive Change on form FMB:010, the CONTRACTOR will proceed with the Work involved.

10.1.1 All such Work shall be executed under the applicable conditions of the Contract Documents.

10.1.2 If any Change Order or Field Directive Change causes an increase or decrease in the Contract Price or any extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12.

10.2 Additional Work performed by the CONTRACTOR without written authorization of a change in the form of an approved Change Order will not entitle CONTRACTOR to an increase in the Contract Price or any extension of the Contract Time, except in the case of an emergency as provided in Article 7.20.

10.3 It is the CONTRACTOR'S responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the OWNER'S REPRESENTATIVE, by the CONTRACTOR, within ten (10) calendar days of the initiation of the change.

10.4 If additions in the work requested by the TOWN involve addition of a new subcontract or of additional scope of work such that the Town considers it in its best interests, the CONTRACTOR shall:

10.4.1 Obtain cost proposals from multiple potential subcontractors, suppliers or vendors, at Contractor's sole expense, if so required by the Town, in order to help ensure competitive pricing.

10.4.2 Obtain TOWN's prior written approval of any proposed Subcontractor, including Sub-subcontractors, to be utilized who are not already included on the approved list of Subcontractors.

#### **ARTICLE 11. CHANGE IN CONTRACT PRICE**

11.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order on form FMB:009. Any claim for an increase or decrease in the Contract Price shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless TOWN allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with paragraph 11.2. All claims for adjustment in the Contract Price shall be reviewed by the OWNER'S REPRESENTATIVE. Any change in the Contract

Price shall be incorporated in a Change Order and approved by the TOWN. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

11.3.2 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

11.3.3 By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

11.3.4 If none of the above methods is agreed upon, the value shall be determined by the TOWN on the basis of cost of the Work and a percentage for overhead and profit. Cost shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved.

In such cases the CONTRACTOR will submit, in the form prescribed by the TOWN, an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CONTRACTOR to the TOWN for any such change which results in a net decrease in cost, will be the amount of the actual net decrease as determined by the TOWN. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net decrease, if any.

#### Cash Allowances

11.4 It is understood that the CONTRACTOR has included in the Contract Price any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or SUBCONTRACTORS and for such sums within the limit of the allowances as the TOWN may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. The CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for cost and profit on account of cash allowances. No demand for an additional sum for overhead or profit in connection therewith will be allowed.

#### Unit Price Work

11.5 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.

11.6 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item.

11.7 The unit price of an item of Unit Price Work shall be subject to revaluation and adjustment under

the following conditions:

11.7.1 if the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the CONTRACTOR differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and

11.7.2 if there is no corresponding adjustment with respect to any other item of Work; and

11.7.3 if the CONTRACTOR believes that it has incurred additional expense as a result thereof; or

11.7.4 if the TOWN believes that the quantity variation entitles it to an adjustment in the unit price, either the TOWN or the CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

## **ARTICLE 12. CHANGE IN CONTRACT TIME**

12.1 The Contract Time may only be changed by a Change Order on form FMB:009.

Any claim for an extension in the Contract Time shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the OWNER'S REPRESENTATIVE allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis of a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CONTRACTOR under this provision shall be allowed unless the CONTRACTOR has given notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time shall be determined by the OWNER'S REPRESENTATIVE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2 The TOWN shall not be responsible for any delay in the completion of the project where the delay is beyond the control or without fault or negligence on behalf of the TOWN. The TOWN shall not be held accountable for extra compensation or an extension of time due to default by the CONTRACTOR, subcontractors, or suppliers in the furnishing of labor or materials for the project, or having to replace defective materials.

12.3 The CONTRACTOR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the TOWN, provided the CONTRACTOR gives notice to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CONTRACTOR'S sole remedy shall be an extension of Contract Time.

12.4 No extension of Contract Time or increases in Contract Price shall be granted for any delay

caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the TOWN in its sole discretion or (4) for any delay which is caused by the CONTRACTOR having to replace defective material or equipment or (5) delays attributable to the lack of performance by Subcontractors regardless of the reasons.

12.5 All time limits stated in the Contract Documents are of the essence of the Agreement.

## **ARTICLE 13. WARRANTY GUARANTEE / ACCEPTANCE OF DEFECTIVE WORK**

### **Warranty and Guarantee**

13.1 The CONTRACTOR warrants and guarantees to the TOWN that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents and any inspections, test or approvals referred to in this Article for a period of twelve months following final completion and acceptance by the Town. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents, or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article. Contractor is to assign any and all warranties or guarantees on equipment, materials, etc. to the TOWN.

### **Test and Inspections**

13.2 If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the OWNER'S REPRESENTATIVE timely notice of readiness therefore. The CONTRACTOR will furnish the OWNER'S REPRESENTATIVE with the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. If any such Work required to be inspected, tested or approved is covered without written approval of the OWNER'S REPRESENTATIVE, it shall, if requested by the OWNER'S REPRESENTATIVE, be uncovered for observation at the CONTRACTOR'S expense. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided.

13.3 Neither observations by the OWNER'S REPRESENTATIVE, nor inspections, tests or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

### **Close Out Procedure**

#### **13.4 General Operating/Maintenance Instructions & Manuals**

13.4.1 The CONTRACTOR shall organize maintenance operating manual information into four (4) suitable sets of manageable size and bind into individual binders properly identified and indexed (thumb-tabbed). Emergency instructions, spare parts listing, warranties, wiring diagrams, recommended "turn around" cycles, inspection procedures, shop drawings, product data, and similar acceptable information shall be included.

The CONTRACTOR shall bind each manual of each set in a heavy duty, 3-ring vinyl covered binder,

and include pocket folders for folded sheet information. Mark identification on both front and spine of each binder.

13.4.2 CONTRACTOR shall arrange for each installer of work requiring continuing maintenance (by the OWNER) or operation, to meet with the OWNER'S personnel, at the project site, to provide basic instructions needed for proper operation and maintenance of the entire work. CONTRACTOR shall include instructions by manufacturer's representatives where installers are not expert in the required procedures. CONTRACTOR shall review maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuels, identification system, control sequences, hazards, cleaning and similar procedures and facilities. For operational equipment, CONTRACTOR shall demonstrate start-up, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and similar operations. CONTRACTOR shall review maintenance and operations in relation to applicable guarantees, warranties, agreements to maintain, bonds, and similar continuing commitments.

#### Access to the Work

13.5 The TOWN and the OWNER'S REPRESENTATIVE shall at all times have access to the Work. The CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

#### Uncovering the Work

13.6 If any work has been covered which the OWNER'S REPRESENTATIVE has not specifically requested to observe prior to its being covered, or if the OWNER'S REPRESENTATIVE considers it necessary or advisable that covered Work be inspected or tested by others, the CONTRACTOR, at the OWNER'S REPRESENTATIVE'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER'S REPRESENTATIVE may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CONTRACTOR will bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if he makes a claim therefore as provided in Article 11 and 12.

#### Town May Stop the Work

13.7 If the Work is defective, if the CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or if the CONTRACTOR fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, the TOWN may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated: however, this right of the TOWN to stop the work shall not give rise to any duty on the part of the TOWN to exercise this right for the benefit of the CONTRACTOR or any other party.

#### Correction or Removal of Defective Work

13.8 If required by the OWNER'S REPRESENTATIVE prior to approval of final payment, the CONTRACTOR will, promptly, without cost to the TOWN and as specified by the OWNER'S REPRESENTATIVE, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If the CONTRACTOR does not correct such defective

Work or remove and replace such rejected Work within ten (10) calendar days, all as specified in a written notice from the OWNER'S REPRESENTATIVE, the OWNER'S REPRESENTATIVE may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement shall be paid by the CONTRACTOR. The CONTRACTOR will also bear the expense of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

#### One (1) Year Correction Period

13.9 If, after the approval of the final payment and prior to the expiration of one (1) year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the CONTRACTOR will promptly, without cost to the TOWN, and in accordance with the OWNER'S REPRESENTATIVE'S written instructions, either correct such defective Work or, if it has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If, within seven (7) calendar days, the CONTRACTOR does not comply with the terms of such instructions, the Bonding Company shall be notified of default and requested to make repairs or replacement, the TOWN may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CONTRACTOR. This shall be in addition to, and not in substitution for, the warranty requirement set forth elsewhere in these Contract Documents.

#### Acceptance of Defective Work

13.10 If, instead of requiring correction or removal and replacement of defective Work, the TOWN prefers to accept it, the TOWN may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the appropriate revisions to the Contract Documents including an appropriate reduction in the Contract Price. If the acceptance occurs after approval of the final payment, an appropriate amount shall be paid by the CONTRACTOR to the TOWN.

#### Neglected Work By Contractor

13.11 If the CONTRACTOR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the TOWN may, after three (3) calendar days written notice to the CONTRACTOR and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the CONTRACTOR.

A Change Order shall be issued incorporating the appropriate revision to the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the TOWN.

### **ARTICLE 14. PAYMENT AND COMPLETION**

#### Schedule of Values

14.1 Within ten (10) calendar days after the effective date of the Agreement, the CONTRACTOR will submit a schedule of values of the Work including quantities and unit prices totaling to the Contract Price. This schedule shall be satisfactory in form and substance to the TOWN and shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedule of values by the OWNER'S REPRESENTATIVE, it shall be incorporated into



the Estimate and Requisition for Payment form No. FMB:013 prescribed by the TOWN. Unit Price Contracts shall have the bid proposal prices incorporated into the Estimate and Requisition for Payment.

#### Application for Progress Payment

14.2 Not more often than once a month, nor less often than specified in the approved payment schedule 1.4.3, and on a date established at the Project Pre-Construction Conference, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for review the Estimate and Requisition for Payment form No. FMB:011 filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and supported by such data as the OWNER'S REPRESENTATIVE may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER'S REPRESENTATIVE, as will establish the TOWN'S title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage specified in the Contract Documents. Such retainage shall be paid and will be issued in the final payment after acceptance by the TOWN of the Work.

#### Contractor's Warranty of Title

14.3 The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the TOWN prior to the next making of application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

#### Approval of Payments

14.4 The OWNER'S REPRESENTATIVE will, within fifteen (15) calendar days after receipt of each Application for Payment, either indicate approval of payment and deliver the application to the TOWN or return the Application to the CONTRACTOR indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of each approved application for payment, either indicate their approval of payment and pay the CONTRACTOR the amount approved or return the application to the CONTRACTOR through the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.4.1 The OWNER'S REPRESENTATIVE's approval of any payment requested in an Application for Payment shall constitute a representation by the OWNER'S REPRESENTATIVE to the TOWN, based on the OWNER'S REPRESENTATIVE'S on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CONTRACTOR is entitled to payment of the amount approved.

14.4.2 The OWNER'S REPRESENTATIVE'S approval of final payment shall constitute an additional representation by the OWNER'S REPRESENTATIVE to the TOWN that the conditions precedent to

the CONTRACTOR'S being entitled to final payment as set forth in this Article 14 have been fulfilled.

14.4.3 The OWNER'S REPRESENTATIVE may refuse to approve the whole or any part of any payment if the OWNER'S REPRESENTATIVE is unable to make such representations to the TOWN. OWNER'S REPRESENTATIVE may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the TOWN from loss because:

14.4.3.1 The Work is defective;

14.4.3.2 A portion of such payment is the subject of a dispute or claim that has been filed.

14.4.3.3 The Contract Price has been reduced because of Modifications;

14.4.3.4 The TOWN has been required to correct defective Work or complete the Work in accordance with Article 13, or

14.4.3.5 Of unsatisfactory prosecution of the Work, including failure to clean up as required by Article 7.

#### Substantial Completion

14.5 Prior to final payment, the CONTRACTOR shall, in writing to the OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of the Project to determine the status of completion. If the TOWN does not consider the Project substantially complete, it will notify the CONTRACTOR in writing giving the reasons therefore. If the TOWN considers the Project substantially complete, a Certificate of Substantial Completion (Form No. FMB:012) will be issued. This certificate shall fix the date of Substantial Completion and the responsibilities between the TOWN and the CONTRACTOR for maintenance, heat and utilities. The Certificate of Substantial Completion will also include a punch list of items to be completed or corrected, said time to be within the Contract Time. The TOWN shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion but the TOWN will allow the CONTRACTOR reasonable access to complete items on the punch list.

#### Partial Utilization

14.6 Prior to final payment, the OWNER'S REPRESENTATIVE may request the CONTRACTOR to permit the use of a specified part of the Project which the TOWN believes it may use without significant interference with construction of the other parts of the Project.

If the CONTRACTOR agrees, he will certify to the OWNER'S REPRESENTATIVE that said part of the Project is substantially complete and request the OWNER'S REPRESENTATIVE to issue a Certificate of Substantial Completion for that part of the Project. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of that part of the Project to determine its status of completion. If the TOWN considers that part of the Project to be substantially complete, the OWNER'S REPRESENTATIVE will deliver to the CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment and fixing the responsibility between the TOWN and the CONTRACTOR for maintenance, heat and utilities as to

that part of the Project. The TOWN shall have the right to exclude the CONTRACTOR from any part of the Project which is so certified to be substantially complete but the TOWN will allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

#### Final Inspection

14.7 Upon written notice from the CONTRACTOR that the Project is complete, the OWNER'S REPRESENTATIVE will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of any particulars which this inspection reveals that the Work is defective. The CONTRACTOR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

#### Final Inspection for Payment

14.8 After the CONTRACTOR has completed any such corrections to the satisfaction of the OWNER'S REPRESENTATIVE and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CONTRACTOR and all SUBCONTRACTORS which performed services for the CONTRACTOR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

#### Approval of Final Payment

14.9 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, it will, within fifteen (15) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the TOWN. Otherwise, it will return the Application to the CONTRACTOR, indicating in writing its reason for refusing to approve final payment, in which case the CONTRACTOR will make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment pay the CONTRACTOR the amount approved by the TOWN and issue a Certificate of Final Completion or return the application thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.10 If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CONTRACTOR, and the OWNER'S REPRESENTATIVE so confirms, the TOWN shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Article 6, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER'S REPRESENTATIVE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.11 If liquidated damages are to be deducted from the final payment, the TOWN shall so notify the CONTRACTOR in writing at least seven (7) calendar days prior to the TOWN'S submittal to Finance.

14.12 The Contractor will be required to submit with his final payment documents a DBE Participation Certification, Form No. FMB:016 indicating all DBE sub-contractor(s) and amount(s) utilized for the project, if applicable.

If the CONTRACTOR did not utilize the DBE firm(s) listed on the Bid Proposal, Schedule D, a letter of justification, as to why shall be submitted along with the DBE Participation Certification if appropriate.

14.13 Upon receipt of the Contractor Performance Evaluation, the CONTRACTOR will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the project manager. If the evaluation has not been received back from the CONTRACTOR within the seven (7) calendar days, the TOWN will assume the CONTRACTOR fully agrees with and has no comments to the evaluation. The evaluation will then be placed on file with Town of Fort Myers Beach Contracts Management.

#### Contractor's Continuing Obligation

14.14 The CONTRACTOR'S obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the TOWN, the issuance of the Certificates of Completion, any payment by the TOWN to the CONTRACTOR under the Contract Documents, any use or occupancy of the Project or any part thereof by the TOWN, any act of acceptance by the TOWN, any failure to do so, nor any correction of defective Work by the TOWN shall constitute an acceptance of Work not in accordance with the Contract Documents.

#### Waiver of Claims

14.15 The making and acceptance of final payment shall constitute:

14.15.1 A waiver of all claims by the TOWN against the CONTRACTOR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any guarantees specified therein, and,

14.15.2 A waiver of all claims by the CONTRACTOR against the TOWN other than those previously made in writing and still unsettled.

### **ARTICLE 15. SUSPENSION OF WORK AND TERMINATION**

#### Town May Suspend Work

15.1 The TOWN may at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by notice in writing to the CONTRACTOR. The TOWN shall fix the date on which Work shall be resumed and the CONTRACTOR will resume the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price, an extension of the Contract Time or both, if such increases are justified and directly attributable to any TOWN suspension and if he makes a claim thereof as provided in Articles 11 and 12.

#### Town May Terminate

15.2 If the CONTRACTOR is adjudged bankrupt or insolvent, if CONTRACTOR makes a general assignment for the benefit of his creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, if he files a petition to take advantage of any debtor's act or reorganizes under the bankruptcy or similar laws, if CONTRACTOR repeatedly fails to supply sufficient skilled

workmen or suitable materials or equipment, if CONTRACTOR repeatedly fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, if CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, if he disregards the authority of the OWNER'S REPRESENTATIVE, or if CONTRACTOR otherwise substantially violates any provisions of the Contract Documents, then the TOWN may, without prejudice to any other right or remedy and after giving the CONTRACTOR and CONTRACTOR's surety seven (7) calendar days written notice, terminate the services of the CONTRACTOR and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the Work by whatever method the TOWN may deem expedient or arrange with the Surety to complete the project. The CONTRACTOR, if notified by the TOWN to do so, shall promptly remove any part of his equipment and supplies from the property of the TOWN; failing, the TOWN shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

15.2.1 In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such cost exceeds such unpaid balance, the CONTRACTOR will pay the difference to the TOWN. Such cost incurred by the TOWN will be determined by the TOWN and incorporated in a Change Order.

15.2.2 Where the CONTRACTOR'S services have been so terminated by the TOWN, said termination shall not affect any rights of the TOWN against the CONTRACTOR then existing or which may thereafter accrue.

15.2.3 If so terminated, any retention or payment of monies by the TOWN due the CONTRACTOR will not release the CONTRACTOR from liability accruing under this Contract.

15.2.4 If after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of Article 15.2 or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 15.3.

#### Contractor May Stop Work or Terminate the Contract

15.3 If through no fault of the CONTRACTOR, or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) calendar days by the TOWN or under an order of court or other public authority, or the OWNER'S REPRESENTATIVE has not issued a certificate for payment and has not notified the CONTRACTOR of the reason for withholding certification as provided in 14.4 or because the TOWN has not made payment on a certificate for payment within the time stated in the Contract Documents, then the CONTRACTOR may, upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE, terminate the Agreement and recover from the TOWN payment for all Work executed and proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

15.4 In addition and in lieu of terminating the Agreement, if the OWNER'S REPRESENTATIVE has failed to act on an application for payment or the TOWN has failed to make any payment as aforesaid, the CONTRACTOR may upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligation to carry on the Work in accordance

with the progress schedule and without delay during disputes and disagreements with the TOWN.

15.5 If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible."

## **ARTICLE 16. MISCELLANEOUS**

### **General**

16.1 All Specifications, Drawings and copies thereof furnished by the TOWN, to the CONTRACTOR, shall remain the TOWN'S property. They shall not be used on another Project.

16.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the CONTRACTOR and the rights and remedies available to the TOWN thereunder shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.

16.3 Should the TOWN or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or any of his employees, agents, or others for whose acts a party is legally liable, a claim should be made in writing to the other party within seven (7) calendar days of the first observance of such injury or damage. This shall not be deemed to waive any immunity from claim on the part of the TOWN, whether it be through sovereign immunity or due to specific provisions set forth in these Contract Documents.

16.4 The Contract Documents shall be governed by the laws of the State of Florida, the County of Lee, and the municipality in which the project is being done.

### **Computation of Time**

16.5 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

## **ARTICLE 17. MAINTENANCE OF RECORDS**

17.1 The CONTRACTOR shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CONTRACTOR for a minimum of five (5) years from the date of termination of this Contract. The TOWN and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the TOWN deems necessary during the period of this Contract and during the period of five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours. The TOWN, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CONTRACTOR as concerns the aforesaid records and documentation.

## **ARTICLE 18. FEDERAL REQUIREMENTS**

18.1 In the event this Contract is paid in whole or in part from any Federal Governmental agency or source, including but not limited to FEMA, it is the intent of the parties to incorporate the specific terms,

regulations and requirements governing the disbursement of these funds as provided in the Contract Documents or as may be incorporated by reference and made a part of this Contract as if attached and a part of this Article. The parties acknowledge that FEMA financial assistance will be used to fund all or a portion of this Contract. The CONTRACTOR agrees to and will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. The parties acknowledge the federal government is not a party to this Contract and is not subject to any obligations or liabilities to the TOWN, CONTRACTOR, or any other party pertaining to any matter resulting from the contract. CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR'S actions pertaining to this contract."

**18.1.1 Remedies for Breach of Contract.** See Article 5 of the Agreement and Article 10 herein.

**18.1.2 Termination for Cause and Convenience.** See Article 8 of the Agreement and Article 15 herein.

**18.1.3 Equal Employment.** During the performance of this Contract, the CONTRACTOR agrees as follows:

(1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.



(6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States. The TOWN further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that the above equal opportunity clause is not applicable which does not participate in work on or under the Contract.

The TOWN agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONTRACTOR and its subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The TOWN further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the TOWN agrees that if it fails or refuses to comply with these undertakings, FEMA or the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 18.1.4 Davis-Bacon Act.

##### (1) *Minimum wages.*

- (i) ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

##### (ii) ***Frequently recurring classifications.***

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to [§ 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to section, provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

##### (iii) ***Conformance.***

(A) The CONTRACTOR must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the CONTRACTOR to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Contract Representative, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the CONTRACTOR of the action taken by the Wage and Hour Division under this section. The CONTRACTOR must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination.

The wage rate (including fringe benefits where appropriate) determined pursuant to this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside, in a separate account,

assets for the meeting of obligations under the plan or program.

(vi) **Interest.** In the event of a failure to pay all or part of the wages required by the Contract, the CONTRACTOR will be required to pay interest on any underpayment of wages.

(2) **Withholding —**

(i) **Withholding requirements.** The TOWN may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the CONTRACTOR so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the CONTRACTOR or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this Contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same CONTRACTOR. The necessary funds may be withheld from the CONTRACTOR under this contract, any other Federal contract with the same CONTRACTOR, or any other federally assisted Contract that is subject to Davis-Bacon labor standards requirements and is held by the same CONTRACTOR, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the CONTRACTOR liability for which the funds were withheld. In the event of the CONTRACTOR'S failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the CONTRACTOR'S failure to submit the required records as discussed in this section, the TOWN may on its own initiative and after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with this section, or both, over claims to those funds by:

(A) A CONTRACTOR'S surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) The TOWN for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A CONTRACTOR'S assignee(s);

(E) A CONTRACTOR'S successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) **Records and certified payrolls —**

(i) **Basic record requirements —**

(A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the CONTRACTOR and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the

work on the prime contract is completed.

(B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under [paragraph \(a\)\(1\)\(v\)](#) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the CONTRACTOR must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements —**

(A) **Frequency and method of submission.** The CONTRACTOR or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to FEMA if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR will submit the certified payrolls to the TOWN, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA. The CONTRACTOR is responsible for the submission of all certified payrolls by all subcontractors.

FEMA or CONTRACTOR may permit or require subcontractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the CONTRACTOR, the TOWN, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the Contract has been completed; and the TOWN or CONTRACTOR permits other methods of submission in situations where the CONTRACTOR is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a CONTRACTOR to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the TOWN that maintains such records).

(B) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subcontractor, or the CONTRACTOR or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (1) That the certified payroll for the payroll period contains the information required to be provided under this section, the appropriate information and basic records are being maintained under this section, and such information and records are correct and complete;
- (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by this section.

(E) **Signature.** The signature by the CONTRACTOR, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(G) **Length of certified payroll retention.** The CONTRACTOR or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) **Contracts, subcontracts, and related documents.** The CONTRACTOR or subcontractor must maintain this Contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The CONTRACTOR or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access —**

(A) **Required record disclosures and access to workers.** The CONTRACTOR or subcontractor must make the records required under this section, and any other documents that the TOWN or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the TOWN or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to



submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action. In addition, any CONTRACTOR or other person that fails to submit the required records or make those records available to the TOWN within the time TOWN requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to TOWN. TOWN will take into consideration a reasonable request from the CONTRACTOR or person for an extension of the time for submission of records. TOWN will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** CONTRACTOR and its subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the TOWN and FEMA if FEMA is a party to the Contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the Contract, the CONTRACTOR, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### (4) ***Apprentices and equal employment opportunity —***

##### (i) ***Apprentices —***

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program.

In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) **Apprenticeship ratio.** The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.



(D) **Reciprocity of ratios and wage rates.** Where a CONTRACTOR is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) **Equal employment opportunity.** The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The CONTRACTOR shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.

(6) **Subcontracts.** The CONTRACTOR or its subcontractor must insert in any subcontracts the clauses contained in this section, along with the applicable wage determination(s) and such other clauses or contract modifications as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The CONTRACTOR is responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in this section. In the event of any violations of these clauses, the CONTRACTOR and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a subcontractor as provided in [29 CFR 5.12](#).

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

(i) By entering into this contract, CONTRACTOR certifies that neither it nor any person or firm who has an interest in the CONTRACTOR'S firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any CONTRACTOR of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#). per the standard described above, TOWN must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10)

18.1.5 Copeland “Anti-Kickback Act” - CONTRACTOR and its subcontractors shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement. CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of these contract clauses may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### 18.1.6 Contract Work Hours and Safety Standards

(1) Overtime requirements. No CONTRACTOR or its subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth above the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The TOWN shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or its subcontractor under any such contract or any other federal contract with CONTRACTOR, or any other

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of CONTRACTOR or its subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(5) CONTRACTOR and its subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(6) Records to be maintained under this provision shall be made available by the CONTRACTOR or its subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job."

18.1. 7 Clean Air Act - The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONTRACTOR agrees to report each violation to TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA

18.1.8 Federal Water Pollution Control Act – The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The CONTRACTOR agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to FEMA, and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA."

18.1.9 Debarment - This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000.

As such, the CONTRACTOR is required to verify that none of the CONTRACTOR'S principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The CONTRACTOR must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the TOWN. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to TOWN, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. CONTRACTOR agrees to comply with the

requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

18.1.10 Bryd Anti-Lobbying Act – CONTRACTOR shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

CONTRACTOR certifies, to the best of its knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. CONTRACTOR shall require that the language of the certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. CONTRACTOR’S certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of a certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

18.1.11 Procurement of Recovered Materials - In the performance of this Contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Contract performance schedule; meeting contract performance requirements; or at a reasonable price. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

18.1.12 Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year

2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, CONTRACTOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing— (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28 (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, the CONTRACTOR shall report the information in paragraph (d)(2) of this clause to the TOWN, unless elsewhere in this contract are established procedures for reporting the information.

(2) The CONTRACTOR shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to

prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The CONTRACTOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

18.1.13 Domestic Preference - As appropriate, and to the extent consistent with law, the CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

18.1.14 Audit - In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the TOWN and CONTRACTOR acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.”

18.1.15 DHS Seal, Flags, etc - THE CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The CONTRACTOR shall include this provision in any subcontracts.

**PART E**  
**FMB:007 – CONSTRUCTION CONTRACT**  
**PUBLIC CONSTRUCTION BOND**  
(1 of 3 Pages)

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FORT MYERS BEACH CONSTRUCTION CONTRACT  
PUBLIC CONSTRUCTION BOND

BOND NO:

1. Know all men by these presents, that \_\_\_\_\_,  
(Name, Full Address & Phone # of Awarded Contractor)  
hereinafter referred to as the CONTRACTOR, as Principal, and \_\_\_\_\_, a  
corporation, licensed to do business in the State of Florida, hereinafter called SURETY, located  
at: \_\_\_\_\_, are  
held and firmly bound unto the Town of Fort Myers Beach, 2731 Oak St., Fort Myers Beach, FL 33931,  
(239) 765-0202, a Florida Municipal Corporation of the State of Florida as "OWNER", in the full and  
just sum of \_\_\_\_\_  
(Amount of Bond Written in Words)

(\$ \_\_\_\_\_) Dollars, lawful money of the United  
States of America, to the payment of which sum, will and truly to be made, the CONTRACTOR and  
SURETY bind themselves, their representatives, and each of their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the CONTRACTOR has entered into a certain written Contract with the TOWN as  
the OWNER, dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, for: Legal Description of project,  
\_\_\_\_\_, whose address is  
\_\_\_\_\_ for the project known as \_\_\_\_\_, with  
conditions and provisions as are further described in the aforementioned Contract, which Contract  
is by reference made a part hereof in its' entirety for the purpose of perfecting this bond.
3. NOW, THEREFORE, the conditions of this obligation are such that if CONTRACTOR shall fully,  
promptly and faithfully perform said Contract and all obligations there under, including all  
obligations imposed by the Contract Documents (which includes the Notice to BIDDERS,  
Instruction to BIDDERS, Bid Proposal Form, General and Supplementary Conditions, Detail  
Specifications, Form(s) of Contract Bond(s), Plans and Specifications, Change Orders, and such  
alterations thereof as may be made as provided for therein), and shall promptly make payments  
to all claimants for any and all labor and materials used or reasonably required for use or furnished  
in connection with the performance of said Contract, and shall perform all other covenants and  
obligations of this bond, then this obligation shall be void; otherwise it shall remain in full force and  
effect.
- 3.1. The undersigned shall indemnify and save harmless the OWNER from and against all  
costs, expenses and damages, including litigation costs and attorney fees arising out of,  
or in connection with the neglect, default or want of care or skill, including patent  
infringement on the part of said CONTRACTOR, his agents, servants or employees in the  
execution or performance of said Contract with the OWNER.
- 3.2. The undersigned shall promptly make payment(s) to all persons supplying services, labor, material  
or supplies used directly or indirectly by said CONTRACTOR, or any Sub-Contractor or  
Sub-Contractor, in the prosecution of the work provided for in said Contract with the OWNER.



**PART E**  
**FMB:007 - CONSTRUCTION CONTRACT**  
**PUBLIC PAYMENT and PERFORMANCE BOND**  
(2 of 3 Pages)

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- 3.3. The undersigned agree to promptly pay to the OWNER any difference between the sum to which the CONTRACTOR would be entitled for the completion of the contract including any damages, direct, liquidated or delay, which the OWNER may sustain by reason of failure of the CONTRACTOR to properly and promptly perform and abide by all of the provisions of said Contract, and any sum which the OWNER may be or was obligated to pay for the completion of said Work by the CONTRACTOR.
- 3.4. The undersigned SURETY covenants and agrees that change orders, extensions of time, alterations or additions to the terms of the Contract or the Work to be performed there under, or the specifications accompanying the same shall in no way effect their obligation on this Bond, and the SURETY does hereby expressly waive notice of any such changes, extensions of time, alterations or additions, so long as the fundamental nature of the work on the Project by the CONTRACTOR is not changed.
- 3.5. Subject to the OWNER'S priority, claimants covered by Section 713.01, Florida Statutes, shall have a direct right of action against the Principal and Surety under this obligation, after written notice is provided to the OWNER of the performance of labor or delivery of materials or supplies, and non-payment thereof. Any claimant who seeks to recover against the Principal or Surety under this obligation must also satisfy the notice requirements and time limitations of Section 255.05, Florida Statutes, as they may be revised from time to time.
4. The CONTRACTOR and the SURETY shall hold the Town harmless from any and all damages, expenses and cost, or lawsuits, which may arise by virtue of any defects in said work or materials within the period of one (1) year from the date of OWNER'S express acceptance of the project, providing, however, that upon completion of the Work, the amount of this bond shall be reduced to 100% of the Contract Price.
5. This public payment and performance bond shall be governed by the laws, administrative rules, and regulations of the State of Florida. Any claims or suits instituted under this bond shall be governed solely by the laws of the State of Florida.

SIGNED and sealed this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

WITNESS:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name and Title)

WITNESS: (If No Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name and Title)

CONTRACTOR, As Principal:

\_\_\_\_\_  
(Firm Name)

BY: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name and Title)

**PART E**  
**FMB:007 - CONSTRUCTION CONTRACT**  
**PUBLIC PAYMENT and PERFORMANCE BOND**  
(3 of 3 Pages)

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COUNTERSIGNED, as SURETY

\_\_\_\_\_  
(Title)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS  
CITY OF \_\_\_\_\_ )

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Power-of-Attorney Signature)

BEFORE me, a Notary Public, duly commissioned, qualified and acting personally, appeared:

\_\_\_\_\_  
\_\_\_\_\_

to me well-known, who being by me first duly sworn upon oath says that he/she is Attorney-in-Fact for \_\_\_\_\_, as Surety, and that he has been authorized by said Surety to execute the foregoing Public Payment and Performance Bond on behalf of the (CONTRACTOR) Principal named therein in favor of the OWNER.

The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ by ( ) physical appearance or ( ) online notarization physically appeared \_\_\_\_\_.  
(Print or Type Name)

who has produced \_\_\_\_\_  
(Type of Identification and Number)

as identification.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

**PART E**

**FMB:008 - CONSTRUCTION CONTRACT  
CLEAN IRREVOCABLE LETTER OF CREDIT**

---

DATE: \_\_\_\_\_  
TO:

**AMOUNT: \$** \_\_\_\_\_ **EXPIRATION DATE:** \_\_\_\_\_  
(U.S. Dollars)

We hereby open our Clean Irrevocable Letter of Credit No. \_\_\_\_\_ in favor of the Town of Fort Myers Beach Town Council (Town) for the amount of \_\_\_\_\_ U.S. Dollars (\_\_\_\_\_) effective as of this date.

This Letter of Credit is issued pursuant to that certain contract No. \_\_\_\_\_ between \_\_\_\_\_, as Contractor, and the Town of Fort Myers Beach, Florida, dated \_\_\_\_\_, 20\_\_ (the "Contract"), however, this Letter of Credit is independent of that contract and reference herein is for information only.

Funds under this Letter of Credit are available to the Town hereunder not exceeding in aggregate the amount of this Credit against the Town's demand for payment on us referencing our Credit No. \_\_\_\_\_.

When we receive your demand for payment at \_\_\_\_\_ (street address) on or prior to the Expiration Date, we will promptly honor the same.

Kindly address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department, mentioning specifically our Credit Number.

Venue for any and all legal action necessary to enforce the terms of this Letter of Credit shall be Lee County, Florida.

This bond shall be effective from \_\_\_\_\_ and remain in effect until \_\_\_\_\_ and shall be renewed annually for the term of the agreement.

Authorized Signature: \_\_\_\_\_

Name (Typed): \_\_\_\_\_

Title: \_\_\_\_\_

Notary Public: \_\_\_\_\_

Except as is inconsistent with the express provisions hereof, this Letter of Credit is subject to the Uniform Customs and Practices For Documentary Credits (1993) Revision, International Chamber of Commerce Publication No. 500.

**PART E**  
**CONSTRUCTION CONTRACT**  
**CERTIFICATE OF INSURANCE**

---

(INSERT CERTIFICATE OF INSURANCE HERE)

**PART E**  
**FMB:009 - CONSTRUCTION CONTRACT**  
**TOWN OF FORT MYERS BEACH BID PROPOSAL REQUEST**

---

PROPOSAL REQUEST NO. \_\_\_\_\_

---

CONTRACT/PROJECT NAME: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_ PROJECT NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ BID NO.: \_\_\_\_\_

CHANGE REQUESTED BY: \_\_\_\_\_ DATE OF REQUEST \_\_\_\_\_

---

Please submit an itemized bid for changes in the Contract Sum and/or Time incidental to proposed modifications to the Contract Documents described herein.

**THIS IS NOT A CHANGE ORDER NOR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED HEREIN.**

---

Description: (Written description of the Work)

Attachments: (List attached documents that support description)

---

CONTRACTOR:

BY:

---

**PART E**

**FMB:010 - CONSTRUCTION CONTRACT  
FIELD CHANGE ORDER**

---

No. \_\_\_\_\_

Project No. \_\_\_\_\_ Bid No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_ Date: \_\_\_\_\_

Contract/Project Name: \_\_\_\_\_

Request By: \_\_\_\_\_

It is hereby requested, agreed, and authorized that the following field change(s) in the work required by the contract documents be made:

Description of the change:

Indicate drawings and/or specification affected by this change:

**CONDITIONS TO THIS CHANGE ORDER:**

It is hereby understood and agreed that the above described field change will not involve:

- (A) any change in the Contract Price, or
- (B) any change in the Contract Completion Time, or
- (C) any change that would be inconsistent with the scope of the Contract Documents.

**NOTE** If this change affects prior approvals for permits granted by any agency, written documentation of that agency's approval of the change is required prior to commencing this change.

CONTRACTOR ACCEPTANCE By: \_\_\_\_\_  
Contractor's Business Name

By: \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

CONSULTANT'S RECOMMENDATION (if applicable)

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
(Print Name of Consultant) Signature Date

TOWN APPROVAL AND AUTHORIZATION

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
(Print Name) Department Director or Designated Project Manager Signature Date

Copies to: Contractor (Top Copy)  
Project Consultant  
Project Sponsoring Department  
Contracts Management

**PART E**  
**FMB:011 - CONSTRUCTION CONTRACT**  
**CHANGE ORDER**

No.: \_\_\_\_\_

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$75,000, approval by the Town Council for expenditures over \$75,000).

CONTRACT/PROJECT NAME: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_ PROJECT NO.: \_\_\_\_\_

CONTRACT NO.: \_\_\_\_\_ BID NO.: \_\_\_\_\_

CHANGE REQUESTED BY: \_\_\_\_\_ DATE OF REQUEST: \_\_\_\_\_

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:  
(If you need space other than what has been provided, please attach additional sheets.)

Description: \_\_\_\_\_

Purpose of Change Order: \_\_\_\_\_

Attachments: (List documents supporting change) \_\_\_\_\_

| CHANGE IN CONTRACT PRICE:                                  | CHANGE IN CONTRACT TIME:                                             |
|------------------------------------------------------------|----------------------------------------------------------------------|
| Original Contract Price<br>\$ _____                        | Original Contract Time<br>_____ Calendar Days                        |
| Previous Change Order No. _____ to No. _____<br>\$ _____   | Net Change from previous Change Orders<br>_____ Calendar Days        |
| Contract Price prior to this Change Order<br>\$ _____      | Contract Time prior to this Change Order<br>_____ Calendar Days      |
| Net Increase (Decrease) of this Change Order<br>\$ _____   | Net Increase (Decrease) of this Change Order<br>_____ Calendar Days  |
| Contract Price with all approved Change Orders<br>\$ _____ | Contract Time with all approved Change Orders<br>_____ Calendar Days |

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

|                                      |                      |                                   |
|--------------------------------------|----------------------|-----------------------------------|
| RECOMMENDED:                         | ACCEPTED             | TOWN APPROVAL:                    |
| By: _____                            | By: _____            | By: _____                         |
| Consultant (if applicable)      Date | Contractor           | Finance Director (Under \$75,000) |
| By: _____                            | Date Accepted: _____ | Date                              |
| Department Director      Date        |                      | Approved: _____                   |
| Contracts Management                 | (CORPORATE SEAL)     | By: _____                         |
| APPROVED:                            |                      | Town Manager (Under \$75,000)     |
|                                      |                      | Date                              |
|                                      |                      | Approved: _____                   |
| Town Attorney      Date              |                      | By: _____                         |
|                                      |                      | Mayor, Town Council               |
|                                      |                      | (Over \$25,000)                   |
|                                      |                      | _____                             |



**PART E**  
**FMB:012 - CONSTRUCTION CONTRACT**  
**FIELD DIRECTIVE CHANGE**  
(1 of 2 Pages)

---

NO.: \_\_\_\_\_

Project No.: \_\_\_\_\_ Bid No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Contract/Project Name: \_\_\_\_\_

Contractor: \_\_\_\_\_

Request By: \_\_\_\_\_ Date of Request: \_\_\_\_\_

1. **DIRECTIVE**: The TOWN hereby directs and authorizes the following change(s) in the work required by the contract documents be made and the CONTRACTOR is hereby directed to proceed promptly. In the event that as a result of the CONTRACTOR accepting this Field Directive Change, there are determined to be change(s) in the Contract (1) scope, (2) cost, or (3) time. Subsequent to the CONTRACTOR finalizing the change(s) in the work required, and upon receipt and acceptance by the TOWN of a written and documented claim by the CONTRACTOR, such changes shall be incorporated in a Change Order which is subject to approval by the TOWN and the CONTRACTOR.
2. Description of the change(s):  
\_\_\_\_\_
3. Purpose or Intent of Field directive Change:  
\_\_\_\_\_
4. Attachments: (List documents supporting change)  
\_\_\_\_\_
5. Not-to-exceed limits applicable to this Field Directive Change:  
Unless specifically authorized by the TOWN by a written amendment to this Field Directive Change, the CONTRACTOR shall not exceed the following limits:  
  - A. Estimated not-to-exceed increase (decrease) in the contract price: \_\_\_\_\_
  - B. Estimated not-to-exceed increase (decrease) in completion time in calendar days: \_\_\_\_\_
6. **Claim(s) resulting from Field Directive Change**  
In the event that, as a result of the CONTRACTOR providing or performing the change(s) in the required construction work as set forth in this Field Directive Change, the CONTRACTOR determines that consideration should be given to (1) changing the contract scope, (2) increasing the CONTRACTOR'S compensation, or (3) increasing the contract time; the CONTRACTOR shall in accordance with the provisions of Articles 11, 12 and 13 of the Contract Document, submit a written claim to the TOWN requesting that a Change Order be executed incorporating changes in the (1) contract scope, (2) CONTRACTOR compensation, or (3) contract time as appropriate. Such a claim shall include documentation to support the claim.

**PART E**  
**FMB:012 - CONSTRUCTION CONTRACT**  
**FIELD DIRECTIVE CHANGE**  
(2 of 2 Pages)

---

It is understood and agreed by the TOWN in authorizing and by the CONTRACTOR in accepting this Field Directive Change that the following methods shall be used as the basis for considering the issuance of a contract Change Order or any CONTRACTOR claim arising out of this Field Directive Change:

A. Method of Determining Change in Contract Price:

- ☐ Time and Materials
- ☐ Unit Prices
- ☐ Cost plus fixed fee
- ☐ Other

B. Method of Determining Change in Contract Time:

- ☐ Contractor's Records
- ☐ Consultant's Records
- ☐ Other

7. ACCEPTANCE:

TOWN AUTHORIZATION

By \_\_\_\_\_  
Printed Name

By \_\_\_\_\_  
Signature

Title/Position \_\_\_\_\_

Date \_\_\_\_\_

CONTRACTOR AUTHORIZATION

By \_\_\_\_\_  
Contractor's Business Name

By \_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

Title/Position \_\_\_\_\_

Date \_\_\_\_\_

Corporate Seal (Affix if applicable, if not enter "None")

Copies Distributed to:

- ☐ Contractor (Signed Original)
- ☐ Director Project Sponsoring Department (Signed Original)
- ☐ Project Manager
- ☐ Consultant (if applicable)
- ☐ Contracts Management

**PART E**  
**FMB:013 - CONSTRUCTION CONTRACT**  
**ESTIMATE AND REQUISITION FOR PAYMENT**  
(1 of 3 Pages)

Date: \_\_\_\_\_

Bid No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_ Project No.: \_\_\_\_\_

Estimate No.: \_\_\_\_\_ (☐ Partial ☐ Final) for Period \_\_\_\_\_ to \_\_\_\_\_

Project Name: \_\_\_\_\_

PAYEE: Contractor's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City & State \_\_\_\_\_ ZIP CODE \_\_\_\_\_

Deliver Warrant: \_\_\_\_\_ Special Instructions - If Other than Mail \_\_\_\_\_

Attach a list of names and addresses of all Sub-Contractors, material men, or suppliers that are to be paid from this requisition.

**CONTRACTUAL FINANCIAL DATA**

Date of Original Contract: \_\_\_\_\_

Total Amount of Original Contract \$ \_\_\_\_\_

**PLUS:** Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Total Change Orders ADDING to cost of Contract . . . . . \$ \_\_\_\_\_

**LESS:** Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Change Order # \_\_\_\_\_ dated \_\_\_\_\_ \$ \_\_\_\_\_

Total Change Orders SUBTRACTING from cost of Contract . . . . . \$ \_\_\_\_\_

Less Total Unit Price Amount Not Used Per Final Field Measurements . . . . . \$ \_\_\_\_\_

**TOTAL OF ABOVE** \$ \_\_\_\_\_

**SPECIAL NOTE:** Any change orders which affect the contract not previously transmitted to the Town's Finance Office or to Contracts Mgmt must be properly executed and attached to this form before payment will be made.

Total Completed this Requisition \$ \_\_\_\_\_ Retainage \$ \_\_\_\_\_

Total Complete to Date (Column F, Sheet 3) . . . . . \$ \_\_\_\_\_

Retainage % (Percent required in Contract Documents) . . . . . \$ \_\_\_\_\_

Total Earned Less Retainage . . . . . \$ \_\_\_\_\_

Less Prior Payments Made . . . . . \$ \_\_\_\_\_

Less Liquidated Damages . . . . . \$ \_\_\_\_\_

Amount of this Requisition . . . . . \$ \_\_\_\_\_

Total Amount Paid to DBE's from above . . . . . \$ \_\_\_\_\_

**PART E**

**FMB:013 - CONSTRUCTION CONTRACT  
PROGRESS PAYMENT CERTIFICATION**  
(2 of 3 Pages)

---

Project Name: \_\_\_\_\_

Bid No.: \_\_\_\_\_  
Contract No.: \_\_\_\_\_  
Estimate No.: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Requisition Date: \_\_\_\_\_  
Period From: \_\_\_\_\_  
To: \_\_\_\_\_

I do hereby certify that all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed, and materials delivered. I further certify that all Sub-Contractors, material men or suppliers listed to be paid from this requisition will be paid prior to any future payment request for this particular project. Accordingly, I hereby certify the amount of \$\_\_\_\_\_ to the Town of Fort Myers Beach for a progress payment.

Signed: \_\_\_\_\_

Contractor

Date: \_\_\_\_\_  
(CORPORATE SEAL)

STATE OF FLORIDA )

COUNTY OF LEE )

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
means

of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_  
as

\_\_\_\_\_ of \_\_\_\_\_,

( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as  
identification.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and documents shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$\_\_\_\_\_ to the Town of Fort Myers Beach for progress payment.

Signed: \_\_\_\_\_  
Owner's Rep. Preparing Estimate

Signed: \_\_\_\_\_  
Department/Division Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PART E**  
**FMB:013 - CONSTRUCTION CONTRACT**  
**FINAL PAYMENT CERTIFICATION AND CONTRACTORS AFFIDAVIT**  
(3 of 3 Pages)

---

Project Name: \_\_\_\_\_

Bid No.: \_\_\_\_\_  
Contract No.: \_\_\_\_\_  
Estimate No.: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Requisition Date: \_\_\_\_\_  
Period From: \_\_\_\_\_  
To: \_\_\_\_\_

I do hereby certify that all items and amounts shown in the requisition for payment are correct and all work has been performed and materials delivered. This waiver and release of lien is conditioned upon payment of the consideration specified herein. It is not effective until said payment is received. I further certify that the consideration received in exchange for this final waiver and release of lien, when received is designated by the Contractor to be applied to the payment of subcontractors, material men, and suppliers who have furnished such services, labor, materials and supplies for which this request for payment is being made.

For warranty and guarantee start date, it is understood and agreed that the date of the final completion of the Work shall apply unless otherwise provided in the Certificate of substantial completion at which time the TOWN initiates occupancy or utilizes the Work or designated portion thereof for the use for which it is intended, which ever is first.

Signed: \_\_\_\_\_

Contractor

Date: \_\_\_\_\_

CORPORATE SEAL

STATE OF FLORIDA )

COUNTY OF LEE )

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
means

of ( ) physical presence or ( ) online notarization, personally appeared \_\_\_\_\_  
as

\_\_\_\_\_ of \_\_\_\_\_,

( ) who personally known to me of ( ) who has produced \_\_\_\_\_ as  
identification.

\_\_\_\_\_  
NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$\_\_\_\_\_ to the Town of Fort Myers Beach for final payment.

Substantial Completion Date: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Owner's Rep. Preparing Estimate

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Department/Division Director

Date: \_\_\_\_\_

APPROVAL RECOMMENDED

By: \_\_\_\_\_

Town Attorney

Date: \_\_\_\_\_



**PART E**  
**FMB:014 - CONSTRUCTION CONTRACT**  
**CERTIFICATE OF SUBSTANTIAL COMPLETION**  
(2 of 2 Pages)

---

Project No.: \_\_\_\_\_ Bid No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Contract/Project Name(s): \_\_\_\_\_

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

**RESPONSIBILITIES:**

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Project Inspector \_\_\_\_\_ Date \_\_\_\_\_,  
Name

Executed by OWNER'S REP. On

Date: \_\_\_\_\_,

CONTRACTOR accepts this Certificate of Substantial Completion on

Date: \_\_\_\_\_,

\_\_\_\_\_  
OWNER'S REPRESENTATIVE (Print)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
CONTRACTOR (Print)

By \_\_\_\_\_  
Signature

TOWN accepts this Certificate of Substantial Completion on

Date: \_\_\_\_\_,

\_\_\_\_\_  
DIRECTOR (Print)

By \_\_\_\_\_  
Signature

cc: Project Manager  
Town of Fort Myers Beach Sponsoring Department  
CONTRACTOR  
Contracts Management



**PART E**  
**FMB:015 - CONSTRUCTION CONTRACT**  
**WARRANTY**

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The undersigned party does hereby warranty and/or guarantee all work executed by the Contractor:

---

Name and Address of Contractor

---

Project Title

To be free from defects of materials and workmanship for a period of one year from

---

(Date of Substantial/Final Completion)

The undersigned party further agrees that it will, at its own expense, repair and replace all such defective work and all other work damaged by said defective work under this Warranty Guaranty. It is furthermore understood that the consideration for the giving of this warranty and/or guaranty is the requirement by the general conditions and specifications under which the contract was let that such warranty and/or guaranty would be given.

DATE \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By \_\_\_\_\_

Corporate Seal

Attest \_\_\_\_\_

**PART E**  
**FMB:016 - CONSTRUCTION CONTRACT**  
**OWNER'S REPRESENTATIVE CERTIFICATE OF FINAL COMPLETION**

---

EFFECTIVE DATE: \_\_\_\_\_

CONSULTANT (If Applicable): \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

TOWN PROJECT MANAGER: \_\_\_\_\_

This is a formal certification that based on observation of the Owner's Representative the above contractor has completed all work for the above project in conformance with the plans, specifications and provisions established by the Contract Documents.

I recommend that the work be accepted by the Town of Fort Myers Beach.

SIGNED: \_\_\_\_\_  
Owner's Representative

DATED: \_\_\_\_\_

cc: Project Manager  
Town of Ft. Myers Beach Sponsoring Department  
CONTRACTOR  
Contracts Management

**PART E**  
**FMB:017 - CONSTRUCTION CONTRACT**  
**DISADVANTAGED BUSINESS AND MINORITY BUSINESS ENTERPRISE**  
**PARTICIPATION CERTIFICATION**  
(If Applicable)

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Project No.: \_\_\_\_\_ Bid No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Contract/Project Name(s): \_\_\_\_\_

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This is a formal certification that the below list of Disadvantaged Business Enterprise Sub-Contractor(s) and amount(s) were utilized on the above project.

| <u>DBE SUB-CONTRACTOR</u> | <u>SUB-CONTRACTOR AMT</u> | <u>AMOUNT PAID</u> |
|---------------------------|---------------------------|--------------------|
| _____                     | _____                     | _____              |
| _____                     | _____                     | _____              |
| _____                     | _____                     | _____              |
| _____                     | _____                     | _____              |
| _____                     | _____                     | _____              |

Signed: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

cc: Project Manager  
Contracts Management

**PART E**  
**FMB:018 - CONSTRUCTION CONTRACT**  
**CONTRACTOR PERFORMANCE EVALUATION**  
(1 of 2 Pages)

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Contractor Name: \_\_\_\_\_

Project Manager: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_ Fax: \_\_\_\_\_

Town Project Manager: \_\_\_\_\_ Bid #: \_\_\_\_\_

Notice to Proceed Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

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SECTION 1  
MANAGEMENT AND ORGANIZATION OF THE WORK

- A. Effectiveness of supervision in scheduling the work, organizing construction operations and providing quality control. \_\_\_\_\_
- B. Negotiation of contract modifications, project recordkeeping and project documentation. \_\_\_\_\_
- C. Working relationship with department personnel responsible for administration of the contract requirements and inspection of the work. \_\_\_\_\_

SECTION 1 TOTAL:

SECTION 1 AVERAGE:

SECTION 2  
WORK PERFORMANCE

- A. Prosecution of the work. \_\_\_\_\_
- B. Work effort and product quality control. \_\_\_\_\_
- C. Scheduling and controlling of construction activities to minimize the impact on traffic through the construction zone, access to adjacent property and protection of the general public. \_\_\_\_\_
- D. Sufficiency of appropriate equipment to prevent downtime and safe production of a quality product. \_\_\_\_\_
- E. Compliance with E.E.O., labor, training and on-site safety. \_\_\_\_\_
- F. Interface with utility companies in adjusting, relocating or installing facilities concurrent with construction. \_\_\_\_\_
- G. Final completion of the project. \_\_\_\_\_

SECTION 2 TOTAL:

SECTION 2 AVERAGE:

**PART E**  
**FMB:018 - CONSTRUCTION CONTRACT**  
**CONTRACTOR PERFORMANCE EVALUATION**  
(2 of 2 Pages)

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**RATING SCALE**

| RANGE | RATING                  | DESCRIPTION                                                                                                                                                         |
|-------|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0 - 1 | Completely Insufficient | Uncorrected or uncorrectable problems                                                                                                                               |
| 2 - 3 | Poor                    | Problems and errors resulting in excessive effort, delay or actual damages to Town or others; some effort made to remedy problems with active participation by Town |
| 4 - 5 | Below Expectations      | Minor but consistent problems usually corrected after identification                                                                                                |
| 6 - 7 | Acceptable              | May encounter rare problems which are quickly remedied                                                                                                              |
| 8 - 9 | Above Expectations      | Consistently problem-free, complete and of high quality                                                                                                             |
| 10    | Outstanding             | Excellent performance with service often above that specifically defined                                                                                            |

**PROJECT MANAGER'S REMARKS SUPPORTING GRADES**

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(Attach Additional Remarks)

Submitted \_\_\_\_\_  
Project Manager Date

**CONTRACTOR'S COMMENTS**

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(Attach Additional Remarks)

Submitted \_\_\_\_\_  
Contractor Signature Date

Approved \_\_\_\_\_  
Department/Division Director Date





TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID NORTH SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 7,030<br>(Estimated)  | \$7.25                | \$50,967.50    |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 2,515<br>(Estimated)  | \$2.65                | \$6,664.75     |
| <b>1C. Dune Sunflower</b>    | EA   | 10,196<br>(Estimated) | \$2.65                | \$27,019.40    |
| <b>1D. Dune Panic Grass</b>  | EA   | 11,090<br>(Estimated) | \$2.65                | \$29,388.50    |
| <b>1E. Railroad Vine</b>     | EA   | 2,919<br>(Estimated)  | \$7.25                | \$21,162.75    |
| <b>2. Adjustments</b>        | EA   | 10                    | \$500.00              | \$5,000.00     |
| <b>3. Warranty</b>           | LS   | 1                     | \$4,000.00            | \$4,000.00     |
|                              |      |                       | <b>Base Bid Total</b> | \$144,202.90   |

Name of Bidder: EarthBalance Corporation  
(This form to be returned)





**TOWN of FORT MYERS BEACH**

**DUNE PLANTINGS ALTERNATIVE NORTH SEGMENT HAZARD MITIGATION PLAN**

| Item                                          | Unit | Quantity              | Unit Price | Extended Price |
|-----------------------------------------------|------|-----------------------|------------|----------------|
| <b>1. Dune Vegetation</b>                     |      |                       |            |                |
| <b>1A. Bitter Panic Grass (2 inch)</b>        | EA   | 10,414<br>(Estimated) | \$1.70     | \$17,703.80    |
| <b>1B. Sea Oats (2 inch)</b>                  | EA   | 10,386<br>(Estimated) | \$1.70     | \$17,656.20    |
| <b>1C. Railroad Vine (2 inch)</b>             | EA   | 2,722<br>(Estimated)  | \$1.70     | \$4,627.40     |
| <b>1D. West Coast Dune Sunflower (2 inch)</b> | EA   | 9,678<br>(Estimated)  | \$1.70     | \$16,452.60    |
| <b>Adjustment</b>                             | EA   | 10                    | \$500.00   | \$5,000.00     |
| <b>Warranty</b>                               | LS   | 1                     | \$4,000.00 | \$4,000.00     |
|                                               |      |                       |            |                |

**Note: This bid form is to establish unit pricing for 2-inch plant sizes as required by the Town's Hazard Mitigation Grant for Dune Vegetation. Pricing for 2-inch plants will not be considered in the selection process.**

Name of Bidder: EarthBalance Corporation

(This form to be returned)



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID CENTRAL SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 2,902<br>(Estimated)  | \$7.25                | \$21,039.50    |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 6,033<br>(Estimated)  | \$2.65                | \$15,987.45    |
| <b>1C. Dune Sunflower</b>    | EA   | 21,580<br>(Estimated) | \$2.65                | \$57,187.00    |
| <b>1D. Dune Panic Grass</b>  | EA   | 24,712<br>(Estimated) | \$2.65                | \$65,486.80    |
| <b>1E. Railroad Vine</b>     | EA   | 5,917<br>(Estimated)  | \$7.25                | \$82,898.25    |
| <b>2. Adjustments</b>        | EA   | 20                    | \$500.00              | \$10,000.00    |
| <b>3. Warranty</b>           | LS   | 1                     | \$4,000.00            | \$4,000.00     |
|                              |      |                       | <b>Base Bid Total</b> | \$216,599.00   |

Name of Bidder: EarthBalance Corporation

(This form to be returned)



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID SOUTH SEGMENT

| Item                         | Unit | Quantity              | Unit Price            | Extended Price |
|------------------------------|------|-----------------------|-----------------------|----------------|
|                              |      |                       |                       |                |
| <b>1. Dune Vegetation</b>    |      |                       |                       |                |
| <b>1A. Sea Oats (1-gal)</b>  | EA   | 1,969<br>(Estimated)  | \$7.25                | \$14,275.25    |
| <b>1B. Sea Oats (4 inch)</b> | EA   | 4,096<br>(Estimated)  | \$2.65                | \$10,854.40    |
| <b>1C. Dune Sunflower</b>    | EA   | 14,653<br>(Estimated) | \$2.65                | \$38,830.45    |
| <b>1D. Dune Panic Grass</b>  | EA   | 16,780<br>(Estimated) | \$2.65                | \$44,467.00    |
| <b>1E. Railroad Vine</b>     | EA   | 4,018<br>(Estimated)  | \$7.25                | \$29,130.50    |
| <b>2. Adjustments</b>        | EA   | 15                    | \$500.00              | \$7,500.00     |
| <b>3. Warranty</b>           | LS   | 1                     | \$4,000.00            | \$4,000.00     |
|                              |      |                       | <b>Base Bid Total</b> | \$149,057.60   |

Name of Bidder: EarthBalance Corporation

(This form to be returned)



**TOWN of FORT MYERS BEACH**

**ESTERO ISLAND DUNE PLANTINGS**

**BASE BID**

**GRAND TOTAL**

| Segment        | Extended Price |
|----------------|----------------|
| North          | \$144,202.90   |
| Central        | \$216,599.00   |
| South          | \$149,057.60   |
| Base Bid Total | \$509,859.50   |

Name of Bidder: EarthBalance Corporation

(This form to be returned)

**FORT MYERS BEACH DUNE MANAGEMENT PLAN**

**August 9, 2022**

**INTRODUCTION**

The Town of Fort Myers Beach proposes the Dune Management Plan (Plan) to incorporate beach and dune vegetation management activities within the Estero Island Shore Protection Project (Project). The Town and Florida Department of Environmental Protection (FDEP) successfully implemented such a Plan with the 2012 original shore protection project. That plan was permitted separate from the beach project under the Coastal Construction Control Line permit process, LE 1361 AW (Appendix 1).

The Plan shall include new dune plantings, existing dune height reduction/replanting, vegetation trimming and maintenance, and installation of rope and bollards. The Plan is an incentive for private property owners to sign easements for the Project. The activities outlined in this document are normally strictly prohibited by the Town Land Development Code. However, the Plan allows property owners who sign an easement to have greater control over their beach and dune vegetation than property owners who do not sign an easement. Increasing the number of properties that sign easements will also increase the likelihood of long-term stability and success of the Project by reducing gaps in the beach fill area. The Plan is consistent with the Comprehensive Plan's of Lee County and Fort Myers Beach which both require dune plantings in association with beach nourishment. It is noted that historically the beachfront property owners have expressed a strong reluctance to sign easements that included new vegetation without a mechanism to maintain it.

All reductions in dune height and vegetation area that take place will be more than offset by the additional plantings of beach and dune vegetation in association with the renourishment project. All dunes that are reduced in height will be replanted so there will be no net loss in vegetated area. The net impact will be an increase in the number and area of native salt tolerant vegetation and dunes.

Areas of existing beach vegetation and vegetation planted for the nourishment project will be hereafter referred to as Managed Beach Zones (MBZ). Ultimately, the Plan will serve as assurance to property owners that they will be able to manage their plantings under certain prescribed criteria outlined in this Plan. The Plan will provide an incentive to encourage property owners to enter into a temporary construction easement with the Town for the Project.

**COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE**

The following sections from the adopted Town of Fort Myers Beach Comprehensive Plan and Land Development Code (LDC) provide support and guidance for the Plan.

- **OBJECTIVE 5-D BEACHES AND DUNES** — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches

to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

- POLICY 5-D-1 ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- OBJECTIVE 6-E DUNES AND BEACHES – Protect and improve dunes and beaches as recreation areas, valuable habitat, protection from storms, and areas of high scenic and aesthetic value. The effect of the Town’s efforts may be a noticeable transition from today’s manicured and compacted beach towards a naturally appearing and functioning beach. This transition will be accomplished through education, regulation, and assistance in physical restoration activities.
  - POLICY 6-E-3 The Town will implement the following measures to promote the restoration of beach and dune systems:
    - Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.
    - Require the use of indigenous plant species for public and private dune restoration or renourishment projects.
  - LDC Section 14-8
    - In areas where the beach has experienced erosion, on public land or with the consent of the owner, the Town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.
    - In areas that have not experienced erosion, the Town will encourage the establishment of a dune system but will not require same.

## **MBZ PLANTING GUIDANCE AND CRITERIA**

### **Property Owner Participation**

The long-term success of this program is dependent on continuity of each MBZ and the collective efforts of the program. In order for staff and partnering agencies to monitor the long-term progress of the program and for the Town to have a reasonable assurance of success after commitment of funds; it is essential to have a pledge from each property owner to maintain the planting in at least a minimum condition. If a property owner wishes to be able to control the nature and height of vegetation and/or the height of dunes, as described in the plan, the property owner will be required to enter into a Memorandum of Agreement (MOA) with the Town for their MBZ and adhere to the program parameters. Each MOA will be kept on file at the Town to effect compliance with the time lines, terms,

and conditions of the program for current and future property owners. Each MOA will contain at a minimum:

- Property owner name, address, STRAP, number, and signature,
- Aerial photograph (available from [www.leepa.org](http://www.leepa.org) at no charge), plat, or survey of the property,
- Scaled diagram of the area to be planted and including pedestrian walkthroughs or dune walkovers (Town staff can assist by utilizing GPS mapping),
- Plant selection including species, sizes, and quantities,
- Layout and design of any proposed rope and bollard systems,
- Location of any proposed temporary irrigation,

If, at any time Town inspections reveal that the MBZ is found to be non-compliant with the MOA, then the property owner may be required to bring the MBZ into compliance or reimburse the Town for the cost of the materials and/or installation.

Temporary irrigation lines may be installed along the landward side of the dune only and must be removed once the plants have become established. Any watering necessary along the seaward side of the dune may be done by hand on an “as needed” basis.

#### **Without Existing Vegetation**

A MBZ that does not have existing vegetation shall be planted as follows.

##### **Managed Beach Zone Alternative #1 “Sea Oat Dune”**

| <u>Common name</u> | <u>Scientific name</u>                             | <u>Percentage</u> |
|--------------------|----------------------------------------------------|-------------------|
| Sea oats           | ( <i>Uniola paniculata</i> )                       | 70%               |
| Dune sunflower     | ( <i>Helianthus debilis</i> var. <i>vestitus</i> ) | 15%               |
| Dune panic grass   | ( <i>Panicum amarum</i> )                          | 10%               |
| Railroad vine      | ( <i>Ipomoea pes-caprae</i> )                      | 5%                |

##### **Managed Beach Zone Alternative #2 “Mixed Dune”**

| <u>Common name</u> | <u>Scientific name</u>                             | <u>Percentage</u> |
|--------------------|----------------------------------------------------|-------------------|
| Sea oats           | ( <i>Uniola paniculata</i> )                       | 50%               |
| Dune sunflower     | ( <i>Helianthus debilis</i> var. <i>vestitus</i> ) | 20%               |
| Dune panic grass   | ( <i>Panicum amarum</i> )                          | 10%               |
| Railroad vine      | ( <i>Ipomoea pes-caprae</i> )                      | 10%               |

##### **Managed Beach Zone Alternative #3 “Low Dune”**

| <u>Common name</u> | <u>Scientific name</u>                             | <u>Percentage</u> |
|--------------------|----------------------------------------------------|-------------------|
| Dune panic grass   | ( <i>Panicum amarum</i> )                          | 40%               |
| Dune sunflower     | ( <i>Helianthus debilis</i> var. <i>vestitus</i> ) | 35%               |
| Sea oats           | ( <i>Uniola paniculata</i> )                       | 15%               |
| Railroad vine      | ( <i>Ipomoea pes-caprae</i> )                      | 10%               |



### **With Existing Vegetation**

Town staff will survey properties where dune vegetation already exists in order to determine if improvements can be made to the dune system through additional plantings. “Vegetation” will be considered to be greater than 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Coconut palms, Floratam, and any non native vegetation will not be counted towards the 20% coverage. The survey will also record areas of no vegetation and the total length of those areas on each property and record those as “No Vegetation”. Areas that have between 1% and 19% coverage of native salt tolerant dune vegetation will be recorded as “Additional Vegetation Needed”. The Town will only survey the actual outer vegetation line in areas where the vegetation is 10 foot deep or greater. If the vegetation area is less than 10 foot deep (measured perpendicular to the shoreline) it will be recorded as “additional vegetation needed”. On properties that are determined to have less than 75% of the beach-front property width vegetated with beach vegetation, the Town will determine approximately how many feet of vegetation would need to be planted to reach the 75% criteria. The Town will determine which properties have greater than 75% linear beach front footage of property that have vegetation and record those as “no vegetation needed”. The ArcMap 9.0 compatible files with metadata (geo-database or shapefiles) will list “No Vegetation”, “Additional Vegetation Needed” or “Vegetation” and the approximate linear footage of each segment surveyed.

Since entering into an MOA for their MBZ will give property owners ability to control dune vegetation and limit their spread, this privilege will also be extended to property owners who only require additional plantings to bring the MBZ up to design specifications. The planted MBZ should also be planted to connect to adjacent MBZ plantings or existing dune vegetation on neighboring properties. The MBZ boundaries will be mapped using sub-meter GPS systems and this information will be entered into the Town’s GIS system. This information will be utilized for monitoring purposes.

### **Planting Techniques**

Depth of planting will vary between plant species. A water absorbing polymer gel product that has been hydrated according to label directions will be placed in the hole prior to planting. All plants will be fertilized with a controlled slow release granular type fertilizer consistent with the Town’s fertilizer ordinance and watered-in at the time of installation. Plant spacing will average 12” to 18” on plant center. This will allow more sand to blow toward the back where plants are densest. Plants will be staggered in adjacent rows to prevent aisles (lined up spaces between plants), which may erode.

### **Dune Banking**

In order to offset the impacts of minor dune management activities including vegetation trimming and dune lowering, the Town will track the overall gain in beach vegetation that will result from the plantings associated with the beach nourishment project. The new planting areas will offset any minor impacts to beach vegetation or dunes as described in this plan. New planting areas will fill in areas where no vegetation exists and create credits to be used against any debits for significant impacts to the dune system.

## **MBZ Planting Maintenance**

### **MBZ Survival and Health**

The Town will require the dune contractor to maintain at least an 80% survival rate to be evaluated 90 days after planting. If the planting survival rate falls below 80% due to improper installation or inadequate maintenance, the dune contractor will replace the plantings to reach the 80% criteria at *no cost to the property owner*.

### **Nuisance Vegetation Control**

The Town recognizes that some plants have characteristics such as spines and thorns which make them unappealing. Other plants may tend to dominate planted vegetation rapidly and may out compete the planted MBZ. Property owners may remove the plants listed below. Town staff will assist property owners with recognition and suggested control methods for these species. It is not anticipated that FDEP field permits will be necessary for control or removal of these plants since the entirety of each planting area is assumed to mitigate for the loss of any plants. Property owners will be authorized to control all Category 1 and 2 exotic invasive plants.

Species designated for homeowner control on the sandy beach and in newly planted MBZs:

| <u>Common name</u> | <u>Scientific name</u>             |
|--------------------|------------------------------------|
| Nicker bean        | ( <i>Caesalpinia bonduc</i> )      |
| Sand spur          | ( <i>Cenchrus spp.</i> )           |
| Coin vine          | ( <i>Dalbergia ecastaphyllum</i> ) |
| Beach naupaka      | ( <i>Scaevola sericea</i> )        |

Species designated for homeowner control on the sandy beach, in newly planted MBZs, and in existing dune vegetation:

| <u>Common name</u> | <u>Scientific name</u>        |
|--------------------|-------------------------------|
| Nicker bean        | ( <i>Caesalpinia bonduc</i> ) |
| Sand spur          | ( <i>Cenchrus spp.</i> )      |
| Beach naupaka      | ( <i>Scaevola sericea</i> )   |

### **Raking**

Raking will be allowed either within two feet of the MBZ or along a boundary mapped by the Town. The Town strongly encourages hand raking only within 10 feet of the MBZ. For MBZ participating properties only, the 10-foot buffer described in LDC Sec. 14-6 will be reduced to two feet or along the mapped boundary. The boundary for raking can either be mapped by sub-meter GPS systems or by rope and bollard systems. All raking methodologies must be in accordance with Town and State regulations, particularly with regard to sea turtle conservation. Beach raking which results in damage or destruction to sea turtle nests or nesting habitat will result in enforcement action. During the sea turtle nesting season, all marked marine turtle nests shall be avoided; and all raking within 10 feet of dune vegetation may be completed by hand labor/tools only.

### Rope and Bollard Systems

Rope and bollard systems (RBS) are used by property owners to designate their ownership lines, protect vegetation, and to prevent public trespass onto their property. RBS systems may not be placed more than one foot seaward of the toe of the most frontal dune line and may not be installed during the nesting season. *However, RBS may not be used to impede public lateral beach access on public beach under Chapter 161 F.S.* RBS would provide assurance to property owners that they would be able to retain control of their beach for the purpose of raking, which is a very common practice on Fort Myers Beach. However, RBS pose a legitimate threat to the health and nesting success of sea turtles and their hatchlings by posing a vertical obstruction. All rope and post fencing may be a single strand of rope at a minimum of three (3) feet in height off the ground, with posts spaced at least seven (7) feet apart. All posts must be installed outside of sea turtle nesting season. Posts may not be seated in the sand with concrete.

Property owners who have signed temporary construction easements to participate in the beach nourishment project will be able to install RBS by right. Property owners who do not sign an easement and who decline to participate in the project may only install RBS by Special Exception with approval contingent upon approval by Town Council in a public hearing. A Special Exception is the only method of approval elsewhere on Fort Myers Beach seaward of the 1978 Coastal Construction Control Line.

### Vegetation Trimming

The Town recognizes that property owners may have a concern with the height of dunes plants or their MBZ and this concern has led to many areas on the beaches that are barren of all vegetation. A balanced approach that takes into account riparian views and nurture of the MBZ is critical to encouraging property owner participation and giving them a sense of control of their MBZ.

A vegetation removal permit must be applied for prior to the first MBZ trimming event. This special permit will be good for three years at no cost to the property owner. The vegetation removal permit may be issued at the time of MBZ planting to reduce processing time and effort for Town staff and the property owner. For the purposes of the Plan, sea grapes (*Coccoloba uvifera*) shall be subject to all existing state statutes and will be managed separately from MBZs and are not considered a part of the Plan. Sea grape trees are also listed as protected plants in the Town Land Development Code and permits may be required for trimming or removal. MBZ trimming must meet the following criteria:

- Trimming will not be permitted on Town, County or State property.
- Trimming in the MBZ shall not reduce the overall height of the individual plant to less than four feet above the substrate.
- Dead stems and panicles from the previous year may be removed.
- Post-trimmed appearance of the vegetation should not be hedged or flattened but will emulate a natural growth pattern. This may be accomplished by alternately trimming portions of the vegetation combined with trimming some branches of individual plants while leaving other branches longer.

### Dune Height Modification

MBZs, by their nature, can be expected to accumulate sand and build a dune. In fact, a healthy, functioning dune would be at least 18"-24" elevated over surrounding natural grade. This height is important for vigorous root establishment and nutrient cycling. However, there are potentially local conditions which may cause dunes to build significantly higher. The shoreline of Estero Island is an undulating shore with a double crescent shape which can cause some areas to receive more wind and sand transport than others. Some existing dunes may often directly face seasonal prevailing winds which generate the highest Aeolian transport, such as dunes that face northwest and are subject to stronger winter winds. Due to natural recruitment of dune vegetation and historical beach raking practices, some of these existing dunes may align at an angle to the shoreline. Placement of newly planted MBZs may also result in additional areas which face seasonal prevailing winds which, combined with site specific planting strategies may also allow for differential dune growth; some dunes may grow larger than others on neighboring properties. The potential for these situations to impair riparian views may cause enough reticence with property owners that they may not choose to participate in the program. Therefore it is important to allow property owners to control their dune height to some extent. The intent of allowing dune lowering is to give property owners a mechanism to control the height of the dune without creating significant impacts to the dune and beach by conserving sand within the system. However, property owners will be required to place the sand landward of the existing dune and create parallel dune ridges where feasible or it may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.

MBZ dune heights may be lowered according to the following criteria:

- An initial dune lowering event may utilize small mechanized equipment such as tractors with buckets and Bobcat style tracked vehicle provided that the tire or ground pressure of the vehicle does not exceed 10psi with special approval by Town staff.
- Follow up dune lowering events may only utilize hand tools (e.g. shovels).
- When dunes are lowered, the slope from surrounding natural grade to the MBZ grade may not be exceeded by creation of an escarpment.
- Sand may not be removed from the beach area. Site specific conditions will determine where sand may be located to within the immediate area. Sand may be placed landward of the dune to create parallel dune systems where feasible to keep sand within the dune system. Alternatively, sand removed from the MBZ may be spread within 50 feet of the surrounding beach where it is not feasible to place the sand landward of the existing dune.
- Sand which is placed landward to create parallel dunes will be spread into a layer no more than 4" deep to allow salt tolerant vegetation an opportunity to reemerge.
- Where dunes are temporarily disturbed, the area will be allowed to naturally recruit and monitored to ensure 20% coverage (e.g. Braun-Blanquet) of native salt tolerant dune vegetation such as sea oats, railroad vine, dune sunflower, and bitter panicum. Any area where dune lowering take places that does not meet the 20% coverage within 6 months will be replanted with native salt tolerant vegetation such as

described above. Other species of native salt tolerant vegetation such as seashore dropseed may be substituted with approval of Town and FDEP.

- Dunes may not be lowered to 18” or less to ensure a healthy, functioning MBZ/dune system.
- A free permit will be required for each dune lowering event from the Town to ensure that techniques are used that minimizes impacts to the beach. Upon consent of the property owner, the Town may act as an agent to acquire any necessary CCCL permits from the FDEP. Typically, these permits are limited to no more than 18” of lowering per event for planted MBZ’s.
- Dune height modifications shall occur outside of sea turtle nesting season and shorebird nesting season (cumulatively March 1 to October 31).
- When possible, any native salt tolerant vegetation that may be disturbed by dune lowering shall be transplanted.



# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

## CONSOLIDATED JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

### PERMITTEE:

Town of Fort Myers  
2525 Estero Boulevard  
Fort Myers Beach, FL, 33931  
[chadd@fmbgov.com](mailto:chadd@fmbgov.com)

### AGENT:

Coastal Engineering Consultants  
28421 Bonita Springs Boulevard  
Bonita Springs, FL, 34135  
[mpoff@cecifl.com](mailto:mpoff@cecifl.com)

### PERMIT INFORMATION:

Permit Number:0413684-001-JC

Project Name: Estero Island Nourishment  
Project

County: Lee

Issuance Date: January 18, 2023

Expiration Date: January 18, 2038

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### REGULATORY AUTHORIZATION:

This permit is issued under the authority of Chapter 161 which includes consideration of the provisions contained in Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

### PROJECT DESCRIPTION:

The project is to periodically nourish approximately 6.5 miles of critically eroding gulf shoreline along Estero Island in Lee County. The project includes sand placement in three different segments North Fill Segment (Terminal Groin- R-187), which is contiguous with the Central Fill Segment (R-187 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R- 207) utilizing offshore sand sources. Upland sand sources will also be used for hot-spot maintenance and post-storm recovery.

The design template for the North and Central Fill Segments includes a 200H:1V beach berm slope to a maximum elevation set at + 3.2 feet NAVD88, a 15H:1V seaward slope from the berm crest to mean low water (MLW), and thence features a seaward slope of 20H:1V below MLW. The design template for the South Fill Segment includes a 200H:1V beach berm slope to a maximum berm crest elevation set at +3.2 feet NAVD88 from R-203 to R-205 and + 1.3 feet NAVD88 from R-205 to R-207, a 15H:1V seaward slope from the berm crest to mean low water (MLW), and thence features a seaward slope of 20H:1V below MLW.

#### **PROJECT LOCATION:**

The beach placement site is located in Lee County, Sections 19, 23, 24, 28, 29, 30, and 33, Township 46 South, Range 23 and 24 East, 300 feet north of Department monument R-175 to R-207. The nearshore borrow area is located within Matanzas Pass ebb shoal complex, Gulf of Mexico, Class III Waters. The offshore borrow area is located 30 nautical miles offshore of Estero Island on the Outer Continental Shelf (OCS).

#### **PROPRIETARY AUTHORIZATION:**

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253, Chapter 18-21 and Section 62-330.075, F.A.C., and the policies of the Board of Trustees.

The Department has also determined that the nourishment activity qualifies for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands.

#### **COASTAL ZONE MANAGEMENT:**

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

#### **WATER QUALITY CERTIFICATION:**

This permit constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

#### **OTHER PERMITS:**

Authorization from the Department does not relieve you from the responsibility of obtaining other permits (Federal, State, or local) that may be required for the project. When the



Department received your permit application, a copy was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps will issue their authorization directly to you, or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date that your application was received by the Department, contact the nearest Corps regulatory office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.

**AGENCY ACTION:**

The above named Permittee is hereby authorized to construct the work that is outlined in the Project Description and Project Location of this permit and as shown on the approved permit drawings, plans and other documents attached hereto. This agency action is based on the information submitted to the Department as part of the permit application, and adherence with the final details of that proposal shall be a requirement of the permit. **This permit and authorization to use sovereign submerged lands are subject to the General Conditions, General Consent Conditions, Specific Conditions, and attached Plans which are a binding part of this permit and authorization.** Both the Permittee and their Contractor are responsible for reading and understanding this permit (including the permit conditions and the approved permit drawings) prior to commencing the authorized activities, and for ensuring that the work is conducted in conformance with all the terms, conditions and drawings.

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**GENERAL CONDITIONS:**

1. All activities authorized by this permit shall be implemented as set forth in the project description, permit drawings, plans and specifications approved as a part of this permit, and all conditions and requirements of this permit. The permittee shall notify the Department in writing of any anticipated deviation from the permit prior to implementation so that the Department can determine whether a modification of the permit is required pursuant to Rule 62B-49.008, F.A.C.
2. If, for any reason, the permittee does not comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department and the appropriate District office of the Department with a written report containing the following information: a description of and cause of noncompliance; and the period of noncompliance, including dates and times; and, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.
3. This permit does not eliminate the necessity to obtain any other applicable licenses or permits that may be required by federal, state, local or special district laws and regulations. This permit is not a waiver or approval of any other Department permit or authorization that may be required for other aspects of the total project that are not addressed in this permit.

4. Pursuant to Sections 253.77 and 373.422, F.S., prior to conducting any works or other activities on state-owned submerged lands, or other lands of the state, title to which is vested in the Board of Trustees, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees shall not be considered received until it has been fully executed.
5. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
6. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee. The issuance of this permit does not convey any vested rights or any exclusive privileges.
7. This permit or a copy thereof, complete with all conditions, attachments, plans and specifications, modifications, and time extensions shall be kept at the work site of the permitted activity. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
8. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel with proper identification and at reasonable times, access to the premises where the permitted activity is located or conducted for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department and to have access to and copy any records that must be kept under conditions of the permit; to inspect the facility, equipment, practices, or operations regulated or required under this permit; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.
9. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall electronically submit to the Department, by email at [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us), and the appropriate District office of the Department a written notice of commencement of construction indicating the actual start date and the expected completion date and an affirmative statement that the permittee and the contractor, if one is to be used, have read the general and specific conditions of the permit and understand them.
10. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, shipwreck remains or anchors, dugout canoes or other physical remains that could be associated with Native American cultures, or early Colonial or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the immediate vicinity of

such discoveries. The permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at (850)245-6333 or (800)847-7278, as well as the appropriate permitting agency office. Project activities shall not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, F.S.

11. Within 30 days after completion of construction or completion of a subsequent maintenance event authorized by this permit, the permittee shall electronically submit to the Department, by email at [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us), and the appropriate District office of the Department a written statement of completion and certification by a registered professional engineer. This certification shall state that all locations and elevations specified by the permit have been verified; the activities authorized by the permit have been performed in compliance with the plans and specifications approved as a part of the permit, and all conditions of the permit; or shall describe any deviations from the plans and specifications, and all conditions of the permit. When the completed activity differs substantially from the permitted plans, any substantial deviations shall be noted and explained on as-built drawings electronically submitted to the Department, by email at [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us).

**GENERAL CONSENT CONDITIONS:**

1. Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
2. Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
4. Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
5. Construction, use or operation of the structure or activity shall not adversely affect any species that is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
7. Structures or activities shall not create a navigational hazard.
8. Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.
9. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident or fire.
10. Structures or activities shall be constructed, operated and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

#### **SPECIFIC CONDITIONS - ADMINISTRATIVE**

1. Pursuant to Chapter 161.141, F.S., prior to construction of the beach nourishment the Board of Trustees may need to establish the line of mean high water for any area affected by this project that does not already have an Erosion Control Line (ECL). This is required to establish the boundary line between sovereignty lands of the state bordering on the Gulf of Mexico and the upland properties not held by the State.
2. Unless otherwise specified in the specific conditions of this permit all submittals required herein (e.g., progress reports, water-quality reports etc.) shall be electronically submitted (via e-mail, file transfer site or hard drive). Email submittals shall be sent to the Department's JCP Compliance Officer (e-mail address: [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us)). If a file transfer site is used, a link shall be e-mailed to the JCP Compliance Officer. If data are too large to be submitted via e-mail or file transfer site, the Permittee may submit the data via an external hard drive, provided by the Permittee. The external hard drive shall be mailed to:

Department of Environmental Protection  
Office of Resilience and Coastal Protection  
Attn: JCP Compliance Officer  
2600 Blair Stone Road, Mail Station 3544  
Tallahassee, FL 32399-2400

3. If the Permittee is unable to complete two maintenance events within the 15-year life of the permit, the Permittee may request (prior to the expiration date of the permit), and the Department shall grant, an extension of the permit expiration date in order to allow completion of the second maintenance event. The extension would be documented through an administrative modification.

#### **SPECIFIC CONDITIONS - PRIOR TO CONSTRUCTION**

4. ***Pre-Construction Submittals.*** For each construction event under this permit, no work shall commence until the Permittee has satisfactorily submitted all information noted in this condition. At least 45 days prior to commencement of construction, the Permittee shall submit the following items for review by the Department. Unless otherwise notified by the Department within 15 days of receipt of all information specified below, the Permittee shall assume the submittals are satisfactory:
  - a. An electronic copy of detailed ***final construction plans and specifications*** for all authorized activities. The plans and specifications must be consistent with the project description, conditions and approved drawings of this permit. These documents shall be certified by a professional engineer (P.E.), who is registered in the State of Florida. The Permittee shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes that would require a permit modification. The plans and specifications shall include a description of the dredging and construction methods to be utilized and drawings and surveys that show all biological resources and work spaces (e.g., anchoring areas, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project.
  - b. ***Turbidity Monitoring:*** In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit.
  - i. ***Qualifications.*** The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions;

- ii. A ***Scope of Work*** for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions;
- iii. ***Draft turbidity sampling map.*** An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 32)
- c. **Fish & Wildlife Monitoring Qualifications:** To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors are capable of meeting the requirements in Specific Conditions 23 through 24. This documentation shall include the following:
  - i. ***Marine Turtle Protection:*** A list of the names and FWC permit numbers for the Marine Turtle Permit Holders.
  - ii. ***Shorebird Protection:*** A list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience, proposed locations of shorebird survey routes, and the locations of travel routes.
- d. Documentation from the U.S. Fish and Wildlife Service (FWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a Biological Opinions (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, a permit modification may be required prior to construction to include those additional conditions.
- e. Documentation confirming authorization for construction activities within the **Little Estero Island Critical Wildlife Area (CWA)** from the Florida Fish and Wildlife Conservation Commission (FWC) pursuant to Specific Condition 27.
- f. Documentation confirming that the approved upland source is currently producing the quantity and quality of the authorized sand product required for the upcoming event, as required by Specific Condition 7.
- g. ***Pre-Construction Conference.*** After all items required by a through f above have been submitted to the Department, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring



requirements of this permit with the Permittee's contractors, the engineer of record, those responsible for turbidity monitoring, those responsible for protected species monitoring, staff representatives of the Fish and Wildlife Conservation Commission (FWC) and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

DEP, JCP Compliance Officer  
e-mail: [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us)

FWC Imperiled Species Management Section  
e-mail: [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com)

FWC, Regional Biologist  
Contact list: <http://myfwc.com/conservation/you-serve/wildlife/shorebirds/>

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of each dredging event, the Permittee shall ensure that notification is sent to the FWC, at [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com), indicating the actual start date and the expected completion date. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

## **SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES**

5. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storing, stockpiling or accessing equipment on, in, over or through areas with benthic biological resources (including beds of submerged aquatic vegetation [SAV], wetlands, oyster reefs or hardbottom) is prohibited unless it occurs within a work area or ingress/egress corridor that is specifically approved by this permit and is shown on the approved permit drawings. Anchoring or spudding of vessels and barges within areas with benthic biological resources is also prohibited.



6. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
7. Prior to each construction event that will use upland sand, the Permittee (or Permittee's Representative) shall submit documentation confirming that the approved upland sand source(s) is currently producing both the quantity and quality of the approved sand product(s) to meet the needs of the upcoming event. The documentation shall be signed and sealed by a Registered Professional in the State of Florida (i.e., a P.E. or P.G.) and shall indicate the name(s) of the product(s), the upland sand source(s) and the approximate volume (per product per source) needed for the upcoming event. The Permittee shall submit the documentation to the Department as a preconstruction submittal item no later than 45 days prior to construction. *Note: If the upland source(s) is no longer producing a product consistent with the approved Sediment QA/QC plan, a permit modification will be required to authorize an alternate source.*
8. The following upland sand source products were reviewed and authorized for use in this project: non-shelly sand product from Stewart Mining Industries' Immokalee Mine, Vulcan Materials Company's Witherspoon Mine, E.R. Jahna Industries' Ortona Mine, and CEMEX Lake Wales Mine. Any additional upland sand sources will require review and authorization through the permit modification process.
9. Sediment quality will be assessed as outlined in the Sediment QA/QC plan dated December 7, 2021. Placement of material that is not in compliance with the Plan shall be handled according to the protocols set forth in the Sediment QA/QC plans. The sediment testing result shall be submitted to the Department within 90 days following the completion of beach construction. The following requirements are included in the Sediment QA/QC Plan:
  - a. If during construction, the Permittee or Engineer determines that the beach fill material does not comply with the sediment compliance specifications, The Permittee shall take measures to avoid further placement of noncompliant fill, and the sediment inspection results shall be reported to the Department.
  - b. The Permittee will submit post-construction sediment testing results and an analysis report as outlined in the Sediment QA/QC plan to the Department within 90 days following beach construction. The sediment testing results will be certified by a P.E. or P.G. from the testing laboratory. A summary table of the sediment samples and test results for the sediment compliance parameters as outlined in Table 1 of the Sediment QA/QC plan shall accompany the complete set of laboratory testing results. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the geotechnical investigation shall be included in the sediment testing results report.

- c. A post-remediation report containing the site map, sediment analysis, and volume of noncompliant fill material removed and replaced will be submitted to the Department within 7 days following completion of remediation activities.

#### **SPECIFIC CONDITIONS - FISH AND WILDLIFE**

10. The pre-construction conference held between the contractors, the engineer and staff representative of the Department (see Specific Condition 4 above) shall also include the Marine Turtle Monitor/permit holder, Bird Monitors and staff representatives of the Florida Fish and Conservation Commission (FWC). The purpose of this portion of the meeting is to ensure that the Permittee/Contractor fully understands the wildlife protection measures and site-specific measures that need to be taken before, during and after construction
11. **In-water Activity.** The Permittee shall adhere to the following requirements for all in-water activity:
  - a. The Permittee shall instruct all personnel associated with the project about the presence of marine turtles and manatees, and the need to avoid collisions with (and injury to) these protected marine species. The Permittee shall be responsible for harm to these resources and shall require their contractors to advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees or marine turtles, which are protected under the Endangered Species Act, the Marine Mammal Protection Act, the Marine Turtle Protection Act and the Florida Manatee Sanctuary Act.
  - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate project area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
  - c. Siltation or turbidity barriers (if used) shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee or marine turtle movement or travel.
  - d. The Permittee is responsible for all on-site project personnel and shall require them to observe water-related activities for the presence of marine turtles and manatee(s). All in-water operations shall be immediately shut down if a marine turtle or manatee comes within 50 feet of the operation. For unanchored vessels, operators shall disengage the propeller and drift out of the potential impact zone. If drifting would jeopardize the safety of the vessel then idle speed may be used to leave the potential impact zone. Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes

elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.

- e. Any collision with (or injury to) a marine turtle or manatee shall be reported immediately to the FWC Hotline at 888-404-3922, and to the FWC at [ImperiledSpecies@MyFWC.com](mailto:ImperiledSpecies@MyFWC.com). Any collision with (and/or injury to) a marine turtle shall also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at [SeaTurtleStranding@MyFWC.com](mailto:SeaTurtleStranding@MyFWC.com).
- f. Temporary signs concerning manatees shall be prominently posted prior to and during all in-water project activities, at sufficient locations to be regularly and easily viewed by all personnel engaged in water-related activities. Two temporary signs, which have already been approved for this use by the FWC, shall be posted at each location. One sign shall read "Caution Boaters - Watch for Manatees". A second sign measuring at least 8 ½" by 11", shall explain the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations. All signs shall be removed by the Permittee upon completion of the project. These signs can be viewed at [MyFWC.com/manatee](http://MyFWC.com/manatee). Questions concerning these signs can be sent to [ImperiledSpecies@MyFWC.com](mailto:ImperiledSpecies@MyFWC.com).

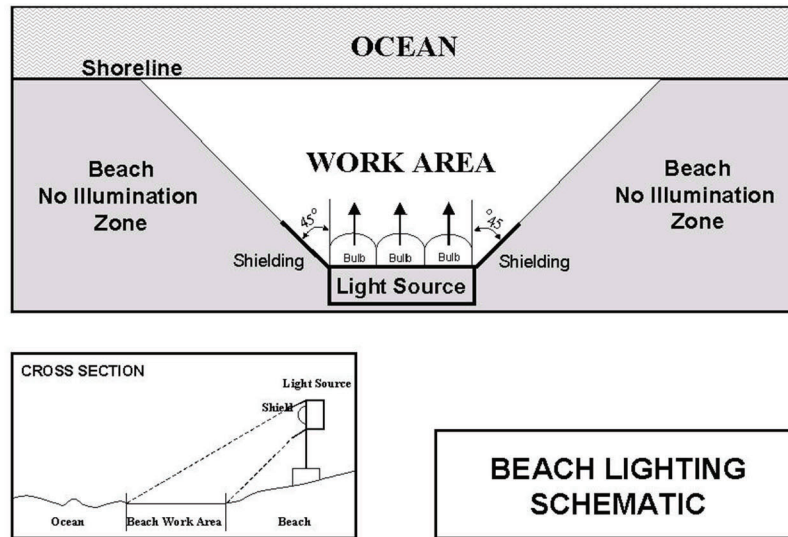
12. **Hopper Dredging.** If a hopper dredge is used for this project, the following requirements shall be met:

- a. Handling of captured marine turtles during hopper dredging activities shall be conducted only by persons with prior experience and training in these activities, and who are duly authorized to conduct such activities through a valid Marine Turtle Permit issued by the FWC, pursuant to Chapter 68E-1, F.A.C. The Permittee shall forward documentation of these qualifications to the FWC for review, as required in Specific Condition 4.
- b. In order to minimize impingement or entrainment of marine turtles within the water column, dredging pumps shall be disengaged by the operator, or the draghead bypass valve shall be open and in use when the dragheads are not firmly on the bottom. This precaution is especially important during the cleanup phase of dredging operations.
- c. A state-of-the-art rigid deflector draghead shall always be used on all hopper dredges.
- d. The Sea Turtle Stranding and Salvage Network (STSSN) Coordinator shall be notified of the start-up and completion of hopper dredging operations at 904-573-3930 or via e-mail at [Allen.Foley@MyFWC.com](mailto:Allen.Foley@MyFWC.com). If a marine turtle is captured or marine turtle parts are recovered, the STSSN shall be contacted at [SeaturtleStranding@MyFWC.com](mailto:SeaturtleStranding@MyFWC.com).

13. **Trawling.** If relocation trawling for marine turtles is required as per applicable NMFS Biological Opinions and Incidental Take authorizations, the following is required:
- a. Any activity involving the use of nets to harass and/or to capture and handle marine turtles in Florida waters requires a Marine Turtle Permit from the FWC prior to trawling.
  - b. The Permittee or their contractor shall e-mail ([MTP@MyFWC.com](mailto:MTP@MyFWC.com)) reports to the FWC's Imperiled Species Management Section on Friday of each week that trawling is conducted in Florida waters. These weekly reports shall include the species and number of turtles captured, their general health, and release information. A summary of all trawling activity (including non-capture trawling) shall be submitted to [MTP@MyFWC.com](mailto:MTP@MyFWC.com) by January 15 of the following year, or at the end of the project. The summary shall be recorded/documentated on the FWC-provided Excel spreadsheet (available at <https://myfwc.com/media/3168/trawl-report-template.pdf>), and shall list all turtles captured in Florida waters, the measurements of all captured turtles, the location of captures (latitude and longitude in decimal degrees), the location of tow start-stop points (latitude and longitude in decimal degrees), and times for the start-stop points of the tows (including tows when no turtles are captured).
14. **Construction Area Project Lighting.**

During the marine turtle nesting season (May 1 through October 31), direct lighting of the beach and nearshore waters shall be limited to the immediate area of active construction. Staging areas, if allowed on the nesting beach, shall not be illuminated unless specifically reviewed and authorized by FWC.

Lighting on offshore and onshore equipment shall be minimized by reducing the number of fixtures, shielding, lowering the height and appropriately placing fixtures to avoid excessive illumination of the water's surface and nesting beach. The intensity of lighting shall be reduced to the minimum standard required for general construction area safety. Shields shall be affixed to the light housing on dredge and on land-based lights and shall be large enough to block lamp light from being transmitted outside the construction area or to the adjacent marine turtle nesting beach. (Figure 1 below).



**Figure 1**

15. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle and shorebird nesting/breeding seasons [February 15 through October 31].

**a. Beach Maintenance.**

- i. The Permittee shall require their contractor and protected species monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping flightless shorebird chicks or marine turtle hatchlings. If so, the deviations outside of the active fill placement area – (see Specific Condition 17) shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.
- ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach to the maximum extent practicable prior to any placement of fill material. If debris removal activities will take place during protected species nesting seasons, the work shall be conducted during daylight hours

only, and shall not commence until completion of daily monitoring surveys.

b. **Equipment Storage and Placement.**

- i. Staging areas and temporary storage for construction equipment and pipes shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle and shorebird protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction. All construction pipes that are in use on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune.
- ii. If it is necessary to extend construction pipes past a known shorebird nesting site, then those pipes shall be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a shorebird nesting site during the shorebird nesting season. If such placement is not feasible for the project, the FWC's Regional Biologist (or their designee) shall be contacted for alternative measures. See contacts available at <https://myfwc.com/conservation/you- conserve/wildlife/shorebirds/contacts/>.

- g. **Beach Driving.** All vehicles operated on the beach shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species. *Note: when flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present pursuant to Specific Condition 25.*

16. **Marine Turtle Protection Conditions.**

Construction-related activities are authorized to occur on the nesting beach (sandy beach seaward of existing coastal armoring structures or dune crest and all areas used for beach access) during marine turtle nesting season (May 1 through October 31) under the following conditions:

- a. Daily early morning marine turtle nest surveys shall start two weeks prior to marine turtle nesting season (April 15) or 65 days prior to beach placement



whichever is later. Daily nesting surveys shall continue through November 30, or until two weeks after the last crawl in the project area, whichever is earlier.

- b. Daily nesting surveys shall be conducted beginning ½ hour prior to sunrise, and no construction activity may commence until completion of the marine turtle survey each day.
  - c. The Permittee shall ensure that marine turtle nesting surveys are conducted as required in this authorization, and only conducted by personnel with a valid FWC Marine Turtle Permit, that covers all project activities as required by Chapter 68E-1, F.A.C. For information on the authorized Marine Turtle Permit Holders in the project area, contact FWC at [MTP@MyFWC.com](mailto:MTP@MyFWC.com).
  - d. Only those nests laid in the area where sand placement will occur shall be relocated, and nest relocation shall cease after the sand placement is completed. Nests requiring relocation shall be moved no later than 9 a.m., the morning following deposition (no longer than 12 hours from the time the eggs are laid), to a nearby self-release beach site in a secure setting, where artificial lighting will not interfere with hatchling orientation. The relocation site shall be determined in conjunction with and approved by the FWC prior to nest relocations. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of beach settings that are not expected to experience any of the following: inundation by high tides; severe erosion; previous egg loss; or illumination by artificial lighting.
  - e. Nests deposited within areas where construction activities will not occur for 65 days, or nests laid in the nourished berm prior to tilling, shall be marked and left in place. The Marine Turtle Permit Holder shall install on- beach markers at the nest site to establish a minimum 5- foot radius around the approximate clutch location and shall also install a secondary marker at a point as far landward as possible to assure that the nest can be located should the on- beach marker be lost. No activity shall occur within the marked area, nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.
17. **Fill Restrictions.** During the marine turtle nesting season, the contractor shall not advance the beach fill more than 500 feet along the shoreline between dusk and the following day, until the daily nesting survey is completed, and the beach has been cleared for fill advancement. If the 500-foot advancement limitation is not feasible for the project, an alternative distance shall be established during the preconstruction meeting, if a distance can be agreed upon in consultation with the FWC. If the work area is extended, nighttime nesting surveys are required, and a Marine Turtle Permit Holder is required to be present on-site to ensure that no nesting and hatching marine turtles are present. If any



nesting turtles are sighted on the beach within the immediate construction area, activities shall cease immediately until the turtle has returned to the water and the Marine Turtle Permit Holder responsible for nest monitoring has relocated the nest.

18. **Marine Turtle or Nest Encounters.** Upon locating a dead or injured marine turtle adult, hatchling, or egg that may have been harmed or destroyed as a result of the project, the Permittee shall be responsible for notifying the FWC Wildlife Alert at 888-404-FWCC (3922). Care shall be taken in handling injured marine turtles or exposed eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials for later analysis. If a marine turtle nest is excavated during construction activities, but not as part of the authorized nest relocation process outlined in these specific conditions, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.
19. **Tilling, Compaction and Escarpment Remediation Requirements.** For the years after the first- year sand placement (out- year), compaction monitoring, tilling and escarpment monitoring are not required if placed material no longer remains on the dry beach.
  - a. **Compaction Sampling.** Sand compaction shall be monitored in the area of sand placement immediately after completion of the nourishment event, and two weeks prior to the beginning of marine turtle nesting season, for three (3) subsequent years. The requirement for compaction monitoring may be eliminated if the placed sand is tilled, regardless of post- construction compaction levels. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled prior to the beginning of marine turtle nesting season. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required. Compaction monitoring shall be in accordance with the following protocol:
    - i. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high-water line (normal wrack line).
    - ii. At each station, the cone penetrometer shall be pushed to depths of 6, 12 and 18 inches three times (i.e., three replicates at each depth). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each

depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

- iii. If values exceeding 500 psi are distributed throughout the project area, but in no case do those values exist at two adjacent stations at the same depth, then the Permittee shall consult with the FWC to determine if tilling is required. A request for a tilling waiver based on these compaction values shall be submitted to the FWC at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com).

- b. **Tilling Requirements.** If tilling is performed regardless of post-construction compaction levels or tilling is required based on compaction measurements, the area shall be tilled to a depth of 24 inches. Tilling shall be in accordance with the following protocol:

- i. All tilling activity shall be completed prior to the marine turtle nesting season. If the project is completed during the marine turtle nesting season, tilling shall not be performed in areas where nests have been relocated to or left in place.
- ii. A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling.
- iii. Tilling shall occur landward of the wrack line and shall avoid all naturally vegetated areas that are at least 3 square feet in size, as well as any planted areas that have been authorized by the Department. A 3-foot-wide No-Tilling buffer shall be maintained around vegetated areas. The slope between the mean high- water line and the mean low water line shall be maintained to approximate natural slopes.

- c. **Escarpment Surveys.** Visual surveys for escarpments along the project area shall be made immediately after completion of sand placement, within 30 days prior to April 15 and weekly throughout the marine turtle season for three (3) subsequent years, each year placed sand remains on the dry beach. Escarpment remediation shall be as follows:

- i. Prior to marine turtle nesting season, escarpments that interfere with marine turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled to the natural beach contour or the beach profile shall be reconfigured to minimize scarp formation. Any escarpment removal shall be reported relative to R monument location to the FWC at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com) with a copy sent to the JCP Compliance Officer.

- ii. If weekly surveys during the marine turtle nesting season document escarpments that exceed 18 inches in height for a distance of at least 100 feet and have persisted for more than two weeks, the FWC shall be contacted immediately to determine the appropriate action to be taken. The Permittee shall provide locations and measurements of the escarpments to the closest R monument as well as the coordinates for the location of marine turtle nests located within 20 feet of the escarpments (latitude and longitude in decimal degrees), with photographs when possible. Upon written notification by the FWC that the escarpment needs to be leveled, the Permittee shall level the escarpment. If nests are located nearby, to minimize impacts to any existing nest the Permittee shall also coordinate with the marine turtle permit holder prior to leveling the escarpments. An annual summary documenting weekly escarpment surveys (including dates, presence and height of escarpments) and any remediation actions taken shall be submitted electronically to the FWC ([MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com)) by December 31 of each year.

*Note for Shorebird Protection:* If compaction sampling, tilling or escarpment removal occurs during shorebird breeding season, the Shorebird Conditions (including surveys) included in this authorization shall be followed. No heavy equipment shall operate, and no compaction sampling or tilling shall occur within 300 feet of any shorebird nest. If flightless shorebird chicks are present within the work zone or equipment travel corridor, a Bird Monitor shall be present during the operation to ensure that no heavy equipment operates within 300 feet of the flightless young or within a site-specific corridor established per Specific 25. It is the responsibility of the Permittee to ensure that their contractors avoid tilling, scarp removal or dune vegetation planting in areas where nesting birds are present.

20. **Post-Construction Lighting Surveys.** The Permittee shall ensure that lighting surveys be conducted from the renourished berm and the following actions taken to address potential adverse impacts expected with artificial lights visible from any dry portion of the newly elevated beach. The surveys shall be conducted from the top of the foreshore slope (i.e., the seaward edge of the filled berm before it slopes into the water), facing landward. The survey shall follow standard techniques for such a survey, such as including the number and type of visible lights, location of lights, and photo documentation (see additional techniques as per the [2015 USFWS Statewide Programmatic Biological Opinion](#)).
- a. The first survey shall be conducted between May 1 and May 15 for the first nesting season following construction. For each visible light source, the Permittee shall document that the property owners have been notified and has been provided with recommendations for correcting the light as soon as possible.

Recommendations shall be in accordance with local lighting ordinances. A report summarizing all visible lights and the recommendations for correcting the light shall be forwarded to local code enforcement. If no lighting ordinances exist, the recommendations to the property owners shall be consistent with the FWC lighting guidelines, which include no lights or light sources shall be visible from the newly elevated beach. The second survey shall be conducted between July 15 and August 1 to assess any remaining visible lights requiring corrective action.

- b. A summary report of the surveys and what corrective actions or local enforcement actions have been taken shall be submitted to the FWC at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com) and copied to [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) by December 31 of the year in which surveys are conducted. Upon request by the FWC, the Permittee shall set up and hold a meeting with the those responsible for code enforcement (when applicable), the FWC and the USFWS to discuss the report and potential additional corrective action needed, as well as any documented marine turtle disorientations in or adjacent to the project area.

21. **Post-Construction Monitoring and Reporting Marine Turtle Protection Conditions.**

- a. For each sand placement event, reports for all required marine turtle nesting surveys shall be provided for the post construction (partial or remaining) nesting season and for two full nesting seasons post construction in accordance with the Table 1 (below). If nesting and reproductive success is less than the criteria in the table below, an additional year of monitoring and reporting may be required. If criteria is not met, additional conditions prior to the next sand placement on this beach may be required by the Department and the FWC.
- b. Data shall be reported and summarized for the nourished areas and reference beach in accordance with Table 1 (below). Reports shall summarize all crawl activity, hatching success of a representative sampling of nests left in place (if any) by species, project name and applicable project permit numbers and dates of construction. Data on nesting activity on the nourished areas and on an equal length of beach that is not nourished shall be submitted in electronic format (Excel spreadsheets) which are available upon request from [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com). Reports shall be sent to the FWC Imperiled Species Management section at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com) and copied to [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us). All summaries should be submitted by January 15 of the following year.

**Table 1. Marine Turtle Monitoring for Beach Placement of Material.**

| <b>Date</b>                             | <b>Duration</b>                                                                                                                                                  | <b>Variable</b>                                                | <b>Criterion</b>                                                                                              |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Nesting Success                         | Year of in-season construction and two entire nesting seasons post construction, with possible additional year (for a total of three years) <sup>1 &amp; 2</sup> | Number of nests and non- nesting emergences by day by species  | 40 percent or greater                                                                                         |
| Hatching success                        | Year of in-season construction and one entire nesting season post construction, with possible additional year <sup>1 &amp; 2</sup>                               | Number of hatchlings by species to hatch from egg              | 60 percent or greater (a statistically valid number of loggerhead and green nests, and all leatherback nests) |
| Emergence Success                       | Year of in-season construction and one entire nesting season post construction, with possible additional year <sup>1 &amp; 2</sup>                               | Number of hatchlings by species to emerge from nest onto beach | Average must not be significantly different than the average hatching success                                 |
| Disorientations                         | Year of in-season construction and two entire nesting seasons post construction <sup>1</sup>                                                                     | Number of nests and/or individuals that misorient or disorient |                                                                                                               |
| Nests affected by erosion or inundation | Year of construction and two years post construction if placed sand remains on the beach                                                                         | Number of nests lost and/or affected, by species               |                                                                                                               |

| Date                                                                                                                                                         | Duration                                                                                                                                                    | Variable                                                                                                                       | Criterion                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Lighting Surveys                                                                                                                                             | Two in-season surveys the year following construction;<br>First survey between May 1 and May 15 and second survey between July 15 and August 1 <sup>1</sup> | Number, location and photographs of lights visible from nourished berm, corrective actions recommended, and notifications made | Lighting survey and possible meeting resulting with plan for reduction in lights visible from nourished berm |
| Compaction                                                                                                                                                   | Three nesting seasons beginning with the year of construction. Not required if the beach is tilled prior to nesting season <sup>1</sup>                     | Shear resistance                                                                                                               | Less than 500 psi                                                                                            |
| Escarpment Surveys                                                                                                                                           | Weekly during nesting season for three years beginning with year of construction <sup>1</sup>                                                               | Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks                      | Successful remediation of all persistent scarps as needed                                                    |
| <sup>1</sup> If placed sand remains on the beach<br><sup>2</sup> Additional years may be required if variable does not meet criterion based on previous year |                                                                                                                                                             |                                                                                                                                |                                                                                                              |

22. **Shorebird Protection.** The term “shorebird” is used here to refer to all solitary nesting shorebirds and colonial nesting seabirds that nest on Florida’s beaches. These conditions are intended to avoid direct impacts associated with the construction of the project and may not address all potential take incidental to the operation and use related to this authorization. The Permittee shall adhere to the shorebird protection conditions during the shorebird breeding cycle, which includes nesting.
- a. Shorebird breeding season dates for this project area are **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).



- b. Any parts of the project where “project activities” on the beach take place *entirely outside the breeding season*, do not require shorebird surveys. The term “project activities” includes operation of vehicles on the beach, movement or storage of equipment on the beach, sand placement or sand removal, and other similar activities that may harm or disturb shorebirds. Bird survey routes must be established and monitored throughout the entire breeding season in any parts of the project area where: 1) potential shorebird breeding habitat occurs, and 2) project activities are expected to occur at any time within the breeding season. Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including survey activities and other pre-construction presence on the beach), whichever is later.
- c. Bird surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established by the Permittee to cover project areas which require shorebird surveys. These routes shall be determined in coordination with the FWC Regional Biologist (or their designee) prior to the initiation of construction. Routes shall not be modified without prior notification to the FWC.
- d. During the pre-construction and construction activities associated with the project, the Permittee shall ensure that surveys for detecting breeding activity and the presence of flightless chicks shall be completed **on a daily basis** by a qualified bird monitor. This shall be completed prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young. If all project activities are completed and all personnel and equipment have been removed from the beach prior to the end of the breeding season, route surveys shall continue to be conducted at least weekly through the end of the breeding season. If breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall establish a buffer in accordance with Specific Condition 23 around the site and shall notify the FWC Regional Biologist (or their designee) within 24 hours. The posts and materials for the shorebird buffer zones shall be removed once all breeding or nesting behavior has ceased.
- e. The Permittee shall require the Bird Monitor to conduct a shorebird education and identification program (and/or provide educational materials) with the on-site staff to ensure protection of precocial (mobile) chicks. All personnel are responsible for watching for shorebirds, nests, eggs and chicks. If the Bird Monitor finds that shorebirds are breeding within the project area, the Permittee shall place and maintain a bulletin board in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that “NESTING BIRDS ARE PROTECTED BY



LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS”.

23. **Shorebird Monitor Requirements.**

- a. The Permittee shall ensure that nesting and breeding shorebird surveys are conducted by trained, dedicated individuals (Bird Monitors) with proven shorebird identification skills and avian survey experience.
- b. Bird Monitor(s) shall be required to review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined on the FWC’s FSD website (<http://www.flshorebirddatabase.org> or [Florida Shorebird Database](#)). They shall use the data-collection protocol and implement data entry procedures as outlined in that website.
- c. The Permittee shall submit a list of Bird Monitors, with their contact information and a summary of qualifications, including bird identification skills and avian survey experience to the FWC Regional Biologist (or their designee) and [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us), prior to any construction or shorebird surveys. The determination that the selected Bird Monitor(s) meet the required qualifications shall be coordinated between the Permittee and the FWC Regional Biologist (or their designee) . Once approved, the Permittee shall submit the names and contact information of the Bird Monitor(s) who have been approved by the FWC to [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us), prior to any construction or shorebird surveys. The Bird Monitor(s) shall meet the following minimum qualifications:
  - i. Has previously participated in beach-nesting shorebird surveys in Florida (provide references or resume). Experience with previous projects must document the ability to 1) identify all species of beach-nesting birds by sight and sound, 2) identify breeding/territorial behaviors, and find nests of shorebirds that occur in the project area, and 3) identify habitats preferred by shorebirds nesting in the project area.
  - ii. Have a clear working knowledge of, and adhere to, the [Breeding Bird Protocol for Florida’s Seabirds and Shorebirds](#).  
<https://app.myfwc.com/crossdoi/shorebirds/PDF-files/BreedingBirdProtocol.pdf>
  - iii. Have completed full-length webinars: Route- Surveyor Training and Rooftop Monitoring Training, including the annual refresher training. Training resources can be found on the [Florida Shorebird Database \(FSD\)](#)

website.

<https://app.myfwc.com/crossdoi/shorebirds/>

- iv. Familiar with the [FWC beach driving guidelines](https://myfwc.com/conservation/you- conserve/wildlife/beach-driving/).  
<https://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>
- v. Experience posting beach-nesting bird sites, consistent with the *Guidelines for Posting Shorebird and Seabird Sites in Florida*.  
<https://flshorebirdalliance.org/media/1055/fsapostingguidelines.pdf>
- vi. Has registered as a contributor to the FSD.

24. **Shorebird Survey Protocols.** Bird survey protocols, including downloadable field data sheets, are available on the [FSD website](#). All breeding activity shall be reported to the FSD website within one week of data collection. If the use of this website is not feasible for data collection, the FWC Regional Biologist (or their designee) shall be contacted for alternative methods of reporting. The Permittee shall ensure that the Bird Monitors use the following survey protocols:
- a. Surveys shall be conducted by walking the length of all survey routes and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD Breeding Bird Protocol for Shorebirds and Seabirds. Use of binoculars (minimum 8x40) is required and use of a spotting scope may be necessary to accurately survey the area. If an ATV or other vehicle is needed to cover large survey routes, the Bird Monitor shall stop at intervals of no greater than 600 feet to visually inspect for breeding activity.
  - b. Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Biologist (or their designee) within 24 hours.
25. **Shorebird Buffer Zones and Travel Corridors.** The Permittee shall require the Bird Monitor(s) and Contractor(s) to meet the following:
- a. The Bird Monitor(s) shall establish a disturbance-free buffer zone around any location within the project area where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot buffer shall be established around each nest or around the perimeter of each colonial nesting area. A 300-foot buffer shall also be placed around the perimeter of areas where shorebirds are seen digging nest scrapes or defending nest territories. All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. **Smaller, site-specific buffers may be established if approved in writing by the FWC Regional Biologist (or**

**their designee).** Travel corridors shall be designated and marked outside the buffer areas for pedestrian, equipment, or vehicular traffic.

- b. The Bird Monitor(s) shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds appear to be agitated or disturbed by these activities, then the Bird Monitor(s) shall immediately widen the buffer zone to a sufficient size to protect breeding birds.
- c. The Bird Monitor(s) shall ensure that reasonable and traditional pedestrian access is not blocked in situations where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be allowed when breeding was initiated within 300 feet of an established beach access pathway. The Bird Monitor(s) shall work with the FWC Regional Species Conservation Biologist to determine if pedestrian access can be accommodated without compromising nesting success. These site-specific buffers must be determined in coordination with the FWC Regional Biologist (or their designee).
- d. The Bird Monitor(s) shall ensure that the perimeters of designated buffer zones shall be marked according to *Guidelines for Posting Shorebird and Seabird Sites in Florida* available at: <https://flshorebirdalliance.org/media/1055/fsapostingguidelines.pdf> with posts, twine and the FWC-approved signs stating “Do Not Enter, Important Nesting Area” or similar language around the perimeter (see example of signage for marking designated buffer zones at <http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/>). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Biologist (or their designee), these shall be clearly marked. **Posting shall be maintained in good repair until no active nests, eggs, or flightless young are present.** Although solitary nesters may leave the buffer zone temporarily with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.
- e. The Permittee shall ensure that no construction activities, pedestrians, moving vehicles, or stockpiled equipment are allowed within the buffer area.
- f. The Permittee shall ensure that the Bird Monitor(s) designate and mark travel corridors outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy

equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site.

- g. When flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present to adequately monitor the travel corridor. The Permittee shall require the contractor with the oversight of the Bird Monitor(s) to avoid any chicks that may be in the path of moving vehicles. The Permittee shall also require the contractor with the oversight of the Bird Monitor(s) to level any tracks, ruts, or holes that may be capable of trapping flightless chicks, while avoiding any impacts to the chicks.

*Notification.* Any injury or death of a shorebird (including crushing eggs or young) resulting from project activities shall be reported immediately to the FWC Regional Biologist (or their designee).

- 26. **Little Estero Island Critical Wildlife Area.** To minimize potential impacts to marine turtles and breeding shorebirds within the Little Estero Island Critical Wildlife Area (CWA), construction-related activities are authorized to occur on the South Beach Fill Segment (R-203 to R-207), commencing after October 31 and completed before March 1. The Permittee shall adhere to the requirements pursuant to Specific Conditions 10 through 25 above for all construction-related activities occurring during marine turtle and shorebird nesting/breeding seasons.
- 27. Pursuant to Chapter 68A-19.005, F.A.C portions of CWA are closed seasonally for the protection of state-listed beach nesting birds. The Permittee shall ensure all necessary authorizations from the FWC are obtained prior to all construction-related activities within the CWA.
- 28. **Dune Planting Conditions.** Planting of dune vegetation is encouraged outside of marine turtle nesting season. However, planting activities may occur during the marine turtle nesting season May 1 through October 31 under the following conditions:
  - a. It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nest surveys and activities involving marine turtles shall be conducted only by persons with a valid FWC permit issued pursuant to Florida Administrative Code 68E-1. For information regarding marine turtle permit holders, contact the FWC at [MTP@MyFWC.com](mailto:MTP@MyFWC.com).
  - b. Marine turtle nest surveys shall be initiated at the beginning of the nesting season or 65 days prior to installation of plants (whichever is later). Surveys shall continue until completion of the project or through October 31 (whichever is earliest). Surveys shall be conducted throughout the project area and all beach access sites.

- c. Any nests deposited in the area shall be left in place. The marine turtle permit holder shall install an on-beach marker at any nest site and a secondary marker located at a point as far landward as possible to ensure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and survey ribbon or string shall be installed to establish an area of three (3) feet radius surrounding the nest. No planting or other activity shall occur within this area nor shall any activity occur which might cause indirect impacts within this area. Nest sites shall be inspected daily to ensure nest markers have not been removed.
  - d. The use of heavy equipment (including vehicles such as trucks) is not authorized in marine turtle nesting habitat. A lightweight (ATV style) vehicle, with tire pressures of 10 psi or less can operate on the beach if required.
  - e. Any vegetation planting shall be installed by hand labor/tools only.
  - f. All activity shall be confined to daylight hours and shall not occur prior to the completion of all necessary marine turtle surveys and conservation activities within the project area. Nighttime storage of equipment or materials shall be off the beach.
  - g. In the event a nest is disturbed or uncovered during planting activity, the Permittee shall cease all work and immediately contact the marine turtle permit holder responsible for marine turtle conservation measures within the project area. If a nest(s) cannot be safely avoided during construction, all activity within the affected project area shall be delayed until complete hatching and emergence of the nest.
  - h. All planting related activities must avoid marked marine turtle nests including those that may be on the beach before and after the marine turtle nesting season dates (May 1 through October 31). Any impacts to nests or marine turtles that inadvertently occur shall be immediately reported the Florida Fish and Wildlife Conservation Commission (FWC) at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com), and all work shall stop until authorized to continue by the Department and the FWC.
  - i. All irrigation lines for the dune restoration planting, if proposed, will be temporarily installed along the landward side of the dune only and will be removed once the plants have become established. Any watering necessary along the seaward side of the dune will be done by hand on an “as needed” basis.
29. **Dune Management Plan Conditions.** All dune management activities associated with this project shall adhere to the Fort Myers Beach Dune Management Plan dated **August**

**26, 2022.** Dune management activities under this plan may occur under the following marine turtle protection conditions:

- a. No dune height modifications involving excavation and/or fill activities shall occur during the marine turtle nesting season (May 1 – October 31).
- b. For all dune height modifications, including vegetation trimming, conducted under this plan, a lighting survey shall be conducted within 30 days prior to construction and within 30 days after construction or by May 15<sup>th</sup>, whichever is later, to assess lighting impacts from dune height modifications. A summary report of the surveys and what corrective actions or local enforcement actions have been taken shall be submitted to the FWC at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com) and copied to [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) by December 31 of the year in which surveys are conducted.
- c. All activities shall avoid marked marine turtle nests including those that may be on the beach before or after the marine turtle nesting season. Any impacts to nests that may have inadvertently occurred or if a marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Permittee shall ensure that the Marine Turtle Permit Holder be notified immediately such that appropriate conservation measures can be taken. Within 24 hours of any such occurrence, the Permittee shall submit a report detailing the incident (e.g., date, time, permit number, location, photos, contact information, incident and response descriptions) to the FWC at [MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com).
- d. No installation of fencing is authorized on marine turtle nesting habitat (sandy beach) during the marine turtle nesting season (May 1 – October 31). All post and rope fencing shall be a single strand of rope at a minimum of three (3) feet in height and posts shall be spaced at least seven (7) feet apart.
- e. During the marine turtle nesting season (May 1 to October 31), all mechanical beach cleaning activities conducted under this plan shall be confined to daylight hours (sunrise to sunset) and adhere to the following marine turtle protection conditions:
  - i. During marine turtle nesting season (May 1 to October 31), the permittee is responsible for ensuring that a daily marine turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach cleaning area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach cleaning. The marine turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68E-1 Permit issued by the Florida Fish & Wildlife Conservation Commission



(FWC).

- ii. In the event that mechanical beach cleaning occurs prior to completion of the marine turtle nest survey, protection, and monitoring program, mechanical beach cleaning shall not occur landward of the wrack or debris line on that beach until 65 days have passed or after November 30, whichever is earlier. The permittee shall contact the Marine Turtle Permit Holder prior to reinitiating mechanical beach cleaning in that area.
- iii. All nests left in place shall be marked with a circle of tape or string having a radius of at least three (3) feet, centered at the approximated location of the clutch. An additional marker shall be placed at the base of the dune or seawall to ensure that future location of the nests will be possible should the on-beach markings be lost. No mechanical cleaning equipment is allowed inside of this circle; however, careful removal of material by hand is allowed. All equipment operators should be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- iv. In the event that on-beach nest markers are lost for any reason, including vandalism or high water conditions, no mechanical beach cleaning shall be conducted until the marine turtle permit holder identifies the nest and restores the markers. In the event that the nest cannot be found and may have been lost during high water conditions, the permittee shall contact FWC staff at (850) 922-4330 to determine if mechanical beach cleaning can resume. All marine turtle protection conditions shall remain in effect unless specifically waived in writing by FWC.
- v. In order to avoid adverse impacts in the event that cleaning accidentally occurs over a nest, mechanical beach cleaning equipment shall not penetrate more than two inches into the surface of the beach. This permit authorizes the use of a vehicle with a maximum tire pressure of 10 p.s.i. and a rake or cleaning apparatus that limits penetration into the surface of the beach to a maximum of two inches. Box blades and front or rear mounted blades are not authorized. No other types of vehicles may be operated on the beach pursuant to this permit. Mechanized beach cleaning shall be accomplished so that no ruts are formed on the beach.
- vi. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of accumulated debris from the beach must occur immediately after cleaning has been performed.



- vii. Operators of mechanical beach cleaning equipment shall avoid all native, salt tolerant dune vegetation by a minimum of 10 feet. **Any raking within 10 feet of dune vegetation shall be completed by hand labor/tools only.**

**SPECIFIC CONDITIONS - MONITORING REQUIRED:**

30. Water Quality - Turbidity shall be monitored as follows:

Units: Nephelometric Turbidity Units (NTUs).

Frequency: Monitoring for a pipeline dredge and truck haul placements shall be conducted 3 times daily, approximately 4 hours apart, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredging and sand placement operations.

Monitoring for a hopper dredge shall be conducted for each hopper dredge load during daylight hours. At the dredge site, sampling shall be conducted after overflow from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. At the fill placement site, sampling shall be conducted after discharge from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone.

Sampling shall be conducted **while the highest project-related turbidity levels are crossing the edge of the mixing zone**. Since turbidity levels can be related to pumping rates, the dredge pumping rates shall be recorded, and provided to the Department upon request. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., background sample shall immediately follow the compliance sample.

Location: **Background:** Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet). All background sampling shall occur clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

**Borrow Site:** Samples shall be collected at least 300 meters up-current from the source of turbidity at the dredge site.

**Beach Site:** Samples shall be collected at least 300 meters up-current from any portion of the beach that has been, or is being, filled during

the current construction event, at the same distances offshore as the associated compliance samples.

**Compliance:** Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet).

**Borrow Site:** Samples shall be collected 150 meters down-current from the cutterhead or the hopper dredge overflow point, **and** from any other source of turbidity generated by the dredge, in the densest portion of any visible turbidity plume. If no plume is visible, follow the likely direction of flow.

**Beach Site:** Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone polygon, which measures up to 150 meters offshore and up to 1,000 meters alongshore from the point where the return water from the dredged discharge reenters the Gulf of Mexico. *Note: If the plume flows parallel to the shoreline, the densest portion of the plume may be close to shore, in shallow water. In that case, it may be necessary to access the sampling location from the shore, in water that is too shallow for a boat.*

**Calibration and Verification:** The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity “standards” that bracket the anticipated turbidity samples. If the post-sampling calibration verification value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:  
<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf>

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

31. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding background turbidity, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us) and include in the subject line, “TURBIDITY EXCEEDANCE”, and the Project Name and Permit Number. Also notify the Department’s Southeast District office.

Any project-associated turbidity source other than dredging or fill placement for beach nourishment (e.g., scow or pipeline leakage) shall be monitored as close to the source as possible. If the turbidity level 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state “OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE”.

- a. When reporting a turbidity exceedance, the following information shall also be included:
  - i. the Project Name;
  - ii. the Permit Number;
  - iii. location and level (NTUs above background) of the turbidity exceedance;
  - iv. the time and date that the exceedance occurred; and
  - v. the time and date that construction ceased.
- b. Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the “Exceedance Report”, plus the following information:
  - i. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
  - ii. corrective measures that were taken; and

iii. cause of the exceedance.

32. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:
- a. time of day samples were taken;
  - b. dates of sampling and analysis;
  - c. GPS location of sample and source. *When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001). Please also indicate the datum;*
  - d. depth of water body;
  - e. depth of each sample
  - f. antecedent weather conditions, including wind direction and velocity;
  - g. tidal stage and direction of flow;
  - h. water temperature;
  - i. a geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations (background and compliance), location of active construction, the visible plume pattern and direction of flow. The map shall also include the boundaries of any benthic resources or OFW. A sample map shall be submitted to and reviewed by the Department prior to construction (Specific Condition 4);
  - j. a statement describing the methods used in collection, handling, storage and analysis of the samples;
  - k. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
  - l. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

Monitoring reports shall be submitted by email to the Department's JCP Compliance Officer. In the subject line of the reports, include the Project Name, Permit Number and the dates of the monitoring interval. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the Department's JCP Compliance Officer, on the cover page to the submittal and at the top of each page, please state: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No.0413684-001-JC, for the Estero Island Shore Protection"**

33. **Physical Monitoring.** Monitoring and reporting of the permitted project shall be conducted in accordance with the Physical Monitoring Plan dated December 7, 2021, and the conditions of this permit.
34. The approved Monitoring Plan can be revised at any later time by written request of the Permittee and with the written approval of the Department. If subsequent to approval of the Monitoring Plan there is a request for modification of the permit, the Department may require revised or additional monitoring requirements as a condition of approval of the permit modification.

As guidance for obtaining Department approval, the plan shall generally contain the following items:

- a. Topographic and bathymetric profile surveys of the beach and offshore shall be conducted prior to commencement of construction, immediately following completion of construction, and annually beginning one year following completion of construction for a period of three years. Thereafter, monitoring surveys shall be conducted biennially after the Year Three monitoring until the next beach nourishment event or the expiration of the project design life, whichever occurs first.

A pre-construction survey of the project area to receive beach fill may use surveys conducted for purposes of construction bidding, contracting, or construction management. The post-construction survey of the beach fill may use surveys and other information collected periodically during construction for purposes of construction management and payment. Alternatively, the post-construction survey may consist of a single beach-offshore profile survey event of the project monitoring area conducted within 60 days after completion of beach fill placement.

The monitoring surveys shall be conducted during a spring or summer month and repeated as close as practicable during that same month of the year. If the time period between the immediate post-construction survey and the first annual monitoring survey is less than six months, then the Permittee may at their

discretion postpone the first monitoring survey until the following spring/summer.

The monitoring area shall include profile surveys at each of the Department of Environmental Protection's reference monuments within the bounds of the beach fill area and along at least 5,000 feet of the adjacent shoreline on both sides of the beach fill area. All work activities and deliverables for all monitoring surveys shall be conducted in accordance with the latest update of the Department's *Monitoring Standards for Beach Erosion Control Projects, Sections 01000 and 01100*.

- b. The Permittee shall submit an engineering report and the monitoring data to the Department within 90 days following completion of the construction and each annual and biennial monitoring survey.

The report shall summarize and discuss the data, the performance of the beach fill project, and identify erosion and accretion patterns within the monitored area. Results shall be analyzed for patterns, trends, or changes between annual surveys and cumulatively since project construction. In addition, the report shall include a comparative review of project performance to performance expectations and identification of adverse effects attributable to the project. The report shall specifically include:

- i. A record of the volume and location of all beach fill, including any sand placed from the Estero Island Nourishment Project (FDEP Permit Number: 0413684-001-JC) within the project area;
- ii. The volume and percentage of advance nourishment lost since the last beach nourishment project as measured landward of the mean high water (MHW) line of the most recent survey;
- iii. The most recent MHW shoreline positions (feet) in comparison with the design profile at each individual monument location;
- iv. The MHW shoreline position changes (feet) relative to the pre-construction survey at each individual monument location for all the monitoring periods;
- v. The total measured remaining volume (cubic yards) in comparison with the total predicted remaining volume (cubic yards) above the MHW line and above the Depth of Closure for the entire project area over the successive monitoring periods; and,

- vi. Other shoreline position and volumetric analysis the Permittee or Engineer deem useful in assessing, with quantitative measurements, the performance of the project.

The report shall include computations, tables and graphic illustrations of volumetric and shoreline position changes for the monitoring area. An appendix shall include superimposed plots of the two most recent beach profile surveys, the design profile, and pre- and post-construction beach profile at each individual monument location.

- c. An electronic copy of the monitoring report and the survey data shall be submitted to the Department's JCP Compliance Officer. Failure to submit reports and data in a timely manner constitutes grounds for revocation of the permit. When submitting any monitoring information to the Department, please include a transmittal cover letter clearly labeled with the following at the top of each page: **This monitoring information is submitted in accordance with the approved Monitoring Plan for Permit No. 0413684-001- JC for the monitoring period [XX].**

## POST CONSTRUCTION CONDITIONS

- 35. Within 30 days after completion of authorized activities, the Permittee shall submit a notice of completion to the JCP Compliance Officer that includes the following information:
  - a. The permit number (0413684-001-JC) and the project name (Estero Island Beach Nourishment Project).
  - b. A copy of any post-construction As-Built Survey drawings required of the Contractor. If any of the completed activities differ substantially from the permitted plans, any substantial deviations shall be noted and explained.
  - c. A summary of the construction event (the date on which authorized activities began and the date of completion, the volume of sand placed and/or dredged as well as the source of sand and the R-monument locations for construction activities).
  - d. A table identifying any exceedances of turbidity standards that occurred during dredging or disposal, the probable causes of the exceedances, and corrective measures taken to reduce turbidity.



- e. A table identifying any known impacts to biological resources (including SAV and Hardbottom communities) and, the probable causes of the impacts, and corrective measures taken.
  - f. A table identifying any harm or injury to threatened species, endangered species or protected species, endangered status communities, the probable causes of the take and corrective measures taken.
36. **Post-Construction Meeting.** Within 90 days following each construction activity authorized by this permit, the Permittee shall hold a post-construction conference. Attendees shall include at minimum, the Permittee, Agent, Department representative, and FWC representative.

**EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Gregory W. Garis.  
Program Administrator  
Beaches, Inlets and Ports Program  
Office of Resilience and Coastal Protection

**Attachment(s):**

1. Approved Permit Drawings (33 pages, dated November 3, 2022)
2. Dune Management Plan (dated August 26, 2022)
3. QA/QC (dated December 7, 2021)
4. Physical Monitoring Plan (dated December 7, 2021)

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below.

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

|                          |                   |
|--------------------------|-------------------|
| <i>Diana Dukhovskaya</i> | <u>01/18/2023</u> |
| Clerk                    | Date              |

**AMENDMENT NO. 1  
TO AGREEMENT NO. 23LE1  
BETWEEN  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
TOWN OF FORT MYERS BEACH**

This Amendment to Agreement No. 23LE1 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for the Estero Island Shore Protection Project effective March 16, 2023; and

WHEREAS, the Grantee was awarded additional funds to complete the project from the fiscal year 2024/2025 legislative appropriation to the Beach Management Funding Assistance Program (GAA Line Item #1856); and

WHEREAS, the Grantee requested that unencumbered funds from Agreement No. 22LE3, Lee County Shore Protection Project – Estero Island Segment, funded by the Fiscal Year 2021/2022 legislative appropriation to the Beach Management Funding Assistance Program (Land Acquisition Trust Fund, GAA Line Item #1647), in the amount of \$150,000.00 be included in Agreement No. 23LE1; and

WHEREAS, the Grantee has requested an extension to the Agreement and the Department has agreed; and

WHEREAS, the Grantee has requested a change in the Agreement and Task Timelines and the Department has agreed; and

WHEREAS, the parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, the parties agree as follows:

- 1) The total amount of funding of the Agreement is increased by \$2,907,176.50 to \$16,920,522.50.
- 2) The Agreement is extended for a twelve (12) month period to begin January 1, 2026, and remain in effect until December 31, 2026. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.
- 3) The Agreement Begin Date in Paragraph 3 to the Standard Grant Agreement is hereby amended to January 1, 2021.
- 4) Attachment 1, Standard Terms and Conditions, is hereby deleted in its entirety and replaced with Attachment 1-A, Revised Standard Terms and Conditions, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 1 shall hereinafter refer to Attachment 1-A, Revised Standard Terms and Conditions.
- 5) Attachment 2, Special Terms and Conditions, is hereby deleted in its entirety and replaced with Attachment 2-A, Revised Special Terms and Conditions, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 2 shall hereinafter refer to Attachment 2-A, Revised Special Terms and Conditions.
- 6) Attachment 3, Grant Work Plan, is hereby deleted in its entirety and replaced with Attachment 3-A, Revised Grant Work Plan, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 3 shall hereinafter refer to Attachment 3-A, Revised Grant Work Plan.
- 7) Attachment 4, Public Records Requirements, is hereby deleted in its entirety and replaced with Attachment 4-A, Revised Public Records Requirements, as attached to this Amendment and hereby incorporated into the Agreement.

All references in the Agreement to Attachment 4 shall hereinafter refer to Attachment 4-A, Revised Public Records Requirements.

- 8) Attachment 5, Special Audit Requirements, is hereby deleted in its entirety and replaced with Attachment 5-A, Revised Special Audit Requirements, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 5 shall hereinafter refer to Attachment 5-A, Revised Special Audit Requirements.
- 9) All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistencies may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

**Town of Fort Myers Beach**

By:   
Andrew Hyatt (Apr 15, 2025 17:10 EDT)

Title: Town Manager

Date: Apr 15, 2025

**Florida Department of  
Environmental Protection**

By: 

Secretary or Designee Alex Reed, Director  
Office of Resilience and Coastal Protection

Date: 5/1/2025

**LIST OF ATTACHMENTS/EXHIBITS INCLUDED AS PART OF THIS AMENDMENT:**

| <u>Specify Type</u> | <u>Letter/Number</u> | <u>Description</u>                               |
|---------------------|----------------------|--------------------------------------------------|
| Attachment          | 1-A                  | Revised Standard Terms and Conditions (14 pages) |
| Attachment          | 2-A                  | Revised Special Terms and Conditions (3 pages)   |
| Attachment          | 3-A                  | Revised Grant Work Plan (5 pages)                |
| Attachment          | 4-A                  | Revised Public Records Requirements (1 page)     |
| Attachment          | 5-A                  | Revised Special Audit Requirements (7 pages)     |

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## ORCP Additional Signatures

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Caleb Hill

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DEP Grant Manager

Nathan Veitch

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Veitch  
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DEP QC Reviewer

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Local Sponsor may add additional signatures if needed below.

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**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REVISED STANDARD TERMS AND CONDITIONS  
APPLICABLE TO GRANT AGREEMENTS**

**ATTACHMENT 1-A**

**1. Entire Agreement.**

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

**2. Grant Administration.**

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
  - i. Standard Grant Agreement
  - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
  - iii. Attachment 1, Standard Terms and Conditions
  - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
  - (1) an increase or decrease in the Agreement funding amount;
  - (2) a change in Grantee's match requirements;
  - (3) a change in the expiration date of the Agreement; and/or
  - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
  - (1) task timelines within the current authorized Agreement period change;
  - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
  - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
  - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

**3. Agreement Duration.**

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

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#### **4. Deliverables.**

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

#### **5. Performance Measures.**

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

#### **6. Acceptance of Deliverables.**

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

#### **7. Financial Consequences for Nonperformance.**

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction  
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
  - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
  - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department



does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

## **8. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
  - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
  - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
  - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for invoice payments and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
  - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.

This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
  - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.

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- ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

#### **9. Documentation Required for Cost Reimbursement Grant Agreements and Match.**

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. For grants funded with federal funds, nonconsumable and/or nonexpendable personal property or equipment costing \$10,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in 2 CFR 200. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
  - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-

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- price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
- ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
  - e. Direct Purchase Equipment. For grants funded fully or in part with state funds, equipment is defined as capital outlay costing \$5,000 or more. For grants funded fully with federal funds, equipment is defined as capital outlay costing \$10,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
  - f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
  - g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
  - h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

#### **10. Status Reports.**

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

#### **11. Retainage.**

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform

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that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.

- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

## **12. Insurance.**

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

## **13. Termination.**

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant

Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

#### **14. Notice of Default.**

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

#### **15. Events of Default.**

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
  - i. Entry of an order for relief under Title 11 of the United States Code;
  - ii. The making by Grantee of a general assignment for the benefit of creditors;
  - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
  - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

#### **16. Suspension of Work.**

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

#### **17. Force Majeure.**

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first

arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

#### **18. Indemnification.**

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
  - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
  - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

#### **19. Limitation of Liability.**

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

#### **20. Remedies.**

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

#### **21. Waiver.**

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.**

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
  - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
  - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
  - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
  - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Development, at (850) 487-0915.

**23. Compliance with Federal, State and Local Laws.**

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

**24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.**

**This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where**



**there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.**

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

## **25. Investing in America**

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
  - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.
  - b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

## **26. Scrutinized Companies.**

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized

Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

## **27. Lobbying and Integrity.**

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

## **28. Record Keeping.**

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

## **29. Audits.**

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
  - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
  - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect,

general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.

- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
  - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
  - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
  - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

### **30. Conflict of Interest.**

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

### **31. Independent Contractor.**

The Grantee is an independent contractor and is not an employee or agent of Department.

### **32. Subcontracting.**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Development at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

### **33. Guarantee of Parent Company.**

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee

is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

**34. Survival.**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

**35. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

**36. Severability.**

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

**37. Grantee's Employees, Subcontractors and Agents.**

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

**38. Assignment.**

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

**39. Compensation Report.**

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

**40. Disclosure of Gifts from Foreign Sources.**

If the value of the grant under this Agreement is \$100,000 or more, Grantee shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Grantee must also provide a copy of such disclosure to the Department of Financial Services.

**41. Food Commodities.**

To the extent authorized by federal law, the Department, its grantees, contractors and subcontractors shall give preference to food commodities grown or produced in this state when purchasing food commodities, including farm products as defined in section 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

**42. Anti-human Trafficking.**

If the Grantee is a nongovernmental entity, the Grantee must provide the Department with an affidavit signed by an officer or a representative of the Grantee under penalty of perjury attesting that the Grantee does not use coercion for labor or services as defined in section 787.06, F.S.

**43. Iron and Steel for Public Works Projects.**

If this Agreement funds a “public works project” as defined in section 255.0993, F.S., or the purchase of materials to be used in a public works project, any iron or steel permanently incorporated in the Project must be “produced in the United States,” as defined in section 255.0993, F.S. This requirement does not apply if the Department determines that any of the following circumstances apply to the Project:

- (1) iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- (2) the use of iron or steel products produced in the United States will increase the total cost of the project by more than twenty percent (20%); or
- (3) complying with this requirement is inconsistent with the public interest.

Further, this requirement does not prevent the Contractor’s minimal use of foreign steel and iron materials if:

- (1) such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
- (2) the “cost” of such materials, as defined in section 255.0993, F.S., does not exceed one-tenth of one percent (1%) of the total Project Cost under this Agreement or \$2,500, whichever is greater.

Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system that are necessary for operation or concealment (excepting transmission and distribution poles) are not considered to be iron or steel products and are, therefore, exempt from the requirements of this paragraph.

This provision shall be applied in a manner consistent with and may not be construed to impair the state’s obligations under any international agreement.

**44. Complete and Accurate information.**

Grantee represents and warrants that all statements and information provided to DEP are current, complete, and accurate. This includes all statements and information in this Grant, as well as its Attachments and Exhibits.

**45. Execution in Counterparts and Authority to Sign.**

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Revised Special Terms and Conditions  
AGREEMENT NO. 23LE1**

**ATTACHMENT 2-A**

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

**1. Scope of Work.**

The Project funded under this Agreement is the Estero Island Shore Protection Project. The Project is defined in more detail in Attachment 3, Grant Work Plan.

**2. Duration.**

- a. Reimbursement Period. The reimbursement period for this Agreement begins on January 1, 2021 and ends at the expiration of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

**3. Payment Provisions.**

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

**4. Cost Eligible for Reimbursement or Matching Requirements.**

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

| <u>Reimbursement</u>                | <u>Match</u>             | <u>Category</u>                                     |
|-------------------------------------|--------------------------|-----------------------------------------------------|
| <input type="checkbox"/>            | <input type="checkbox"/> | Salaries/Wages                                      |
|                                     |                          | Overhead/Indirect/General and Administrative Costs: |
| <input type="checkbox"/>            | <input type="checkbox"/> | a. Fringe Benefits, N/A.                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | b. Indirect Costs, N/A.                             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contractual (Subcontractors)                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Travel, in accordance with Section 112, F.S.        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Equipment                                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Rental/Lease of Equipment                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Miscellaneous/Other Expenses                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Land Acquisition                                    |

**5. Equipment Purchase.**

No Equipment purchases shall be funded under this Agreement.

**6. Land Acquisition.**

There will be no Land Acquisitions funded under this Agreement.

**7. Match Requirements**

See Attachment 3, Grant Work Plan.

## **8. Insurance Requirements**

**Required Coverage.** At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. Grantee shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. **Comprehensive General Liability Insurance.**

The Grantee shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Agreement. The minimum limits shall be \$200,000 for each person and \$300,000 per occurrence.

b. **Commercial Automobile Insurance.**

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

\$200,000/300,000

Automobile Liability for Company-Owned Vehicles, if applicable

\$200,000/300,000

Hired and Non-owned Automobile Liability Coverage

c. **Workers' Compensation.**

The Grantee shall comply with the workers' compensation requirements of Chapter 440, F.S.

d. **Other Insurance.** None.

## **9. Quality Assurance Requirements.**

There are no special Quality Assurance requirements under this Agreement.

## **10. Retainage.**

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10 percent of the total amount of the Agreement.

## **11. Subcontracting.**

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

## **12. State-owned Land.**

The Board of Trustees of the Internal Improvement Trust Fund must be listed as additional insured to general liability insurance required by the Agreement and, if the Grantee is a non-governmental entity, indemnified by the Grantee.

## **13. Office of Policy and Budget Reporting.**

There are no special Office of Policy and Budget reporting requirements for this Agreement.

## **14. Common Carrier.**

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution. If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The



Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

**15. Financial Assistance and Payment of Invoices to Rural Communities or Rural Areas of Opportunity**

This agreement does not provide federal or state financial assistance to a county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2).

**16. Additional Terms.**

None.

### **ATTACHMENT 3-A REVISED GRANT WORK PLAN**

**PROJECT TITLE:** Estero Island Shore Protection Project

**PROJECT LOCATION:** The Project is located between Department of Environmental Protection (Department or DEP) reference monuments R175-400' to R198 and R203 to R207 along the Gulf of Mexico in the Town of Fort Myers Beach in Lee County, Florida.

**PROJECT BACKGROUND:** The project's northern 1.3 miles of project shoreline was restored in 2011 and included the construction of Matanzas Pass terminal groin on the north end of the beach fill. In 2016 and 2020, the USACE placed dredged sand from Matanzas Pass between R182 and R187. In 2017, the West Coast Inland Navigation District and Lee County Nourished between R203 and R206 using dredged sand from Big Carlos Pass. In 2017 and 2020, Lee County used upland sand to repair storm damages at R180 and R181 from Hurricane Irma and Tropical Storm Eta, respectively. In 2020, the Town of Fort Myers Beach took over local sponsorship from Lee County. Following additional storm damages along Estero Island in 2020 and 2021, the Town plans to extend the project nourishment length.

**PROJECT DESCRIPTION:** The Project consists of Design, Construction and Monitoring.

**PROJECT ELIGIBILITY:** The Department has determined that 86 percent of the non-federal Project cost for Tasks 1 and 3, 83.4 percent of the non-federal Project cost for Task 2.1, and 100 percent of the non-federal Project cost for Task 2.2 is eligible for state cost sharing. Therefore, the Department's financial obligation shall not exceed the sum of \$16,920,522.50 for this Project or up to 43 percent of the non-federal Project cost for Tasks 1 and 3, 41.7 percent of the non-federal Project cost for Task 2.1, and 100 percent of the non-federal Project cost for Task 2.2, if applicable, for the specific eligible Project items listed, whichever is less. To the extent applicable, it is understood and agreed that for portions of the Project which are located within lands owned by the State of Florida, no cost share for construction activities shall be required of the Local Sponsor, and the Project costs for such portions shall be paid by the Department. Any indicated federal cost sharing percentage is an estimate and shall not affect the cost sharing percentages of the non-federal share. The parties agree that eligibility for cost sharing purposes will be maintained pursuant to 62B-36, Florida Administrative Code (F.A.C.).

The Local Sponsor will be responsible for auditing all travel reimbursement expenses based on the travel limits established in section 112.061, Florida Statute (F.S.).

Pursuant to sections 161.091 - 161.161, F.S., the Department provides financial assistance to eligible governmental entities for beach erosion control and inlet management activities under the Florida Beach Management Funding Assistance Program.

Pursuant to 62B-36.005(1)(d), F.A.C., the Local Sponsor has resolved to support and serve as local sponsor, has demonstrated a financial commitment, and has demonstrated the ability to perform the tasks associated with the beach erosion control project as described herein.

The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at:

<https://floridadep.gov/sites/default/files/PhysicalMonitoringStandards.pdf>

One (1) electronic copy of all written reports developed under this Agreement shall be forwarded to the Department, unless otherwise specified.

Acronyms:

DEP – Florida Department of Environmental Protection  
F.A.C. – Florida Administrative Code  
F.S. – Florida Statutes  
FWC – Florida Fish and Wildlife Conservation Commission  
USACE – United States Army Corps of Engineers  
CWA – Critical Wildlife Area

## **TASKS and DELIVERABLES:**

The Local Sponsor will provide detailed scopes of work or a letter requesting advance payment if authorized by Attachment 2, for all tasks identified below, which shall include a narrative description of work to be completed, a corresponding cost estimate and a proposed schedule of completion for the proposed work and associated deliverables. Each scope of work shall be approved in writing by the DEP Project Manager to be included into this work plan for reimbursement.

### **Task 1: Design and Permitting**

**Task Description:** The Local Sponsor will acquire professional services for the engineering and design of the Project such as coastal engineering analyses, preparation of plans and specifications, physical and environmental surveys, cultural resource surveys, design-level geotechnical services, sediment studies, inlet studies, environmental analyses, orthophotography, plan formulations and for obtaining environmental permits and other Project-related authorizations. The Local Sponsor will submit work products to the appropriate State or Federal regulatory agencies as requested by the DEP Project Manager in order to be eligible for reimbursement under this task.

**Deliverable:** Certification of Completion including documentation of submittal affirming that the final design document was completed and submitted to the Department. For interim payment requests, a Task Summary Report signed by the Local Sponsor must be submitted detailing work progress during the payment request period. The Task Summary Report must include the dates and descriptions of all activities, surveys and reports completed or in progress during the time period of the interim payment request.

**Performance Standard:** The DEP Project Manager will review the task deliverable and any associated work products as necessary to verify they meet the specifications in the Grant Work Plan and this task description.

**Payment Request Schedule:** Payment requests may be submitted after the deliverable is received and accepted and may be submitted no more frequently than quarterly.

### **Task 2.1: Construction (North: R175-400' - R198)**

**Task Description:** This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs associated with eligible beach and inlet construction activities include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible costs may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, beach fill, tilling and scarp removal, erosion control structures, mitigation reefs, dune stabilization

measures and native beach-dune vegetation. Construction shall be conducted in accordance with any and all State or Federal permits. The Local Sponsor will submit work products to the appropriate State or Federal regulatory agencies as requested by the DEP Project Manager in order to be eligible for reimbursement under this task.

**Deliverable:** Certification of Completion by a Florida-registered Professional Engineer with documentation of submittal to the Department affirming the construction task was completed in accordance with construction contract documents. For interim payment requests, a Task Summary Report signed by Local Sponsor must be submitted detailing activities completed during the payment request period. The Task Summary Report must include the dates and descriptions of all activities, surveys and reports completed or in progress during the time period of the interim payment request.

**Performance Standard:** The DEP Project Manager will review the task deliverable and any associated work products as necessary to verify they meet the specifications in the Grant Work Plan and this task description.

**Payment Request Schedule:** Payment requests may be submitted after the deliverable is received and accepted and may be submitted no more frequently than quarterly.

### **Task 2.2: Construction (CWA: R203 - R207)**

**Task Description:** This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs associated with eligible beach and inlet construction activities include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible costs may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, beach fill, tilling and scarp removal, erosion control structures, mitigation reefs, dune stabilization measures and native beach-dune vegetation. Construction shall be conducted in accordance with any and all State or Federal permits. The Local Sponsor will submit work products to the appropriate State or Federal regulatory agencies as requested by the DEP Project Manager in order to be eligible for reimbursement under this task.

**Deliverable:** Certification of Completion by a Florida-registered Professional Engineer with documentation of submittal to the Department affirming the construction task was completed in accordance with construction contract documents. For interim payment requests, a Task Summary Report signed by Local Sponsor must be submitted detailing activities completed during the payment request period. The Task Summary Report must include the dates and descriptions of all activities, surveys and reports completed or in progress during the time period of the interim payment request.

**Performance Standard:** The DEP Project Manager will review the task deliverable and any associated work products as necessary to verify they meet the specifications in the Grant Work Plan and this task description.

**Payment Request Schedule:** Payment requests may be submitted after the deliverable is received and accepted and may be submitted no more frequently than quarterly.

### **Task 3: Monitoring**

State and federal monitoring required by permit is eligible for reimbursement pursuant to program statute and rule. In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with section 287.057(19)(a)(1), F.S., all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Department/Local Sponsor permittee/engineering consultant. The Local Sponsor's engineering consultant must provide an adequate

mitigation plan, consistent with section 287.057(19)(a)(1), F.S., including a description of organizational, physical, and electronic barriers to be used by the Local Sponsor's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources. Department approval of the consultant's mitigation plan will be required prior to execution of this Agreement. If at any time the Local Sponsor and/or its engineering consultant fails to comply with this provision, the Local Sponsor agrees to reimburse the Department all funds provided by the Department associated with environmental monitoring for the Project listed.

**Task Description:** This task includes activities associated with permit-required monitoring conducted in accordance with the conditions specified by state or federal regulatory agencies. All monitoring tasks must be located within or adjacent to the Project area and follow the Department's Regional Coastal Monitoring Program and FWC's marine turtle and shorebird monitoring programs. Guidance for monitoring of nearshore resources is available in the Department's Standard Operation Procedures For Nearshore Hardbottom Monitoring Of Beach Nourishment Projects. The Local Sponsor must submit work products directly to the appropriate state or federal regulatory agencies in accordance with permit conditions to be eligible for reimbursement under this task, unless otherwise directed.

**Deliverable:** For each interim or final payment, the Local Sponsor will provide a Task Summary Report signed by Local Sponsor containing; 1) An itemized listing of all monitoring activities completed or in progress during the payment request period and, 2) Documentation of submittal to state and federal regulatory agencies of completed monitoring data, surveys and final reports for permit-required work under this task description.

**Performance Standard:** The DEP Project Manager will review the task deliverable and any associated work products as necessary to verify they meet the specifications in the Grant Work Plan and this task description.

**Payment Request Schedule:** Payment requests may be submitted after the deliverable is received and accepted and may be submitted no more frequently than quarterly.

Estimated Eligible Project Cost

| Task # | Eligible Project Tasks     | State Cost Share (%) | Federal Estimated Project Costs | DEP                    | Local                  | Total                  |
|--------|----------------------------|----------------------|---------------------------------|------------------------|------------------------|------------------------|
| 1      | Design and Permitting      | 43.00%               |                                 | \$185,260.00           | \$245,577.21           | <b>\$430,837.21</b>    |
|        |                            |                      |                                 |                        |                        |                        |
| 2.1    | Construction (North)       | 41.70%               |                                 | \$6,952,432.50         | \$9,720,067.50         | <b>\$16,672,500.00</b> |
|        |                            |                      |                                 |                        |                        |                        |
| 2.2    | Construction (CWA)         | 100.00%              |                                 | \$9,640,500.00         | \$0.00                 | <b>\$9,640,500.00</b>  |
|        |                            |                      |                                 |                        |                        |                        |
| 3      | Monitoring                 | 43.00%               |                                 | \$142,330.00           | \$188,670.00           | <b>\$331,000.00</b>    |
|        |                            |                      |                                 |                        |                        |                        |
|        | <b>TOTAL PROJECT COSTS</b> |                      |                                 | <b>\$16,920,522.50</b> | <b>\$10,154,314.71</b> | <b>\$27,074,837.21</b> |

**PROJECT TIMELINE & BUDGET DETAIL:** The tasks must be completed by, and all deliverables received by, the corresponding deliverable due date.

| Task No. | Task Title            | Budget Category      | Budget Amount   | Task Start Date | Deliverable Due Date |
|----------|-----------------------|----------------------|-----------------|-----------------|----------------------|
| 1        | Design and Permitting | Contractual Services | \$185,260.00    | 01/01/2021      | 09/30/2026           |
| 2.1      | Construction (North)  | Contractual Services | \$6,952,432.50  | 01/01/2021      | 09/30/2026           |
| 2.2      | Construction (CWA)    | Contractual Services | \$9,640,500.00  | 01/01/2021      | 09/30/2026           |
| 3        | Monitoring            | Contractual Services | \$142,330.00    | 01/01/2021      | 09/30/2026           |
| Total:   |                       |                      | \$16,920,522.50 |                 |                      |

Note that, per paragraph 8.j. of the agreement, authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. Extending the contract end date carries the risk that funds for this project may become unavailable in the future. This should be a consideration for the Local Sponsor with this and future requests for extension.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Revised Public Records Requirements**

**Attachment 4-A**

**1. Public Records.**

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

**2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

**f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone:** (850) 245-2118  
**Email:** [public.services@floridadep.gov](mailto:public.services@floridadep.gov)  
**Mailing Address:** Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Boulevard, MS 49  
Tallahassee, Florida 32399



**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Revised Special Audit Requirements**  
**(State and Federal Financial Assistance)**

**Attachment 5-A**

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

**MONITORING**

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

**AUDITS**

**PART I: FEDERALLY FUNDED**

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$1,000,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$1,000,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

**Attachment 5-A**

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## PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

## PART III: OTHER AUDIT REQUIREMENTS

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

## PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
  - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

- B. The Auditor General's Office at the following address:

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

**Attachment 5-A**

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5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

## **PART V: RECORD RETENTION**

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

# EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

*Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded*

| <b>Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:</b> |                |             |            |                |                              |
|--------------------------------------------------------------------------------------------------------|----------------|-------------|------------|----------------|------------------------------|
| <b>Federal Program A</b>                                                                               | Federal Agency | CFDA Number | CFDA Title | Funding Amount | State Appropriation Category |
|                                                                                                        |                |             |            | \$             |                              |
|                                                                                                        |                |             |            |                |                              |
|                                                                                                        |                |             |            |                |                              |
| <b>Federal Program B</b>                                                                               | Federal Agency | CFDA Number | CFDA Title | Funding Amount | State Appropriation Category |
|                                                                                                        |                |             |            | \$             |                              |
|                                                                                                        |                |             |            |                |                              |
|                                                                                                        |                |             |            |                |                              |

*Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:*

| <b>Federal Program A</b> | First Compliance requirement: i.e.: (what services of purposes resources must be used for)     |  |
|--------------------------|------------------------------------------------------------------------------------------------|--|
|                          | Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources) |  |
|                          | Etc.                                                                                           |  |
|                          | Etc.                                                                                           |  |
| <b>Federal Program B</b> | First Compliance requirement: i.e.: (what services of purposes resources must be used for)     |  |
|                          | Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources) |  |
|                          | Etc.                                                                                           |  |
|                          | Etc.                                                                                           |  |

*Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.*

| State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs: |                |      |            |                |                              |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------|------|------------|----------------|------------------------------|
| Federal Program A                                                                                                                     | Federal Agency | CFDA | CFDA Title | Funding Amount | State Appropriation Category |
|                                                                                                                                       |                |      |            |                |                              |
|                                                                                                                                       |                |      |            |                |                              |
| Federal Program B                                                                                                                     | Federal Agency | CFDA | CFDA Title | Funding Amount | State Appropriation Category |
|                                                                                                                                       |                |      |            |                |                              |
|                                                                                                                                       |                |      |            |                |                              |

*Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.*

| State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.: |                                                |                                |             |                                                                        |                 |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|--------------------------------|-------------|------------------------------------------------------------------------|-----------------|------------------------------|
| State Program A                                                                                                                         | State Awarding Agency                          | State Fiscal Year <sup>1</sup> | CSFA Number | CSFA Title<br>or<br>Funding Source Description                         | Funding Amount  | State Appropriation Category |
| Original                                                                                                                                | Florida Department of Environmental Protection | 2022-2023                      | 37.003      | Beach Management Funding Assistance Program, GAA Line Item #1778, LATF | \$14,013,346.00 | 140126                       |
| Amendment 1                                                                                                                             | Florida Department of Environmental Protection | 2021-2022                      | 37.003      | Beach Management Funding Assistance Program, GAA Line Item #1647, LATF | \$150,000.00    | 140126                       |
| Amendment 1                                                                                                                             | Florida Department of Environmental Protection | 2024-2025                      | 37.003      | Beach Management Funding Assistance Program, GAA Line Item #1856, LATF | \$2,757,176.50  | 140126                       |
| State Program B                                                                                                                         | State Awarding Agency                          | State Fiscal Year <sup>2</sup> | CSFA Number | CSFA Title<br>or<br>Funding Source Description                         | Funding Amount  | State Appropriation Category |
|                                                                                                                                         |                                                |                                |             |                                                                        |                 |                              |
|                                                                                                                                         |                                                |                                |             |                                                                        |                 |                              |
| Total Award                                                                                                                             |                                                |                                |             |                                                                        | \$16,920,522.50 |                              |

<sup>1</sup> Subject to change by Change Order.

<sup>2</sup> Subject to change by Change Order.

*Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.*

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [[https://apps.fldfs.com/fsaa/state\\_project\\_compliance.aspx](https://apps.fldfs.com/fsaa/state_project_compliance.aspx)]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.



**MODIFICATION #1 TO SUBGRANT AGREEMENT BETWEEN  
THE DIVISION OF EMERGENCY MANAGEMENT AND TOWN OF FORT  
MYERS BEACH**

This Modification is made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and Town of Fort Myers Beach ("Recipient"), to modify Contract Number D1502, which began on March, 5, 2024 ("the Agreement").

WHEREAS, the Division and the Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to Recipient of **\$8,000,000.00**;

WHEREAS, the Agreement expires on March 31, 2026; and,

WHEREAS, the Division and the Recipient desire to modify the Agreement; and,

WHEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. Attachment A to the Scope of Work of the Agreement will include the following as an eligible activity under this funding:
  - a. The dune may be planted with native dune vegetation.
2. All provisions not in conflict with this Modification remain in full force and effect and are to be performed at the level specified in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

**RECIPIENT: TOWN OF FORT MYERS BEACH**

Signature:  Dan Allers

Name: Dan Allers

Title: Mayor

Date: 4/23/2024

**DIVISION OF EMERGENCY MANAGEMENT**

Signature:  Ian Guidicelli

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief,  
as Authorized Representative.**

Date: 5/7/2024

**INTERLOCAL AGREEMENT by and between  
LEE COUNTY and the TOWN OF FORT MYERS BEACH**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of April 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, hereinafter referred to as the "Town", and the Board of County Commissioners of LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County".

**WHEREAS**, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

**WHEREAS**, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

**WHEREAS**, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

**WHEREAS**, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

**WHEREAS**, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

**WHEREAS**, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to cooperate in mitigating erosion on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants contained herein, the Town and the County agree as follows:

**SECTION ONE**

**INCORPORATION OF RECITALS**

The Recitals as set forth above are incorporated into the terms of this Agreement.

**SECTION TWO**

**PURPOSE**

The purpose of this agreement is to reduce to writing the parties' agreement to a method for allocation of costs and responsibilities for "The Estero Island Beach Nourishment Project", hereinafter referred to as the "Project". This Agreement shall supersede and replace in its entirety

the June 22, 2010, Interlocal Agreement between the County and the Town for Estero Island Beach Restoration. The parties acknowledge and agree that all terms and conditions of the June 22, 2010, Interlocal Agreement have been satisfied.

### **SECTION THREE**

### **PROJECT SCOPE**

The parties agree the scope of the Project shall include the necessary design, permitting, engineering, construction, project management, and environmental protection and monitoring required by state and federal permits for the Estero Island shoreline extending from R175 at the northern end of Estero Island to R198 ("the North-Central Project Segment"), and from R203 to R207 ("the South Project Segment"). The scope of the Project includes post-construction maintenance and monitoring for a period of seven years, unless a shorter time is required or permitted by state or federal permits for the Project. For the purpose of this Agreement, maintenance includes additional fill placement as authorized by Project permits to address erosion hot spots that develop prior to the next scheduled nourishment subject to the Cost Allocations and Cancellation provisions herein. The Project shall be constructed in accordance with applicable local, state and federal rules, regulations, and permits.

### **SECTION FOUR**

### **COUNTY OBLIGATIONS**

The County agrees to:

- a) Cooperate with the Town and Town Contractors as necessary to facilitate state funding applications, design, permitting, and implementation of the Project.
- b) Maintain any public access and parking under the County's control used to qualify for state cost sharing.
- c) Cooperate with the Town in coordinating overlapping monitoring or maintenance areas to eliminate duplication of effort associated with the completion of post-construction maintenance and monitoring for a period of seven years unless a shorter time is required or permitted by the state and federal permits for the Project. Maintenance responsibilities under this Agreement will be limited to tilling and scarp removal required by permits for the Project.
- d) Not object to the Town's desire to be able to commence construction activities 24 hours a day, every day of the year in order to maximize construction efficiency and reduce construction costs.
- e) Allow the Town the use of County owned properties adjacent to the Project for Town Contractors and equipment for the purpose of reasonable staging, beach access, and construction. Reasonable staging and access shall be subject to prior written approval by the County Manager or designee, the terms and conditions of which shall be binding on the Town and Town Contractors as necessary to protect the County's interests.
- f) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement. The County will not be responsible for providing payment in any form for expenses for experimental technologies, LiDAR, aerial oblique photography, surveys not required by the Florida Department of Environmental Protection (hereinafter DEP) approved physical monitoring plan, economic studies and benefits analysis, fines, penalties, interest, and work completed on private properties not authorized by a signed construction easement.

## **SECTION FIVE**

## **TOWN OBLIGATIONS**

The Town agrees to:

- a) Monitor the Project area as required by permits and provide the results of the monitoring to the County concurrent with submittal to permitting agencies.
- b) Apply for all necessary permits for the Project.
- c) Seek state cost sharing to help reduce overall costs to the Town and County and provide the County with copies of all funding applications and agreements within thirty (30) days of execution.
- d) Prepare detailed plans and specifications for the Project including provision that any County property used for staging and beach access, including use of parking areas for Town Contractors, construction and equipment, is left in conditions equal to or better than before it was used for the Project. This will include protection of natural resources and construction of dunes on County Parks where requested by the County.
- e) Maintain any public access and parking under the Town's control used to qualify for state cost sharing.
- f) Acquire all easements necessary to complete the Project and provide a detailed list to the County.
- g) Provide copies of Project technical reports to the County at the same time provided to DEP.
- h) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement.
- i) Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs and funding of the Project. The Town will make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized County representatives for a minimum of seven years after completion of construction of the Project.
- j) The Town or its agents will act as Project sponsor and manager.
- k) Notify the County of the final completion of Project monitoring tasks required by state and federal permits within thirty (30) days of completion of each task.
- l) The Town may, at its sole option and discretion, coordinate regionally with other eligible government entities when it is in the best interests of the Town and County, particularly in sharing resources for cost savings purposes.

## **SECTION SIX**

## **COST ALLOCATIONS**

The Parties agree to share in the eligible costs for the Project in accordance with the following:

- a) The cost allocation between the Town and County will be based on total eligible Project costs as defined herein and documented by the Town pursuant to Section Four (f) and Section Five (i) above.
- b) Operational expenses including staff time of Town and County personnel are not considered Project expenses for the purposes of this Agreement.
- c) The County will pay a share of eligible Project costs including those incurred prior to the date of this Agreement but only those on or after April 24, 2023, and listed on

Exhibit A. The Town will invoice no more than once per month and the schedule for payments will be as follows:

- i. For eligible expenses incurred prior to the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment for eligible Project costs. Completed DEP reports as described in Section Five (g) above and including copies of supporting documentation will satisfy this requirement.
  - ii. The County will advance a sum to the Town equal to ninety percent (90%) of the County share estimated from the bid documents for sand placement. The County will make payment to the Town within thirty (30) days of receiving a notice from the Town including their approved bid and executed contract. Upon receipt of a detailed invoice, notification from the Town that the sand placement has been completed, and accounting documentation, the County will pay the balance of funds due for completed sand placement within thirty (30) days.
  - iii. For eligible expenses other than the sand placement incurred after the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment. This includes costs for permit required post-construction monitoring and maintenance.
- d) The payment amounts will be calculated using the cost sharing methods described as follows:
- i. Pursuant to Sections 161.091 - 161.161, F.S., the DEP provides financial assistance to eligible governmental entities for beach erosion control and inlet management activities under the Florida Beach Management Funding Assistance Program. Any State funding provided through the DEP is typically based on criteria described in Chapter 62B-36, Florida Administrative Code but may also include hurricane recovery funding. The total state funding is known as the State Share.
  - ii. Project funding provided by entities other than the DEP Beach Management Funding Assistance Program, County or Town shall collectively be referred to as Grant Funding. This may include but is not limited to Project funding from the Florida Division of Emergency Management (FDEM) and the Federal Emergency Management Agency (FEMA).
  - iii. The costs remaining after deduction of the State Share shall be known as the Local Share. In accordance with Section 5c above, the Town will seek Grant Funding to reduce the overall Local Share. Any such funding will apply to the Town Share first, with any balance applied to the County Share.
  - iv. The distribution of the Local Share has been determined based on a prior Benefit Analysis. The Benefit Analysis determined that 12.4% of the benefits are for storm protection, and 87.6% of the benefits are for recreation.
  - v. The County owns approximately 1954 linear feet or 8.1% of the Estero Island North-Central Project Segment shoreline primarily at Bowditch Point, Lynn Hall, and Crescent Beach Parks and will pay the proportional storm protection cost for those facilities equal to 1.0% of the Local Share (i.e.,  $12.4\% \times 8.1\% \times \text{Local Share}$ ).

- vi. The North-Central Project Segment shoreline is 83.4% publicly accessible as defined by DEP for construction. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 73.1% of the Local Share (i.e., 87.6% x 83.4% x Local Share).
- vii. The South Project Segment is State owned as defined by DEP for beach funding purposes. As such construction costs for the South Project Segment are paid 100% by the State and not part of the Local Share.
- viii. For Post-construction monitoring costs, the Project shoreline is 86.0% publicly accessible as defined by DEP. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 75.3% of the Local Share (i.e., 87.6% x 86.0% x Local Share) for permit required post-construction monitoring costs of the North-Central and South Segments.
- ix. The total County Share will be the sum of the County North-Central storm protection share (Section 6(d)v), the County North-Central recreation share (Section 6(d)vi), and post-construction monitoring expenses cost shared in accordance with Section 6(d)viii. All other expenses and financial obligations are the sole responsibility of the Town.

## **SECTION SEVEN**

## **HOLD HARMLESS**

Each party shall be liable for its own actions, negligence and, to the extent permitted by law, Town shall indemnify, defend and hold harmless the County against any actions, claims for damages arising out of Town's negligence in connection with this Agreement, and County shall indemnify, defend and hold harmless the Town against any actions, claims for damages arising out of County's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

## **SECTION EIGHT**

## **CANCELLATION**

- a) Prior to award of the construction contract, the Town shall provide the County with the estimated maximum County contribution under the terms of this Agreement. In the event that the County's maximum contribution is estimated to exceed \$9,200,000, the terms of this Agreement will become null and void unless the County and Town mutually agree in writing to proceed with the Project. The written Agreement to proceed must provide the maximum County contribution prior to award of the construction contract. The Town hereby agrees not to award a contract or incur any costs attributable to the County until such time as the County agrees to proceed. The Town will be responsible for all costs incurred without prior approval to proceed from the County.
- b) If the Agreement is canceled, any conditions necessitated by a permit will continue in full force and effect.
- c) The breach of a material obligation of this Agreement shall be grounds for immediate cancellation of this Agreement by the non-breaching party. The non-breaching party must provide the party in default with 30 days, from the date of notice of the default, to cure said



default. If the breach is not curable, the non-breaching party may terminate the Agreement without waiting 30-days and seek any remedies available under Florida law.

**SECTION NINE**                      **AMENDMENT TO AGREEMENT**

This Interlocal Agreement may only be amended as provided for herein, with the express consent of both Parties and executed with the same formality and dignities as this original Agreement.

**SECTION TEN**                      **INTERPRETATION OF AGREEMENT**

This Interlocal Agreement shall be construed and interpreted pursuant to Florida law. Venue for any disputes between the Parties arising under this Interlocal Agreement shall be the Twentieth Judicial Circuit Court, in and for Lee County, Florida.

**SECTION ELEVEN**                      **INTEGRATION OF DOCUMENT**

This Agreement, including any incorporated exhibits or amendments, constitutes the entire Agreement between the Parties and shall supersede and control over any or all prior Agreements or understandings, either written or oral, relating to the matters herein.

**SECTION TWELVE**                      **NOTICE PROVISIONS**

All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

Mayor  
Town of Fort Myers Beach  
2523 Estero Boulevard  
Fort Myers Beach, Florida 33931

Chair, Board of County Commissioners  
Lee County  
Post Office Box 398  
Fort Myers, Florida 33902

**SECTION THIRTEEN**                      **EFFECTIVE DATE**

This Agreement will be effective on the last date signed by the County acting through its Board of County Commissioners or the Town acting through the Town Council.

**SECTION FOURTEEN**                      **TERM**

This Agreement shall commence upon execution and continue from year to year uninterrupted and shall terminate upon reimbursement of eligible costs associated with the last date of the monitoring required for the Project under the Project's state and federal permits. The rights and obligations of

each party that arise prior to the expiration of the term shall survive any expiration of the term of this Agreement.

**SECTION FIFTEEN**      **SEVERABILITY**

Should any portion of this Agreement be found invalid by a court of law, the remaining portions of this Agreement shall remain in effect insofar as they can reasonably be severed from the invalid portion.

**SECTION SIXTEEN**      **ATTORNEY'S FEES AND COSTS**

If either Party brings or commences legal action or proceeding to enforce the terms of this Agreement, the Parties agree that each will pay for its own costs and expenses of litigation, including reasonable attorneys' fees. In the event of a dispute and prior to litigation, the parties agree to consider alternative dispute resolution opportunities, include but not limited to mediation. Should the Parties agree to mediation, the Parties agree to equally divide the costs of the mediation.

**SECTION SEVENTEEN**      **MISCELLANEOUS**

1. The Parties represent that they have full authority to enter into and execute this Agreement.
2. The terms and conditions of this Agreement shall extend to and bind the successors and assigns of the County and the Town.
3. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other.
4. Except as otherwise provided for herein, neither Party shall be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, or any other damages of any kind relating to this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed on the day and year first written above.

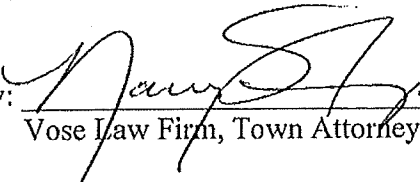
ATTEST:

**Town of Fort Myers Beach**

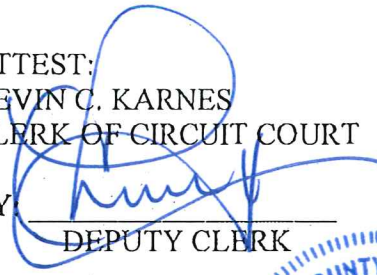
By:   
Amy Baker, Town Clerk

By: 

APPROVED AS TO FORM:

By:   
Vose Law Firm, Town Attorney

ATTEST:  
KEVIN C. KARNES  
CLERK OF CIRCUIT COURT

BY:   
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY

  
CHAIR



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY:

  
Office of the County Attorney

## Exhibit A

Project Expenses incurred prior to Agreement execution but after April 24, 2023, total approximately \$47,120.00 for activities including:

- a) \$47,120.00: 2023 Annual Monitoring of Estero Island; Update Bid Plans with Current Survey Data; Coastal Engineering Consultants STA #16.

## RESOLUTION NUMBER 24-15

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY FOR THE CONSTRUCTION OF THE ESTERO ISLAND BEACH RENOURISHMENT PROJECT AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

**WHEREAS**, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

**WHEREAS**, both the Town and the County are responsible to properly manage, protect, and maintain beaches fronting on the Gulf of Mexico from erosion through beach restoration and nourishment projects as part of their governmental duties; and,

**WHEREAS**, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

**WHEREAS**, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

**WHEREAS**, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

**WHEREAS**, the Town and the County have previously entered into agreement to do so and to date have successfully completed all obligations from prior maintenance and nourishment agreements; and

**WHEREAS**, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to continue to cooperate in completing beach maintenance, mitigating erosion, and nourishment on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

**WHEREAS**, the Town Council has determined it is in the best interest of the Town to approve the requested Interlocal Agreement between the Town and Lee County to construct Estero Island Beach Renourishment Project.

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

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

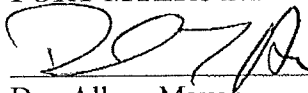
Section 2. The Town Council hereby approves the Interlocal Agreement between the Town and Lee County for the construction of the Estero Island Beach Renourishment Project. A copy of the Interlocal Agreement is attached hereto as Attachment "A".

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

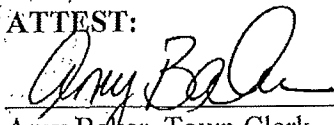
|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             | Aye |
| Jim Atterholt, Vice Mayor     | Aye |
| John R. King, Council Member  | Aye |
| Scott Safford, Council Member | Aye |
| Karen Woodson, Council Member | Aye |

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

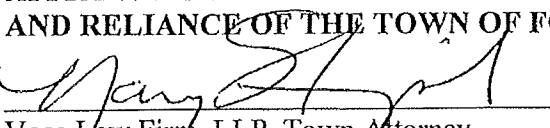
**FORT MYERS BEACH TOWN COUNCIL**

  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Amy Baker, Town Clerk

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

  
\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1<sup>st</sup> day of April 2024.

| <b>ESTERO ISLAND BEACH NOURISHMENT: CUTTERHEAD DREDGE - NEARSHORE BORROW AREA</b><br><b>PRELIMINARY OPINION OF PROBABLE CONSTRUCTION COSTS</b><br><b>ANTICIPATED YEAR OF CONSTRUCTION: 2023-24</b> |                              |      |          |             |                             |                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|------|----------|-------------|-----------------------------|---------------------|
| Item                                                                                                                                                                                               | Description                  | Unit | Quantity | Unit Price  | Extended Price <sup>1</sup> | Subtotals           |
| C-1                                                                                                                                                                                                | Mobilization/Demobilization  | LS   | 1        | \$7,946,000 | \$7,946,000                 |                     |
| C-2                                                                                                                                                                                                | Beach Fill                   | CY   |          |             |                             |                     |
| C-2A                                                                                                                                                                                               | North-Central                |      | 629,950  | \$15.41     | \$9,708,000                 |                     |
| C-2B                                                                                                                                                                                               | South                        |      | 316,000  | \$15.86     | \$5,012,000                 |                     |
| C-3                                                                                                                                                                                                | Environmental Protection     | Days | 160      | \$400       | \$64,000                    |                     |
| C-4                                                                                                                                                                                                | Turbidity Monitoring         | Days | 160      | \$700       | \$112,000                   |                     |
| C-5                                                                                                                                                                                                | Shorebird Abatement          | Days | 120      | \$500       | \$60,000                    |                     |
| C-7                                                                                                                                                                                                | Dune Vegetation              | SY   | 26,800   | \$15        | \$392,000                   | \$23,294,000        |
| CM-1                                                                                                                                                                                               | Construction Monitoring      | LS   | 1        | \$67,000    | \$67,000                    | \$67,000            |
| CP-1                                                                                                                                                                                               | Construction Phase Services  | LS   | 1        | \$498,000   | \$498,000                   | \$498,000           |
| M-1                                                                                                                                                                                                | Biological Monitoring        | LS   | 1        | \$67,000    | \$67,000                    |                     |
| M-2                                                                                                                                                                                                | Post-Construction Monitoring | LS   | 1        | \$64,000    | \$64,000                    |                     |
| M-3                                                                                                                                                                                                | Beach Tilling                | LS   | 1        | \$50,000    | \$50,000                    | \$181,000           |
| <sup>1</sup> Values rounded to the nearest \$1,000<br>                                                            |                              |      |          |             | <b>Subtotal</b>             | <b>\$24,040,000</b> |
|                                                                                                                                                                                                    |                              |      |          |             | <b>10% Contingency</b>      | <b>\$2,404,000</b>  |
|                                                                                                                                                                                                    |                              |      |          |             | <b>Grand Total</b>          | <b>\$26,444,000</b> |

CEC File No. 24.504

February 28, 2024



## Department of Homeland Security Federal Emergency Management Agency

### General Info

|                                 |                                                     |             |     |                            |                                          |
|---------------------------------|-----------------------------------------------------|-------------|-----|----------------------------|------------------------------------------|
| <b>Project #</b>                | 705212                                              | <b>PW #</b> | 643 | <b>Project Type</b>        | Specialized                              |
| <b>Project Category</b>         | G - Parks, Recreational Facilities, and Other Items |             |     | <b>Applicant</b>           | Fort Myers Beach, Town of (071-24150-00) |
| <b>Project Title</b>            | Fort Myers Beach Beach Renourishment                |             |     | <b>Event</b>               | 4673DR-FL (4673DR)                       |
| <b>Project Size</b>             | Large                                               |             |     | <b>Declaration Date</b>    | 9/29/2022                                |
| <b>Activity Completion Date</b> | 3/29/2024                                           |             |     | <b>Incident Start Date</b> | 9/23/2022                                |
| <b>Process Step</b>             | Obligated                                           |             |     | <b>Incident End Date</b>   | 11/4/2022                                |

### Damage Description and Dimensions

The Disaster # 4673DR, which occurred between 09/23/2022 and 11/04/2022, caused:

#### Damage #1294705; Engineered Beach Renourishment (North Segment)

Please see attached SME Report titled "**V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin**" for additional information on Location, Project History, Eligibility, Maintenance, Incident Related Damages, Scope of Work, and Environmental Compliance

#### General Facility Information:

- **Facility Type:** Beaches
- **Facility:** North Estero Island Shore Protection Project
- **Facility Description:** Engineered Beach in Town of Ft. Myers Beach constructed with imported sand—of proper grain size—to a designed elevation, width, and slope.
- **Year Built:** 2011
- **Start GPS Latitude/Longitude:** 26.46159, -81.96720
- **End GPS Latitude/Longitude:** 26.45088, -81.95285
- **Design Elevation:** Varies
- **Design Slope:** Varies
- **Pre- and Post-Storm Profiles Available?:** Yes

#### General Damage Information:

- **Date Damaged:** 9/23/2022 to 11/4/2022
- **Cause of Damage:** During the declared incident period from September 23, 2022 – November 4, 2022, Hurricane Ian generated storm surge and wave action that caused beach and dune erosion in the Town of Ft. Myers Beach

#### Facility Damage:

**Start (R-176): 26.46159, 81.96720 End (R-182): 26.45088, -81.95285:**

- Beach, 56,845 CY of Sand, hurricane, 0% work completed.
- Dunes, 33,200 each of Dune Plants, hurricane, 0% work completed.

The "North Estero Island Shore Protection Project" is located on the Gulf Coast of Florida in the Town of Ft. Myers Beach on

Estero Island (see [Attachment 1. North Estero Shore Protection Damages Location Map](#)) and Fig. 1 of [Attachment 2: 22279 Estero Island Post-Ian Engineering and Assessment Report with Appendices 20230216](#).

#### Project Location

North End at Groin: 26.46430, -81.96889

South End at R-182: 26.45088, -81.95285

Project Area Length: 6,850 FT

There are no federally constructed shoreline management projects within Project template. The Project is not a specifically authorized and constructed Corps of Engineers (USACE) Coastal Storm Risk Management project. Therefore, the beach is not a federally constructed shoreline under the specific authority of USACE (PAPPG, p.126).

The construction, maintenance and repair of this engineered beach project is the legal responsibility of the Applicant, the Town of Ft. Myers Beach. More information can be found in [Attachment 3: Estero Island FO](#).

Therefore, the Project is the legal responsibility of the Applicant requesting assistance (PAPPG, p.52).

-

#### Damage Description and Dimensions

**Erosion Damages were observed within the project template between R-176 and R-182.**

Coordinates for the damaged area of the project template are as follows:

**Start (R-176): 26.46159, -81.96720**

**End (R-182): 26.45088, -81.95285**

During the declared incident period from September 23, 2022 – November 4, 2022, Hurricane Ian generated storm surge and wave action that caused beach and dune erosion in Ft. Myers Beach, Florida. A major disaster, DR-4673-FL, was declared on September 29, 2022. Photos of the beach taken before and after the storm are shown in [Fig. 6 and 7 of Attachment 2](#).

#### PROJECT HISTORY/MAINTENANCE:

##### Design

The project was constructed between April 2011 and December 2011.

Geotechnical data collected on North Estero Island showed a native beach mean grain size of 0.13 mm. Permitted offshore borrow areas were the sources of beach-compatible sand for the Project. The location of these offshore borrow areas is shown in [Fig. 1 of Attachment 2](#). The Borrow Areas' mean grain size was 0.15 mm with 4% silt content.

In summary, the Project was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope (PAPPG, p. 180).

-

##### Maintenance

The project was constructed in 2011 and is coming up on the first scheduled and budgeted 10-year renourishment cycle.

The upcoming 2023 Renourishment project will place 905,000 CY of imported beach compatible sand within the project template.

Additional information on this scheduled renourishment can be found in [Section 4, Table 3 of Attachment 2](#).

In summary, the Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design (PAPPG, p. 180).

## INCIDENT-RELATED DAMAGE:

### Depth of Closure:

FEMA's definition of Depth of Closure is found in its "Guidance for Flood Risk Analysis and Mapping: Coastal Notations, Acronyms, and Glossary of Terms", that reads: "*CLOSURE DEPTH The water depth beyond which repetitive profile surveys (collected over several years) do not detect vertical sea bed changes, generally considered the seaward limit of littoral transport. The depth can be determined from repeated cross-shore profile surveys or estimated using formulas based on wave statistics. Note that this does not imply the lack of sediment motion beyond this depth.*" The Applicant's coastal engineer, CEC, reviewed historical profiles to estimate the DOC values at each station within the design template are Shown in [Table 2 of Attachment 2](#).

The post-lan bathymetric survey of the Project was completed by CEC on October 11<sup>th</sup> of 2022. The prior survey of North Estero Island was conducted by CEC on June 1<sup>st</sup> of 2022. The beach profiles at each R-monument from the Terminal Groin to R-182 are presented in [Appendix 1 of Attachment 2](#).

The total incident-related sand loss for the beach fill from the landward limit of erosion to the depth of closure equals **56,845 CY**. The details of the storm impact volume calculations including the volume changes and the application of background erosion are presented in [Appendix 2 of Attachment 2](#).

Using pre-storm aerials and the survey comparisons, the Applicant's Engineer determined approximately 8,300 square yards of previously planted dune plants were destroyed. These plants were installed at an average plant spacing of 18 inches on center, equivalent to 4 plants per square yard. Therefore, the number of plants destroyed equals **33,200 plants**.

**\*\*\* NOTE - All incident-related sand replacement will occur between R-176 and R-182. No Recovery work will be performed in the CBRA zone.**

## Final Scope

### 1294705 Engineered Beach Renourishment (North Segment)

DI 1294705

Town of Fort Myers Beach Renourishment

#### Work to be Completed

The applicant will utilize contract and/or force account services to renourish Fort Myers Beach to its pre-disaster design, function, and capacity (in-kind) within the existing footprint.

A. Furnish and Install 56,845 CY of Sand along 6,850 LF of shoreline at North Estero Island with a berm elevation of 2.9 feet NAVD88 and sloped 20H:1V seaward until connected with existing grade.

- Start: R-176 The Groin – (26.46159, -81.96720)
- End: R-182 – (26.45088, -81.95285)

Total Work to be Completed Total: \$1,408,050.00

Project Notes:

1. The Town of Fort Myers Beach is legally responsible for the maintenance and renourishment of Fort Myers Beach including North Estero Island.
2. The applicant engaged their Engineer of Record (EOR) to assess the damages to Town of Fort Myers Beach specifically North Estero Island. The assessment report, signed and sealed by the EOR, computed sand losses from pre and post storm surveys and has accounted for background erosion. Refer to *Attachment 2. 22279 Estero Island Post-lan Engineering and Assessment Report 20230216.pdf*.
3. The EOR assessment also includes an estimate for the Estero Island Nourishment Project Preliminary Opinion of Probable Construction costs. The costs for this project are predicated by this project coinciding with previously scheduled, unassociated, maintenance and engineered beach development projects and all costs are prorated per CY of total quantities. This estimate and approach have been found to be reasonable. Refer to *705212 DR4673FL Cost Summary.xlsx*.
4. Installation of dune plants will be performed as part of this project. Costs were included in the prorated CY price developed for the larger dredging project. All plant replacement is for damages resulting from Hurricane Ian.
5. The beach is not a federally constructed shoreline under the specific authority of USACE.
6. The beach was constructed by the placement of imported sand, of proper grain size, to a designed elevation, width, and slope.
7. As of December 2022, FDEP and USACE permits were still in process. FDEP permit 0413684-001-JC is pending local public notice and anticipated in January 2023. The published the public notice on December 20, 2022, and will be initiating consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in early 2023.
8. For work to be completed, the applicant is required to obtain any necessary Federal, State, and Local environmental permits prior to the start of construction.
9. Construction scheduled to take place June – December 2023 and will require sea turtle nest relocations.
10. The northern end of the project template is within CBRS System Unit P-17A, "Bowditch Point". All incident-related sand replacement will occur between R-176 and R-182. No Recovery work will be performed in the CBRA Zone.
11. Refer to subject matter expert (SME) report for more information, V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin.pdf.

#### Public Assistance

#### Hazard Mitigation Proposal

|                                                                                  |                                                 |              |        |          |              |
|----------------------------------------------------------------------------------|-------------------------------------------------|--------------|--------|----------|--------------|
| For template instructions, turn paragraph marks on. Press "¶" or "Ctrl/Shift+/8" |                                                 |              |        |          |              |
|                                                                                  |                                                 |              |        |          |              |
| Applicant Name                                                                   | Town of Fort Myers Beach                        | GM Project # | 705212 | HMP Date | May 24, 2023 |
|                                                                                  |                                                 |              |        |          |              |
| Site Name                                                                        | North Estero Island Shore, Fort Myers Beach, FL |              |        |          |              |
|                                                                                  |                                                 |              |        |          |              |
| DR-                                                                              | 4673                                            | - FL         | D#     | 1294705  |              |

|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| HMP Writer and Title:                                                                                                                                                                                                                                                                                            | Oswaldo "Ossie" Rueda Builes, General Engineer                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| This HMP is based on the following Grants Manager project report, see attachment.                                                                                                                                                                                                                                |                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                  | PRJ_Report_705212_20230504.pdf                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| Select Work Completed Status:                                                                                                                                                                                                                                                                                    | Work to be Completed                                                                                                                                                                        |
| <h2>I. Related Damaged Items to be Protected</h2>                                                                                                                                                                                                                                                                |                                                                                                                                                                                             |
| <p>During the declared incident period of September 23, 2022, through November 4, 2022, the Town of Fort Myers Beach was impacted by Hurricane Ian's Storm Surge and wave action resulting in erosion damages. As a direct result of this event, 56,845 CY of Sand and 6,850 LF of Dune plants were damaged.</p> |                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| Total repair cost of damaged elements being protected by the HMP at this site*=                                                                                                                                                                                                                                  | \$ 1,267,245                                                                                                                                                                                |
| *Before Cost Estimating Format (CEF) factors if a large project.                                                                                                                                                                                                                                                 |                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| Comments:                                                                                                                                                                                                                                                                                                        | According to Grants Manager the total cost for the project is \$1,408,050 which includes a 10% contingency, therefore, the total repair cost is \$1,267,245, after contingency is deducted. |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |
| <h2>II. Hazard Mitigation Proposal (HMP) Scope of Work</h2>                                                                                                                                                                                                                                                      |                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             |

Mitigation consists of replacing pre-disaster dune vegetation with mature plants that have a 2.5 multiplier. Planting of mature plants in the dune system will bring immediate storm protection benefits to the coastal system.

Project Location

North End at Groin: 26.46430, -81.96889

South End at R-182: 26.45088, -81.95285

Project Area Length: 6,850 LF

Effective Planting width: 7.5 LF

Area: 5,708 SY

Unit Rate per SY: \$32.5

Cost: \$185,521

The mitigation measures will reduce the risk of future damage by helping build up the dunes and maintain their form. In major storms, these dunes will act as a buffer against waves and flooding.

### III. Hazard Mitigation Proposal (HMP) Cost: Worksheet

- Reference and attach a detailed, itemized cost estimate and/or CEF.

A. Cost of items if the HMP is approved=

\$185,521

B. Cost of items deducted from the repair scope of work (SOW)=

\$0

C. Net Hazard Mitigation Cost (before CEF factors) =

\$185,521

D. Is there a CEF?

?Yes ?No

E. Net Hazard Mitigation Cost (after CEF factors)=

\$204,073

|                                                                                                                                                                            |                                                                               |                              |                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|------------------------------|----------------------|
|                                                                                                                                                                            |                                                                               |                              |                      |
| F. What is the CEF ratio (CEF Total Cost/Base Cost)?                                                                                                                       |                                                                               | 1.1 (10% Contingency Factor) |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
| Comments:                                                                                                                                                                  | 10% contingency added as per CRC validated applicant provided cost            |                              |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
| Hazard Mitigation Proposal Cost: Summary                                                                                                                                   |                                                                               |                              |                      |
| Net Hazard Mitigation Cost =                                                                                                                                               |                                                                               | \$ 204,073                   |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
| See attachment(s).                                                                                                                                                         |                                                                               | N/A                          |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
| Comments:                                                                                                                                                                  | The multiplier and cost are based on similar projects utilized in this event. |                              |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
| <h2>IV. Cost Effectiveness Calculation</h2> <p>(Net HMP Cost/Total Repair Cost of the damaged portions of the facility for which the mitigation measure applies) x 100</p> |                                                                               |                              |                      |
|                                                                                                                                                                            |                                                                               |                              |                      |
|                                                                                                                                                                            | \$ 185,521                                                                    | / \$ 1,267,245               | x 100 = 14.64% = 15% |
|                                                                                                                                                                            |                                                                               |                              |                      |
| The Benefit-Cost Analysis (BCA) ratio is                                                                                                                                   |                                                                               | N/A                          | = 1.0                |
|                                                                                                                                                                            |                                                                               |                              |                      |



## V. HMP Cost-Effectiveness

The mitigation measures meet the cost effectiveness criteria based on:

a) Mitigation cost is within 15% of the total eligible repair cost of the facility or facilities for which the mitigation measure applies. In accordance with FEMA Public Assistance Program and Policy Guide (PAPPG) V4 June 2020, Chapter 8. Section IV. A, this mitigation measure does not exceed 15 percent of the eligible repair cost and is considered to be cost-effective.

## VI. Compliances and Assurances

For 'work to be completed,' this HMP is for estimating purposes only. If the site's final placement and configuration are different than the preliminary estimate, the Applicant should submit a change in scope request. This HMP is subject to further review prior to award.

The Applicant is responsible for final design, placement, configuration, procurement, permits and compliance with all regulatory codes and standards.

Eligibility and funding for the mitigation at this site on this project will be subject to the compliance of all environmental laws, regulations, and executive orders applicable to the site(s).

### HMP Notes

1. The mitigation proposal estimates were generated using local costs. See attachment labeled V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin.pdf
2. The project does not reflect CEF factors, since a 10% contingency was already incorporated in the estimate.
3. The Multiplier for the Mature plants is 2.5 X \$13/SY of replacement dune plants = \$32.5/SY.

Cost

| Code            | Quantity | Unit     | Total Cost     | Section     |
|-----------------|----------|----------|----------------|-------------|
| 9001 (Contract) | 1.00     | Lump Sum | \$1,408,050.00 | Uncompleted |

|                            |                |
|----------------------------|----------------|
| CRC Gross Cost             | \$1,408,050.00 |
| Total 406 HMP Cost         | \$204,073.00   |
| Total Insurance Reductions | \$0.00         |
| CRC Net Cost               | \$1,612,123.00 |
| Federal Share (90.00%)     | \$1,450,910.70 |
| Non-Federal Share (10.00%) | \$161,212.30   |

## Award Information

### Version Information

| Version # | Eligibility Status | Current Location | Bundle Number                | Project Amount | Cost Share | Federal Share Obligated | Date Obligated |
|-----------|--------------------|------------------|------------------------------|----------------|------------|-------------------------|----------------|
| 0         | Eligible           | Awarded          | PA-04-FL-4673-PW-00643(1515) | \$1,612,123.00 | 75%        | \$1,209,092.25          | 10/30/2023     |
| 1         | Eligible           | Awarded          | PA-04-FL-4673-PW-00643(1552) | \$0.00         | 15%        | \$241,818.45            | 11/6/2023      |

### Drawdown History

| EMMIE Drawdown Status As of Date | IFMIS Obligation # | Expenditure Number | Expended Date | Expended Amount |
|----------------------------------|--------------------|--------------------|---------------|-----------------|
| No Records                       |                    |                    |               |                 |

### Obligation History

| Version # | Date Obligated | Obligated Cost | Cost Share | IFMIS Status | IFMIS Obligation # |
|-----------|----------------|----------------|------------|--------------|--------------------|
|-----------|----------------|----------------|------------|--------------|--------------------|

## Subgrant Conditions

- As described in Title 2 Code of Federal Regulations (C.F.R.) § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions are stated in 2 C.F.R. §200.333(a) – (f)(1) and (2). All records relative to this project are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the subrecipient's completion of this project, the final claim for payment, and supporting documentation within 180 days from the date that the applicant completes the scope of work, or the project deadline, whichever occurs first. FEMA reimburses Large Projects (those with costs above the large project threshold) based on the actual eligible final project costs. Therefore, during the final project reconciliation (closeout), the project may be amended to reflect the reconciliation of actual eligible costs.
- When any individual item of equipment purchased with PA funding is no longer needed, or a residual inventory of unused supplies exceeding \$5,000 remains, the subrecipient must follow the disposition requirements in Title 2 Code of Federal Regulations (C.F.R.) § 200.313-314.
- The terms of the FEMA-State Agreement are incorporated by reference into this project under the Public Assistance award and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide; and other applicable FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the declaration date of this emergency declarations or major disaster, as applicable, are incorporated by reference into this project under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at Title 2 Code of Federal Regulations (C.F.R.) Part 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. Part 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The subrecipient must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the subrecipient commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.
- The Subrecipient provided the estimate for this PW. FEMA validated the estimate and found it to be reasonable for the work to be performed.
- Pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA is prohibited from providing financial assistance to any entity that receives assistance from another program, insurance, or any other source for the same work. The subrecipient agrees to repay all duplicated assistance to FEMA if they receive assistance for the same work from another Federal agency, insurance, or any other source. If an subrecipient receives funding from another federal program for the same purpose, it must notify FEMA through the Recipient and return any duplicated funding.

## Insurance

### Additional Information

## **FACTS**

During the incident period Severe Storms and Surge Flooding caused damage to Town of Fort Myers Beach, beach facilities.

## **REPETITIVE DAMAGES**

No previous disaster requirements were found for the location(s) identified in this project.

## **FINDINGS**

The Town of Fort Myers Beach provided a commercial property insurance pool policy issued by Florida Municipal Insurance Trust (FMIT), Member # 0778 with effective dates 10/01/2021 to 10/01/2022. The policy has building property limits of \$13,435,548.00 and contents limits of \$1,175,000.00 with a \$500.00 deductible per occurrence. The policy includes Named Storm coverage by Endorsement, with a 5% of Total Insured Value (TIV) deductible, for scheduled property, per item, and per occurrence. The policies Named Storm coverage includes storm surge flood as the result of a named storm.

The scope of work represented in this project is neither insured nor insurable. The facility was damaged by flood. A Mandatory National Flood Insurance Program (NFIP) Reduction will not be required. Insurance coverage for this type of exposure is not available with the National Flood Insurance Program. The Commercial Policy does not provide coverage for the peril of Flooding. No coverage is anticipated. No insurance reduction will apply. An obtain and maintain insurance requirement will not be mandated for this damage. Insurance coverage for this type of exposure is not available with the National Flood Insurance Program. No insurance narrative will be produced or uploaded into documents or attachments.

## **FEMA Policy 206-086-1**

### **PART 2: Other Insurance-Related Provisions. (Sections 312 and 406(d) of the Stafford Act)**

**A. Duplication of Benefits.** FEMA cannot provide assistance for disaster-related losses that duplicate benefits available to an applicant from another source, including insurance.

1. Before FEMA approves assistance for a property, an applicant must provide FEMA with information about any actual or anticipated insurance settlement or recovery it is entitled to for that property.
2. FEMA will reduce assistance to an applicant by the amount of its actual or anticipated insurance proceeds.
3. Applicants must take reasonable efforts to recover insurance proceeds that they are entitled to receive from their insurer(s).

## **REQUIREMENTS**

A Standard Flood Insurance Policy issued by the National Flood Insurance Program is the basis used to determine if a building or its contents can be insured for the peril of flood. As a result, the requirement to obtain and maintain insurance is not being mandated for the facilities described in this project as these facilities are not insurable by a Standard Flood Insurance Policy.

Insurance coverage for this type of exposure is generally not available. The requirement to obtain and maintain insurance is not being mandated for the damages. Therefore, compliance with Section 311 of the Stafford Act and its implementing regulations, Title 44 CFR 206.250-253 does not apply to the damages included in this project.

Steven A. Goodroad, Insurance Specialist, CRC East

## **O&M Requirements**

There are no Obtain and Maintain Requirements on **Fort Myers Beach Beach Renourishment**.

## 406 Mitigation

08/09/2023 – Marcella Simmons, HM Crew Leader - Project #7052123 -D# 1294705 has entered the mitigation queue for the second time. The project was reworked to reflect changes in the scope notes. There are no apparent changes to the project and the current version of the HMP remains eligible for 406 Funding in accordance with the 15% rule of the FEMA PA Program and Policy Guide - Mitigation Section. MS

5/24/2023 – O. Rueda Builes, EASP – The Hazard Mitigation Proposal is approved in accordance with the 15% rule of the FEMA PA Program and Policy Guide e (PAPPG) V4 June 2020, Chapter 8. Section IV.- See the HMP additional details.

## Environmental Historical Preservation

Is this project compliant with EHP laws, regulations, and executive orders?

Yes

### EHP Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.
- NHPA CONDITION: If human remains or intact archaeological features or deposits (e.g. arrowheads, pottery, glass, metal, etc.) are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The subrecipient will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The subrecipient's contractor will provide immediate notice of such discoveries to the applicant. The subrecipient shall contact the Florida Division of Historic Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Florida Statutes, Section 872.05.
- CWA CONDITION: The subrecipient must comply with the terms and conditions of FDEP Permit No. 0413684-001-JC and associated guidance. The subrecipient must obtain permit modifications as necessary. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- CZMA CONDITION: The subrecipient must comply with the conditions of the FDEP Joint Coastal Permit 0413684-001-JC. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- ESA CONDITION: The proposed project must adhere to the Conservation Measures and Terms and Conditions of the following Biological Opinions: USFWS BO dated 9/29/2023, USFWS Programmatic Piping Plover BO dated 5/22/2013, the USFWS Statewide Programmatic BO for Sand Placement dated 3/13/2015, NMFS BO dated 8/25/2023, and the NMFS GRBO dated 11/19/2003 and 1/9/2007. The subrecipient must also adhere to the attached Sea Turtle and Smalltooth Sawfish Construction Conditions and Standard Manatee Conditions for In-Water Work. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- MSA CONDITION: The proposed project must adhere to the Conservation Measures and Terms and Conditions of the following Biological Opinions: NMFS BO dated 8/25/2023 and the NMFS GRBO dated 11/19/2003 and 1/9/2007. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.

### EHP Additional Info

There is no additional environmental historical preservation on **Fort Myers Beach Beach Renourishment**.

## Final Reviews

### Final Review

**Reviewed By** GILLMAN, ANGELA D.

**Reviewed On** 10/06/2023 1:31 PM EDT

#### Review Comments

Approved

### Recipient Review

**Reviewed By** Hayth, John

**Reviewed On** 10/09/2023 8:22 AM EDT

#### Review Comments

Advanced

## Project Signatures

**Signed By** Russ, Cheri

**Signed On** 10/16/2023

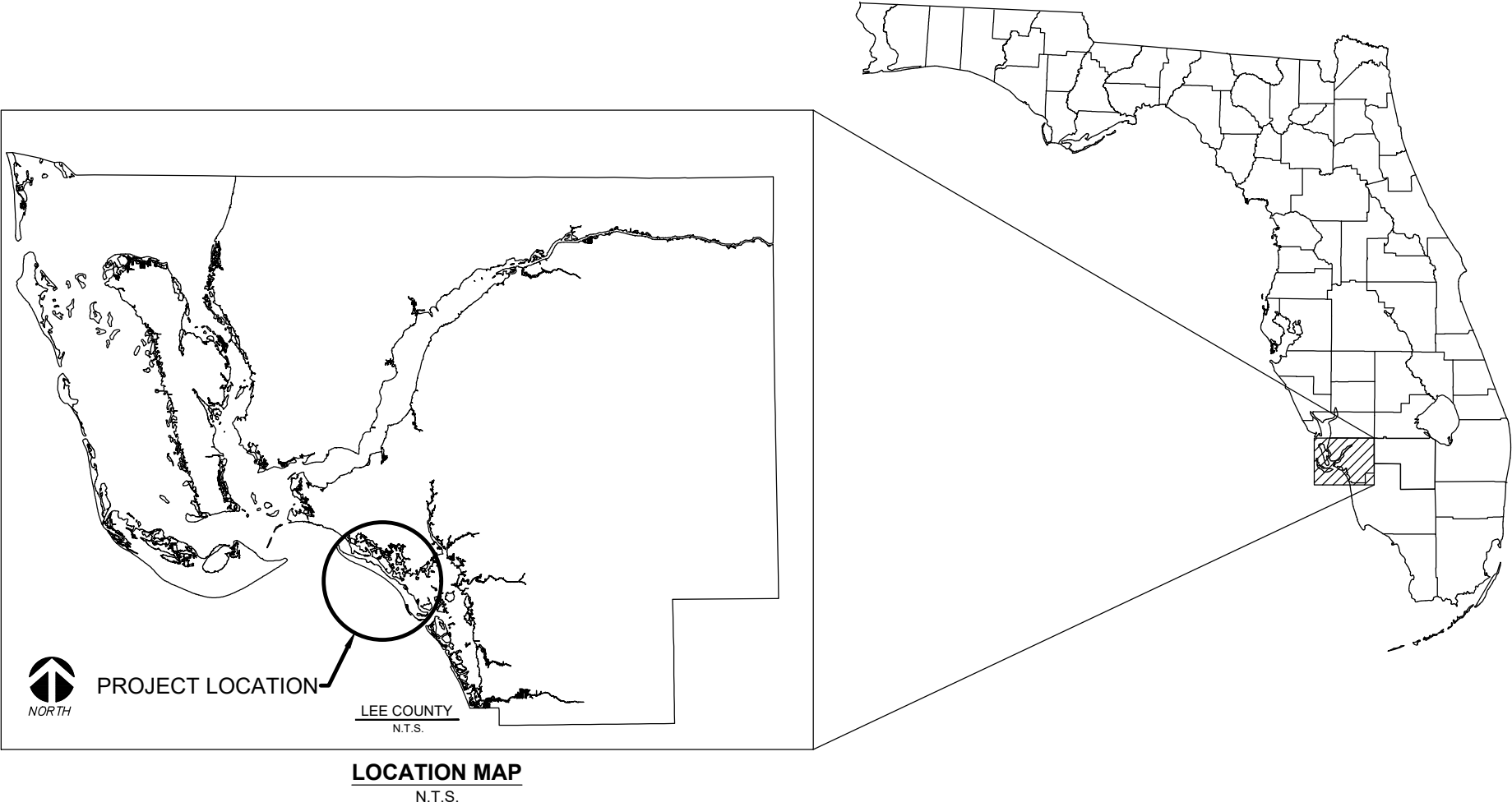


# ESTERO ISLAND DUNE PLANTINGS

PREPARED FOR:  
TOWN OF FORT MYERS BEACH

## SHEET INDEX

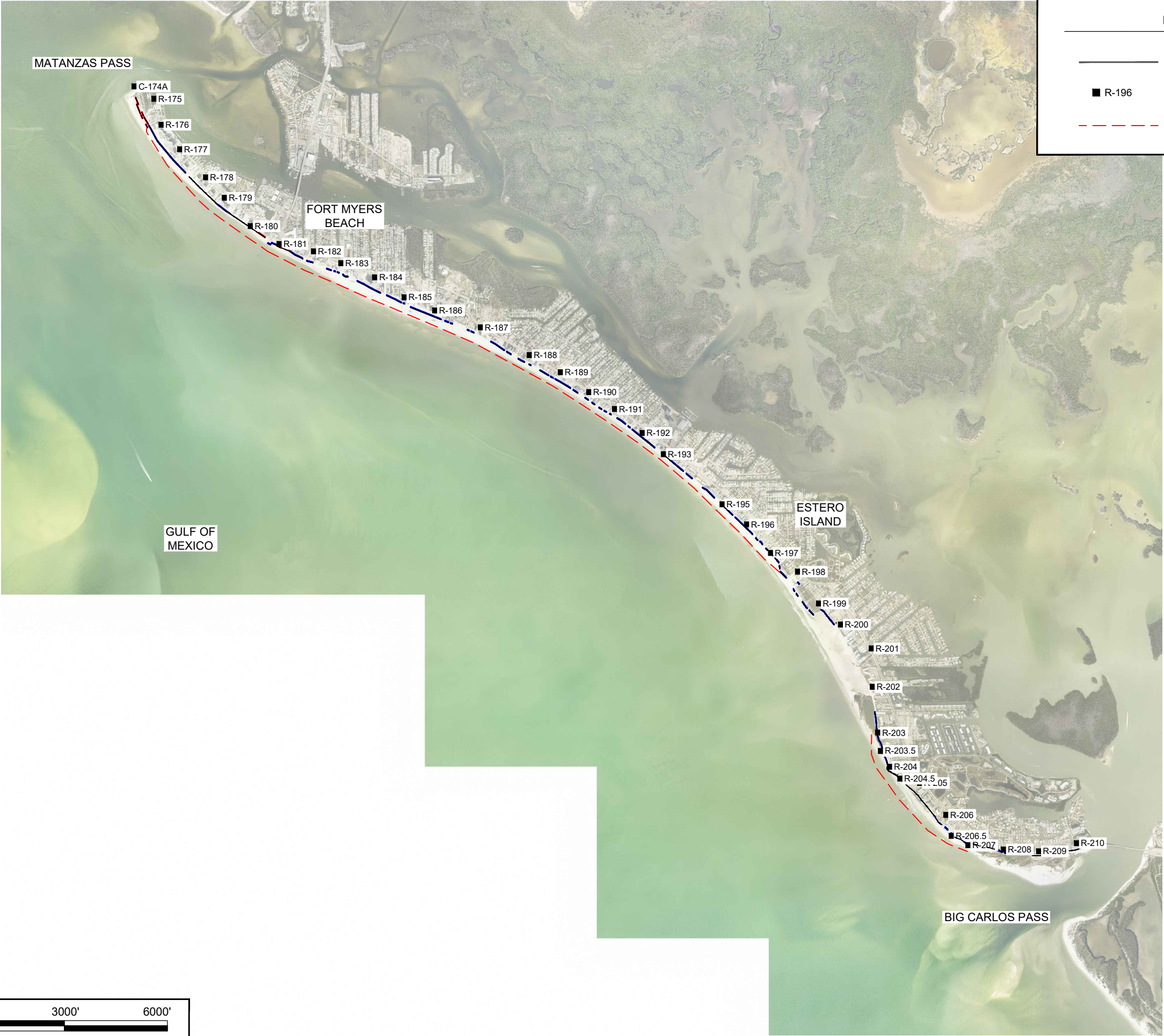
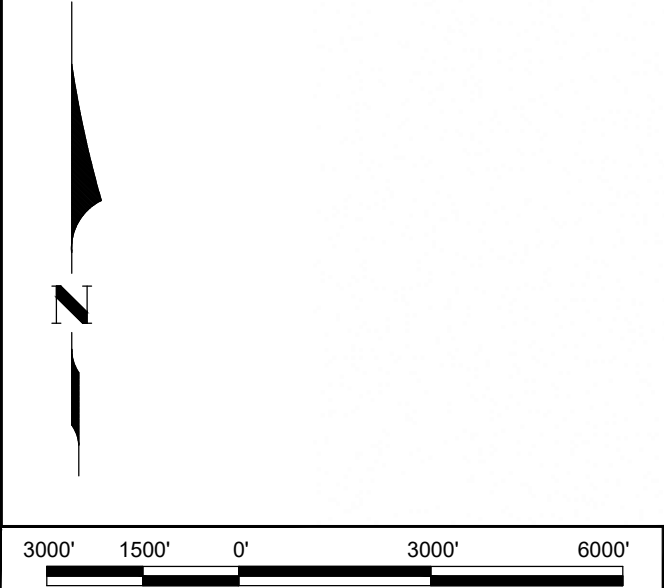
- 1. COVER SHEET
- 2. OVERALL PLAN VIEW
- 3-31. PLAN VIEW
- 32-33. DUNE PLANTING SCHEMES



## NOTES

- AERIAL PHOTOGRAPHY OBTAINED FROM THE LEE COUNTY GIS WEBSITE, DATED 2024.
- EROSION CONTROL LINE (ECL) RECORDED IN THE PLAT BOOK 70, PAGE 25, LEE COUNTY, FLORIDA.
- PLANE COORDINATES ARE BASED ON THE TRANSVERSE MERCATOR PROJECTION FOR THE WEST ZONE OF FLORIDA AND REFERENCED TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83).
- ELEVATIONS SHOWN HEREON ARE IN FEET AND TENTHS AND REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), BENCHMARKS USED:  
  
FDEP 1283-A25-2  
NORTHING: 770,456.326'  
EASTING: 670,763.371'  
ELEVATION: 3.37' NAVD 1988
- MEAN HIGH WATER ELEVATION OF +0.3 FEET NAVD88 IS BASED ON INFORMATION FROM THE FDEP AND TIDE STATION ID NUMBER 8727366.
- INFORMATION SHOWN HEREON REFLECTS CONDITIONS AS THEY EXISTED ON THE SURVEY DATES SHOWN AND CAN ONLY BE CONSIDERED INDICATIVE OF CONDITIONS AT THAT TIME.

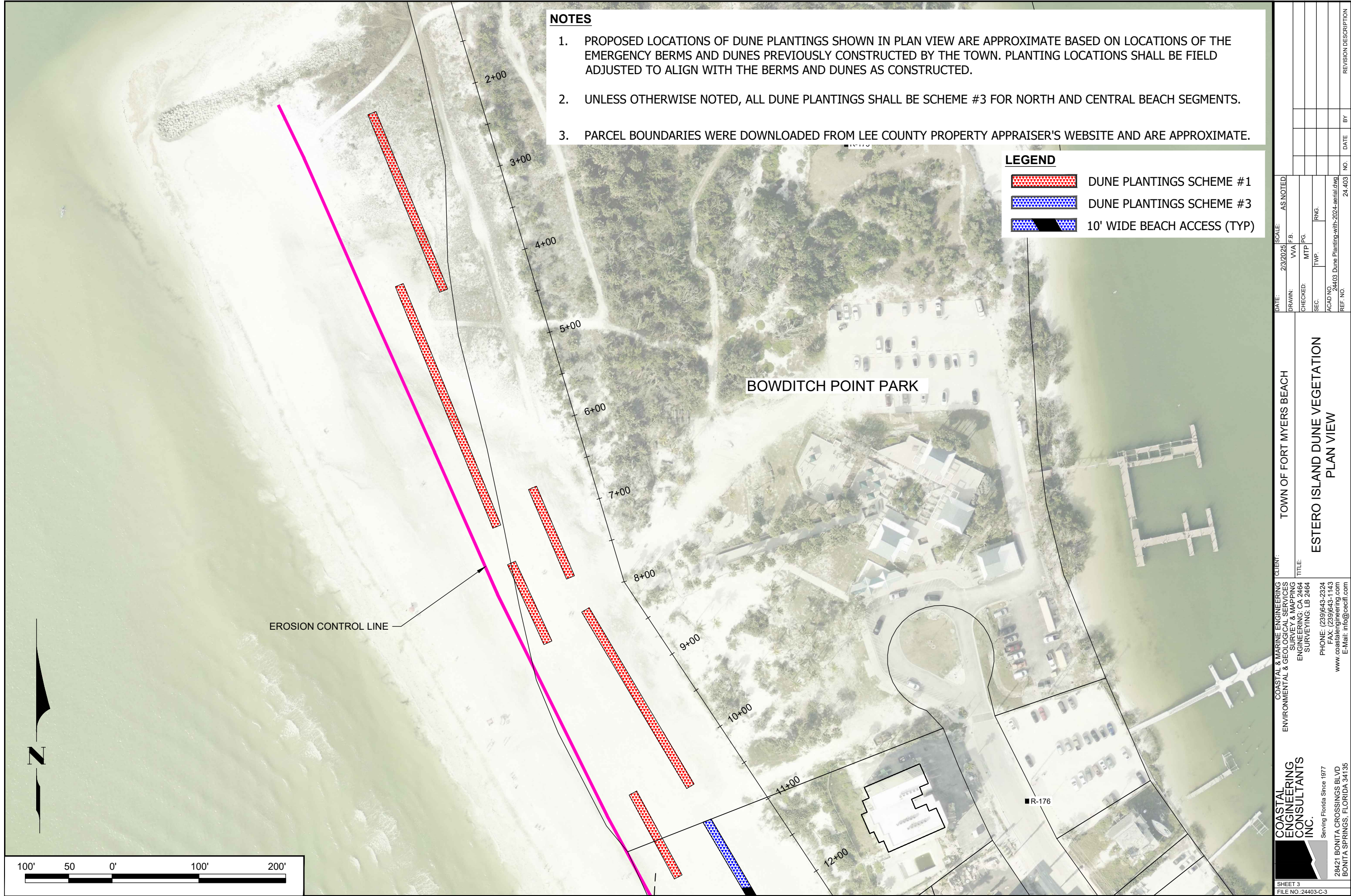
|                                                                                                                                                                                       |  |                                                                                                      |  |                                                                                                |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               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|  <div>COASTAL<br/>ENGINEERING<br/>CONSULTANTS<br/>INC.<br/><br/>Serving Florida Since 1977</div> |  | ENVIRONMENTAL & MARINE ENGINEERING<br>SURVEY & MAPPING<br>ENGINEERING: CA 2464<br>SURVEYING: LB 2464 |  | COASTAL & MARINE ENGINEERING<br>SURVEY & MAPPING<br>ENGINEERING: CA 2464<br>SURVEYING: LB 2464 |  | CLIENT:<br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><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| LEGEND |                          |
|--------|--------------------------|
|        | DUNE PLANTINGS           |
|        | R-196 REFERENCE MONUMENT |
|        | BEACH FILL BERM          |

|                                                                                       |                                                         |                            |                                    |  |         |                                                    |  |          |     |                          |  |          |          |  |        |  |  |                      |  |  |
|---------------------------------------------------------------------------------------|---------------------------------------------------------|----------------------------|------------------------------------|--|---------|----------------------------------------------------|--|----------|-----|--------------------------|--|----------|----------|--|--------|--|--|----------------------|--|--|
|  | <b>COASTAL<br/>ENGINEERING<br/>CONSULTANTS<br/>INC.</b> | Serving Florida Since 1977 | ENVIRONMENTAL & MARINE ENGINEERING |  | CLIENT: | TOWN OF FORT MYERS BEACH                           |  | DATE:    |     | SCALE:                   |  | AS NOTED |          |  |        |  |  |                      |  |  |
|                                                                                       |                                                         |                            | COASTAL & MARINE ENGINEERING       |  |         | ENGINEERING: CA 2464                               |  | DRAWN:   |     | VVA                      |  |          | F.B.     |  |        |  |  |                      |  |  |
|                                                                                       |                                                         |                            | SURVEY & MAPPING                   |  |         | SURVEYING: LB 2464                                 |  | CHECKED: |     | MTP                      |  |          | P.G.     |  |        |  |  |                      |  |  |
|                                                                                       |                                                         |                            | PHONE: (239)643-2324               |  |         | FAX: (239)643-1143                                 |  | SEC.     |     | TWP.                     |  |          | RNG.     |  |        |  |  |                      |  |  |
|                                                                                       |                                                         |                            | www.coastalengineering.com         |  |         | E-Mail: info@cecilf.com                            |  | ACAD NO. |     | 24403 Dune Plantings.dwg |  |          | REF. NO. |  | 24 403 |  |  |                      |  |  |
| SHEET 2                                                                               |                                                         |                            | FILE NO. 24403-C-2                 |  |         | ESTERO ISLAND DUNE VEGETATION<br>OVERALL PLAN VIEW |  |          | NO. |                          |  | DATE     |          |  | BY     |  |  | REVISION DESCRIPTION |  |  |
| 28421 BONITA CROSSINGS BLVD<br>BONITA SPRINGS, FLORIDA 34135                          |                                                         |                            |                                    |  |         |                                                    |  |          |     |                          |  |          |          |  |        |  |  |                      |  |  |





**NOTES**

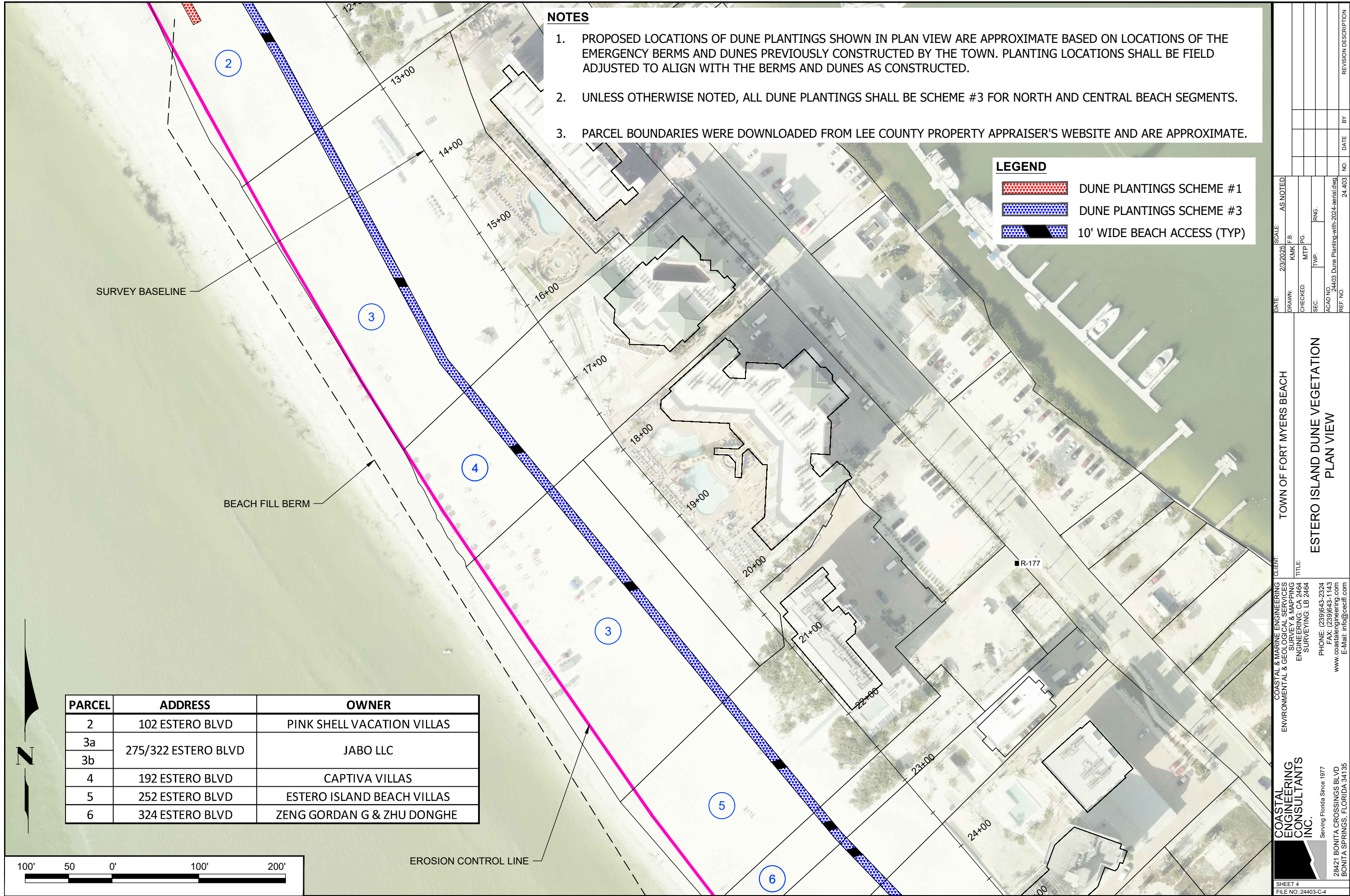
- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
- 2. UNLESS OTHERWISE NOTED, ALL DUNE PLANTINGS SHALL BE SCHEME #3 FOR NORTH AND CENTRAL BEACH SEGMENTS.
- 3. PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

**LEGEND**

- DUNE PLANTINGS SCHEME #1
- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  |                      |  |                 |  |  |  |  |  |
|---------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|--|---------------------------------------------------------------------------------|--|--------------------------------------------------------------|--|----------------------------------------------------|--|------------|--|------|--|--------------|--|----------------------|--|-----------------|--|--|--|--|--|
|                                                  |  | SHEET 3<br>FILE NO. 24403-C-3 |  | COASTAL<br>ENGINEERING<br>CONSULTANTS<br>INC.<br><br>Serving Florida Since 1977 |  | 28421 BONITA CROSSINGS BLVD<br>BONITA SPRINGS, FLORIDA 34135 |  | 24403 Dune Planting-with-2024-aerial.dwg<br>24 403 |  | NO.        |  | DATE |  | BY           |  | REVISION DESCRIPTION |  |                 |  |  |  |  |  |
|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  |                      |  |                 |  |  |  |  |  |
| COASTAL & MARINE ENGINEERING<br>ENVIRONMENTAL & GEOLOGICAL SERVICES<br>SURVEY & MAPPING<br>ENGINEERING: CA 2464<br>SURVEYING: LB 2464 |  |                               |  |                                                                                 |  |                                                              |  | TOWN OF FORT MYERS BEACH                           |  |            |  |      |  |              |  | DATE: 2/3/2025       |  | SCALE: AS NOTED |  |  |  |  |  |
| ESTERO ISLAND DUNE VEGETATION<br><br>PLAN VIEW                                                                                        |  |                               |  |                                                                                 |  |                                                              |  | TITLE:                                             |  | DRAWN: VVA |  | F.B. |  | CHECKED: MTP |  | P.G.                 |  |                 |  |  |  |  |  |
|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  |                      |  |                 |  |  |  |  |  |
|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  |                      |  |                 |  |  |  |  |  |
|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  |                      |  |                 |  |  |  |  |  |
| PHONE: (239)643-2324<br>FAX: (239)643-1143<br>www.coastalengineering.com<br>E-Mail: info@cecill.com                                   |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  | ACAD NO.             |  | 24403           |  |  |  |  |  |
|                                                                                                                                       |  |                               |  |                                                                                 |  |                                                              |  |                                                    |  |            |  |      |  |              |  | REF. NO.             |  |                 |  |  |  |  |  |







- NOTES
1.

PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
2.

UNLESS OTHERWISE NOTED, ALL DUNE PLANTINGS SHALL BE SCHEME #3 FOR NORTH AND CENTRAL BEACH SEGMENTS.
3.

PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

LEGEND

DUNE PLANTINGS SCHEME #3

10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS         | OWNER                         |
|--------|-----------------|-------------------------------|
| 6      | 324 ESTERO BLVD | ZENG GORDAN G & ZHU DONGHE    |
| 7      | 328 ESTERO BLVD | PINK SHELL BEACH CLUB CONDO   |
| 8      | 394 ESTERO BLVD | ISLAND SHORES CONDO           |
| 9      | 420 ESTERO BLVD | WINDWARD PASSAGE RESORT       |
| 13     | 476 ESTERO BLVD | KONA BEACH CLUB CONDO ASSN    |
| 14     | 502 ESTERO BLVD | GATEWAY VILLAS CONDO ASSN     |
| 15     | 512 ESTERO BLVD | CASA PLAYA RESORT CONDO ASSOC |
| 16     | 536 ESTERO BLVD | DOLPHIN WATCH CONDO ASSOC INC |

TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION

PLAN VIEW

CLIENT: COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY & MAPPING ENGINEERING, CA 2464 SURVEYING: LB 2464

TITLE: ESTERO ISLAND DUNE VEGETATION PLAN VIEW

PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecill.com

COASTAL ENGINEERING CONSULTANTS INC.

Serving Florida Since 1977

28421 BONITA CROSSINGS BLVD  
BONITA SPRINGS, FLORIDA 34135

SHEET 5

FILE NO.: 24403-C-5



NOTES

- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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LEGEND

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS             | OWNER                          |
|--------|---------------------|--------------------------------|
| 17     | 574 ESTERO BLVD     | 574 ESTERO LLC                 |
| 18     | 584 ESTERO BLVD     | ELGERSMA BERTRAM               |
| 19     | 600 ESTERO BLVD     | CANE PALM BEACH                |
| 20     | 616 ESTERO BLVD     | MOLLENKOPF DARRELL + PATRICIA  |
| 21     | 628 ESTERO BLVD     | FARRELL JOSEPH J & LINDA M L/E |
| 22     | 650 ESTERO BLVD     | EVANS DOTTIE DARLENE TR        |
| 23     | 632 ESTERO BLVD     | EVANS DOTTIE DARLENE TR        |
| 24     | 684 ESTERO BLVD     | FMB ASSOCIATES LP              |
| 25     | 704 ESTERO BLVD     | MAGNUM FMB 3 LLC               |
| 26     | 718 ESTERO BLVD     | 718 ESTERO LLC                 |
| 27     | 726 ESTERO BLVD     | SEA SHELL REAL ESTATE II LLC   |
| 28     | 742 ESTERO BLVD     | BAY TO BEACH ASSN              |
| 29     | 758 ESTERO BLVD     | MAGNUM FMB 2 LLC               |
| 30     | 764-768 ESTERO BLVD | DULLARD ROBERT TR              |
| 31     | 782 ESTERO BLVD     | BEL-AIR BEACH CLUB CONDO       |
| 32a    | 802 ESTERO BLVD     | ROYAL BEACH CLUB CONDO ASSN    |
| 32b    |                     |                                |



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TOWN OF FORT MYERS BEACH  
ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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SEC: TYP  
ACAD NO: 24403  
REF. NO: 24403  
NO. 24.403  
BY: DATE: NO. 24.403

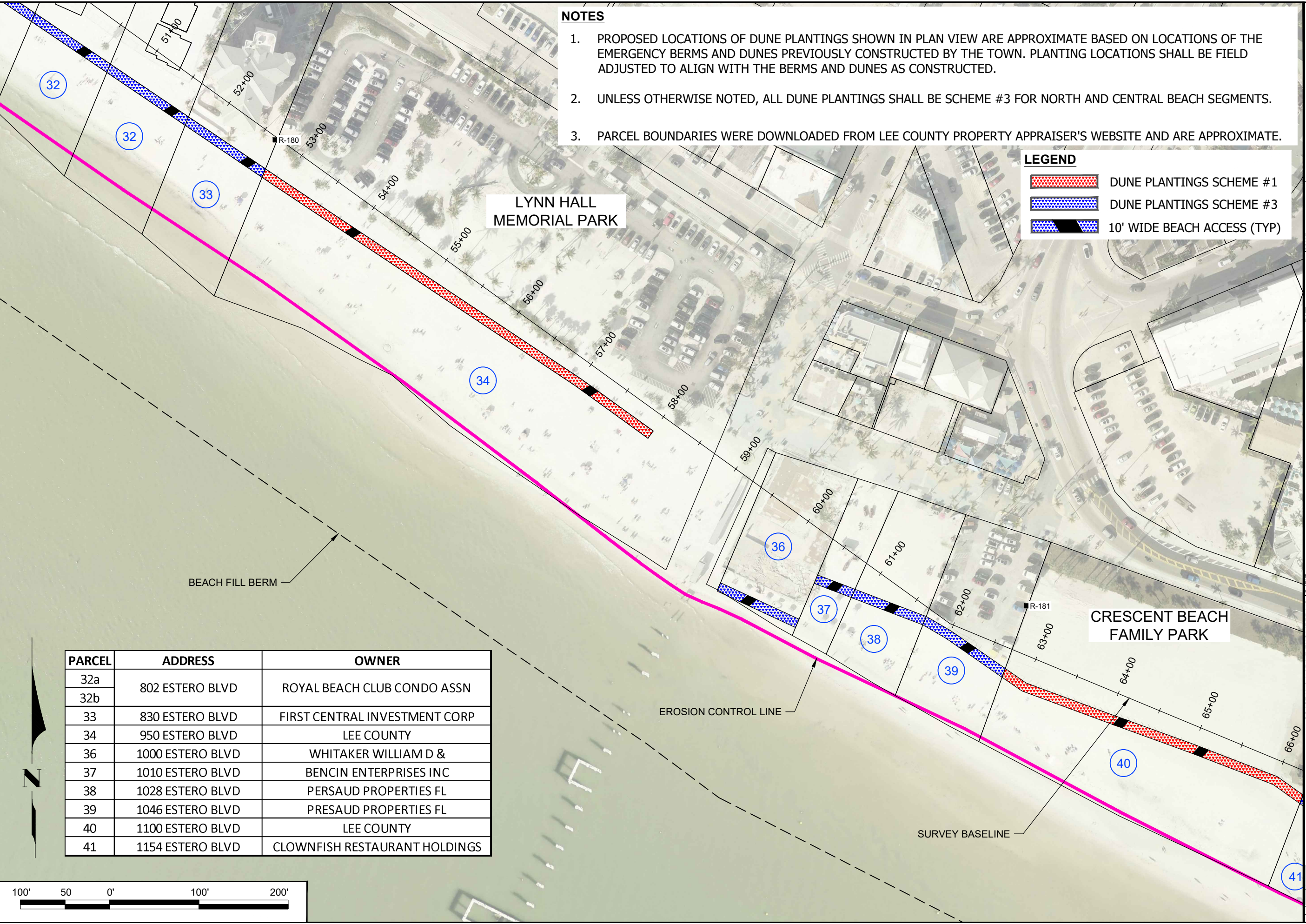


- NOTES**
- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
  - 2. UNLESS OTHERWISE NOTED, ALL DUNE PLANTINGS SHALL BE SCHEME #3 FOR NORTH AND CENTRAL BEACH SEGMENTS.
  - 3. PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

**LEGEND**

- DUNE PLANTINGS SCHEME #1
- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                         |
|--------|------------------|-------------------------------|
| 32a    | 802 ESTERO BLVD  | ROYAL BEACH CLUB CONDO ASSN   |
| 32b    |                  |                               |
| 33     | 830 ESTERO BLVD  | FIRST CENTRAL INVESTMENT CORP |
| 34     | 950 ESTERO BLVD  | LEE COUNTY                    |
| 36     | 1000 ESTERO BLVD | WHITAKER WILLIAM D &          |
| 37     | 1010 ESTERO BLVD | BENCIN ENTERPRISES INC        |
| 38     | 1028 ESTERO BLVD | PERSAUD PROPERTIES FL         |
| 39     | 1046 ESTERO BLVD | PRESAUD PROPERTIES FL         |
| 40     | 1100 ESTERO BLVD | LEE COUNTY                    |
| 41     | 1154 ESTERO BLVD | CLOWNFISH RESTAURANT HOLDINGS |



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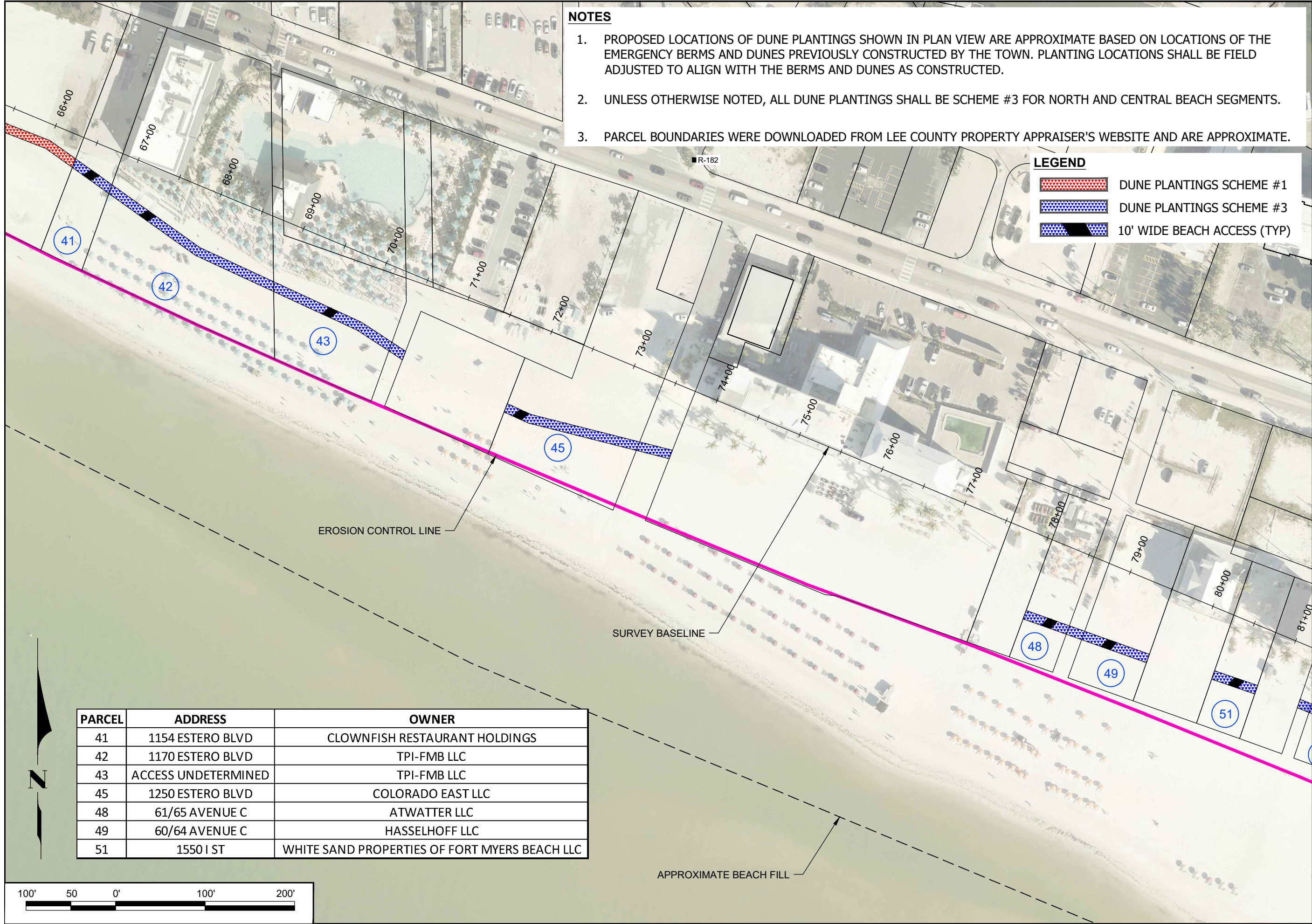
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SHEET 7

FILE NO.: 24403-C-7





**NOTES**

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**LEGEND**

- DUNE PLANTINGS SCHEME #1
- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS             | OWNER                                         |
|--------|---------------------|-----------------------------------------------|
| 41     | 1154 ESTERO BLVD    | CLOWNFISH RESTAURANT HOLDINGS                 |
| 42     | 1170 ESTERO BLVD    | TPI-FMB LLC                                   |
| 43     | ACCESS UNDETERMINED | TPI-FMB LLC                                   |
| 45     | 1250 ESTERO BLVD    | COLORADO EAST LLC                             |
| 48     | 61/65 AVENUE C      | ATWATTER LLC                                  |
| 49     | 60/64 AVENUE C      | HASSELHOFF LLC                                |
| 51     | 1550 I ST           | WHITE SAND PROPERTIES OF FORT MYERS BEACH LLC |

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TOWN OF FORT MYERS BEACH

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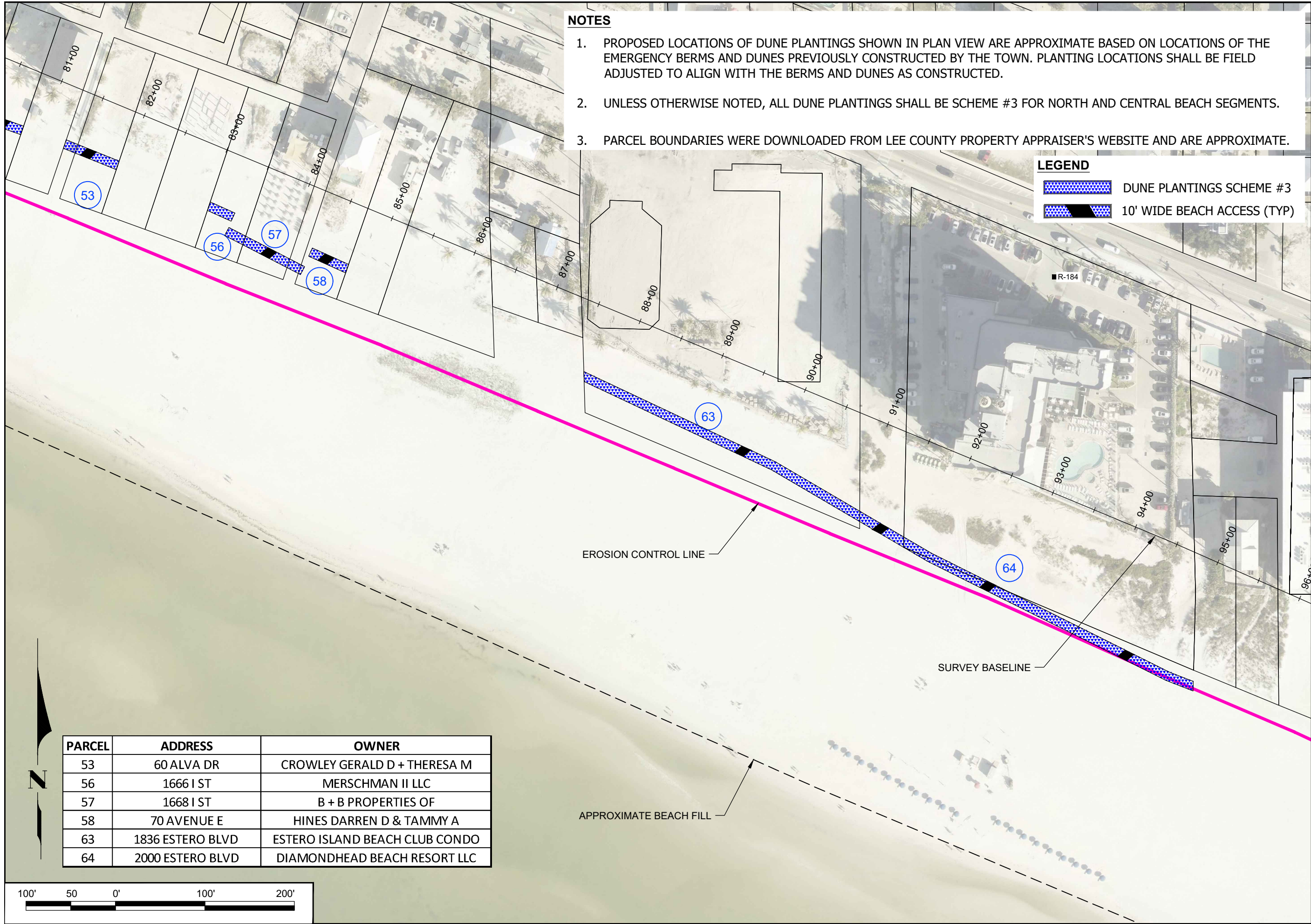
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FILE NO.: 24403-C-8





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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                          |
|--------|------------------|--------------------------------|
| 53     | 60 ALVA DR       | CROWLEY GERALD D + THERESA M   |
| 56     | 1666 I ST        | MERSCHMAN II LLC               |
| 57     | 1668 I ST        | B + B PROPERTIES OF            |
| 58     | 70 AVENUE E      | HINES DARREN D & TAMMY A       |
| 63     | 1836 ESTERO BLVD | ESTERO ISLAND BEACH CLUB CONDO |
| 64     | 2000 ESTERO BLVD | DIAMONDHEAD BEACH RESORT LLC   |

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TOWN OF FORT MYERS BEACH

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PLAN VIEW

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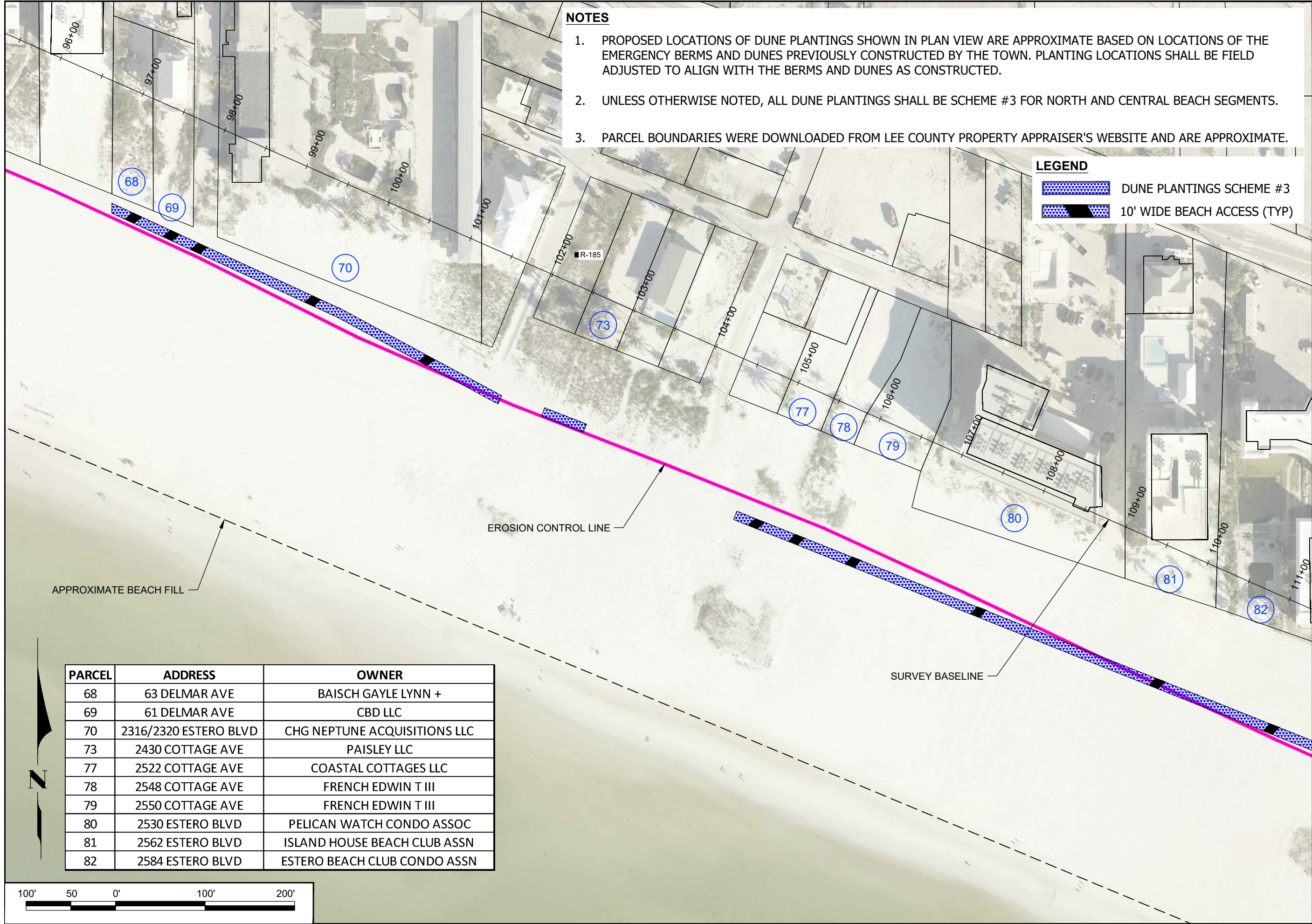
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BY: 24.403  
NO. 24.403  
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FILE NO.: 24403-C-9

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**NOTES**

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**LEGEND**

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS               | OWNER                        |
|--------|-----------------------|------------------------------|
| 68     | 63 DELMAR AVE         | BAISCH GAYLE LYNN +          |
| 69     | 61 DELMAR AVE         | CBD LLC                      |
| 70     | 2316/2320 ESTERO BLVD | CHG NEPTUNE ACQUISITIONS LLC |
| 73     | 2430 COTTAGE AVE      | PAISLEY LLC                  |
| 77     | 2522 COTTAGE AVE      | COASTAL COTTAGES LLC         |
| 78     | 2548 COTTAGE AVE      | FRENCH EDWIN T III           |
| 79     | 2550 COTTAGE AVE      | FRENCH EDWIN T III           |
| 80     | 2530 ESTERO BLVD      | PELICAN WATCH CONDO ASSOC    |
| 81     | 2562 ESTERO BLVD      | ISLAND HOUSE BEACH CLUB ASSN |
| 82     | 2584 ESTERO BLVD      | ESTERO BEACH CLUB CONDO ASSN |

DATE: 2/3/2025

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NO. 24.403

BY

DATE

CLIENT: TOWN OF FORT MYERS BEACH

TITLE: ESTERO ISLAND DUNE VEGETATION PLAN VIEW

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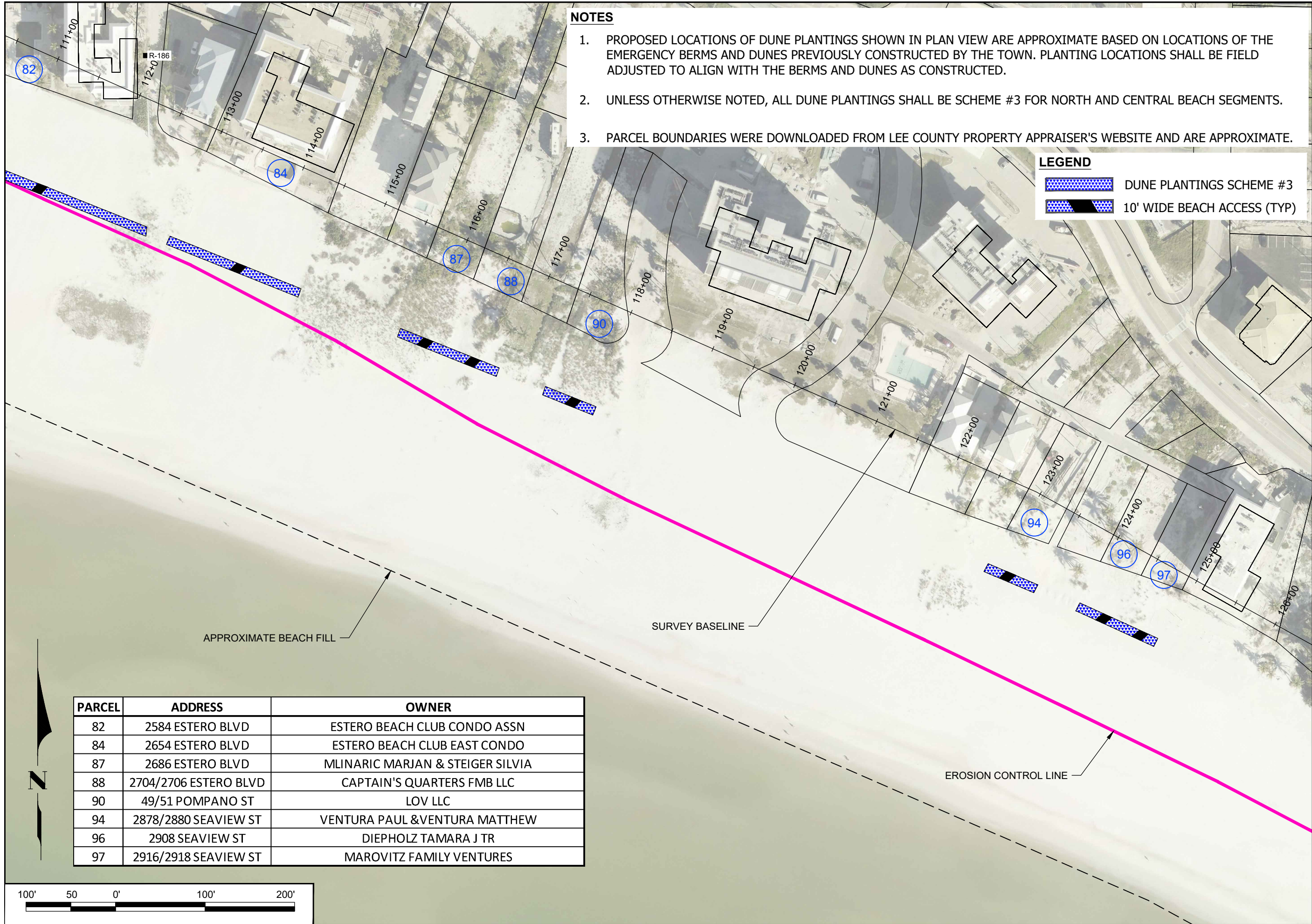
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**NOTES**

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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS               | OWNER                            |
|--------|-----------------------|----------------------------------|
| 82     | 2584 ESTERO BLVD      | ESTERO BEACH CLUB CONDO ASSN     |
| 84     | 2654 ESTERO BLVD      | ESTERO BEACH CLUB EAST CONDO     |
| 87     | 2686 ESTERO BLVD      | MLINARIC MARJAN & STEIGER SILVIA |
| 88     | 2704/2706 ESTERO BLVD | CAPTAIN'S QUARTERS FMB LLC       |
| 90     | 49/51 POMPANO ST      | LOV LLC                          |
| 94     | 2878/2880 SEAVIEW ST  | VENTURA PAUL & VENTURA MATTHEW   |
| 96     | 2908 SEAVIEW ST       | DIEPHOLZ TAMARA J TR             |
| 97     | 2916/2918 SEAVIEW ST  | MAROVITZ FAMILY VENTURES         |

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TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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SHEET 11  
FILE NO.: 24403-C-11

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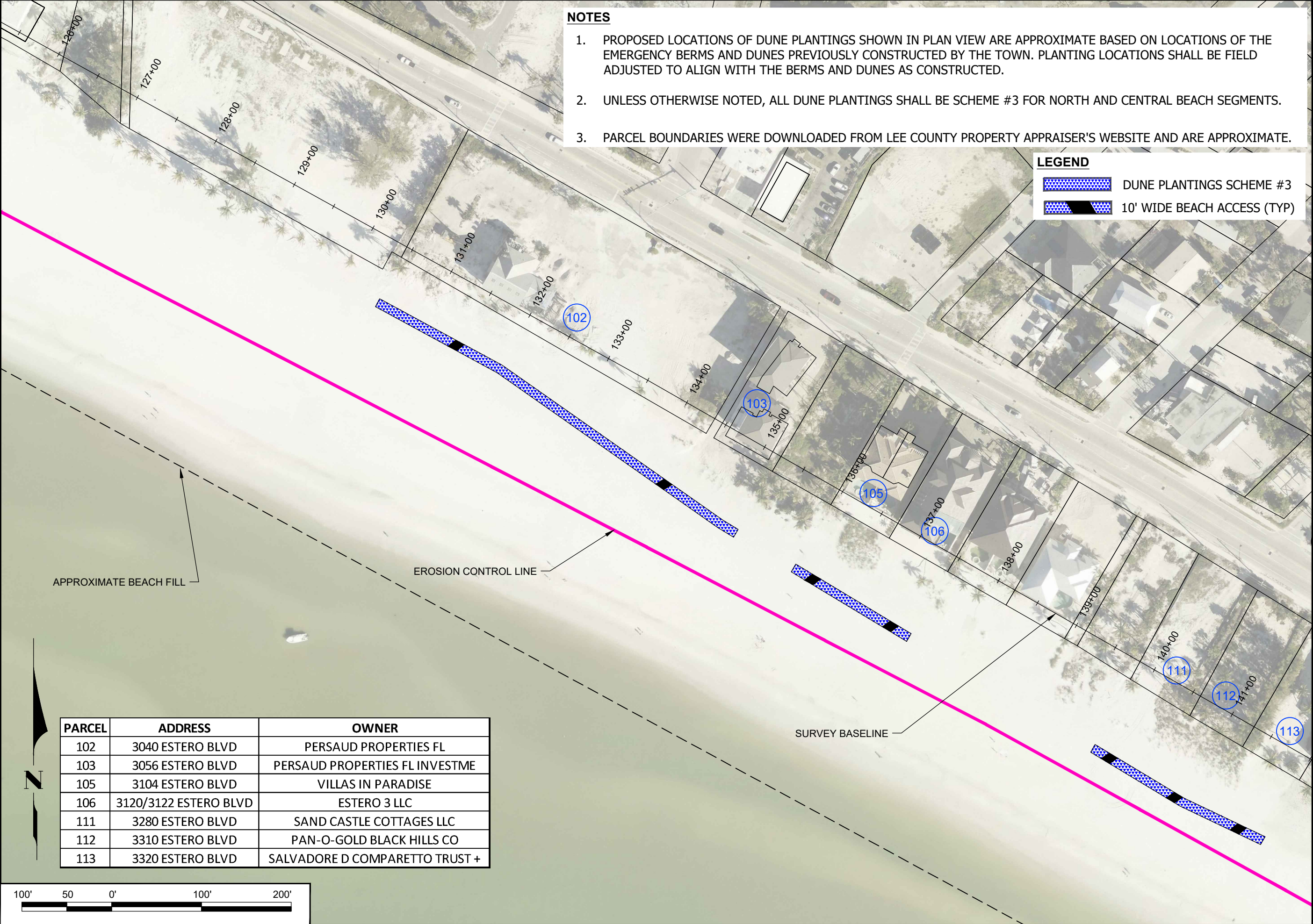
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LEGEND

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS               | OWNER                          |
|--------|-----------------------|--------------------------------|
| 102    | 3040 ESTERO BLVD      | PERSAUD PROPERTIES FL          |
| 103    | 3056 ESTERO BLVD      | PERSAUD PROPERTIES FL INVESTME |
| 105    | 3104 ESTERO BLVD      | VILLAS IN PARADISE             |
| 106    | 3120/3122 ESTERO BLVD | ESTERO 3 LLC                   |
| 111    | 3280 ESTERO BLVD      | SAND CASTLE COTTAGES LLC       |
| 112    | 3310 ESTERO BLVD      | PAN-O-GOLD BLACK HILLS CO      |
| 113    | 3320 ESTERO BLVD      | SALVADORE D COMPARETTO TRUST + |



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TOWN OF FORT MYERS BEACH

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TITLE:

DATE: 2/3/2025

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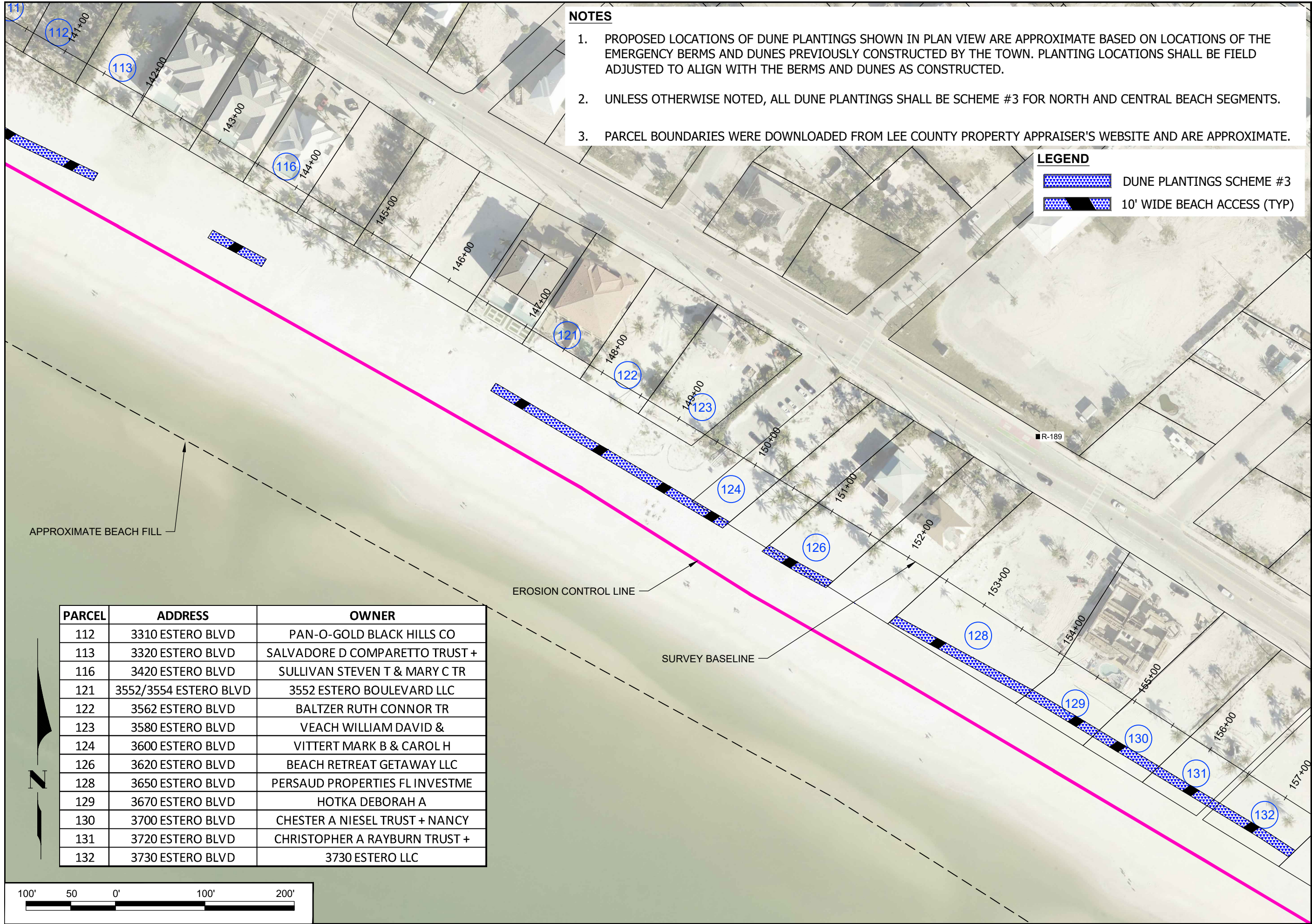
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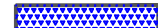
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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS               | OWNER                          |
|--------|-----------------------|--------------------------------|
| 112    | 3310 ESTERO BLVD      | PAN-O-GOLD BLACK HILLS CO      |
| 113    | 3320 ESTERO BLVD      | SALVADORE D COMPARETTO TRUST + |
| 116    | 3420 ESTERO BLVD      | SULLIVAN STEVEN T & MARY C TR  |
| 121    | 3552/3554 ESTERO BLVD | 3552 ESTERO BOULEVARD LLC      |
| 122    | 3562 ESTERO BLVD      | BALTZER RUTH CONNOR TR         |
| 123    | 3580 ESTERO BLVD      | VEACH WILLIAM DAVID &          |
| 124    | 3600 ESTERO BLVD      | VITTEERT MARK B & CAROL H      |
| 126    | 3620 ESTERO BLVD      | BEACH RETREAT GETAWAY LLC      |
| 128    | 3650 ESTERO BLVD      | PERSAUD PROPERTIES FL INVESTME |
| 129    | 3670 ESTERO BLVD      | HOTKA DEBORAH A                |
| 130    | 3700 ESTERO BLVD      | CHESTER A NIESEL TRUST + NANCY |
| 131    | 3720 ESTERO BLVD      | CHRISTOPHER A RAYBURN TRUST +  |
| 132    | 3730 ESTERO BLVD      | 3730 ESTERO LLC                |

DATE: 2/3/2025  
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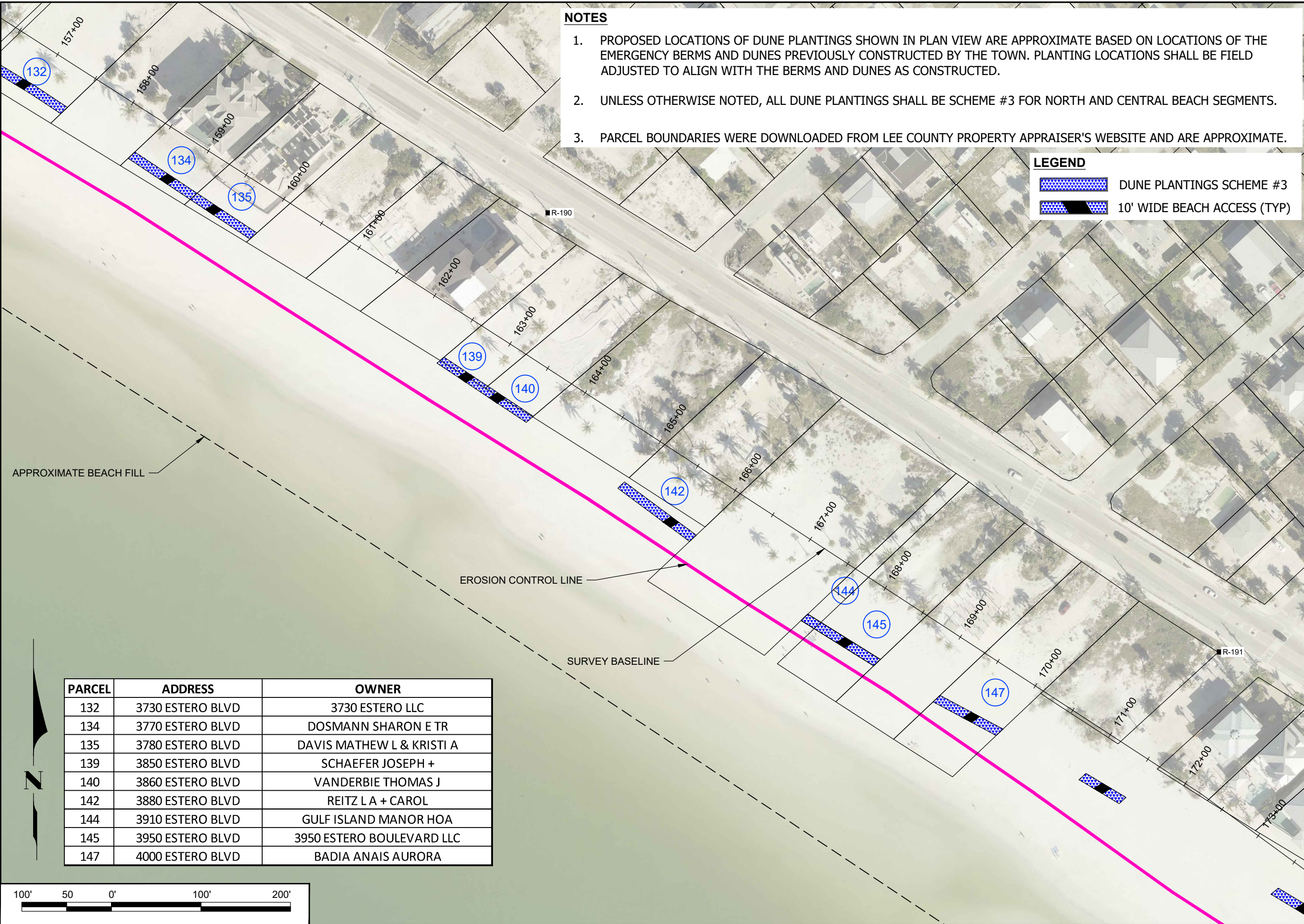
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**LEGEND**

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)



| PARCEL | ADDRESS          | OWNER                     |
|--------|------------------|---------------------------|
| 132    | 3730 ESTERO BLVD | 3730 ESTERO LLC           |
| 134    | 3770 ESTERO BLVD | DOSMANN SHARON E TR       |
| 135    | 3780 ESTERO BLVD | DAVIS MATHEW L & KRISTI A |
| 139    | 3850 ESTERO BLVD | SCHAEFER JOSEPH +         |
| 140    | 3860 ESTERO BLVD | VANDEBIE THOMAS J         |
| 142    | 3880 ESTERO BLVD | REITZ L A + CAROL         |
| 144    | 3910 ESTERO BLVD | GULF ISLAND MANOR HOA     |
| 145    | 3950 ESTERO BLVD | 3950 ESTERO BOULEVARD LLC |
| 147    | 4000 ESTERO BLVD | BADIA ANAIS AURORA        |

TOWN OF FORT MYERS BEACH

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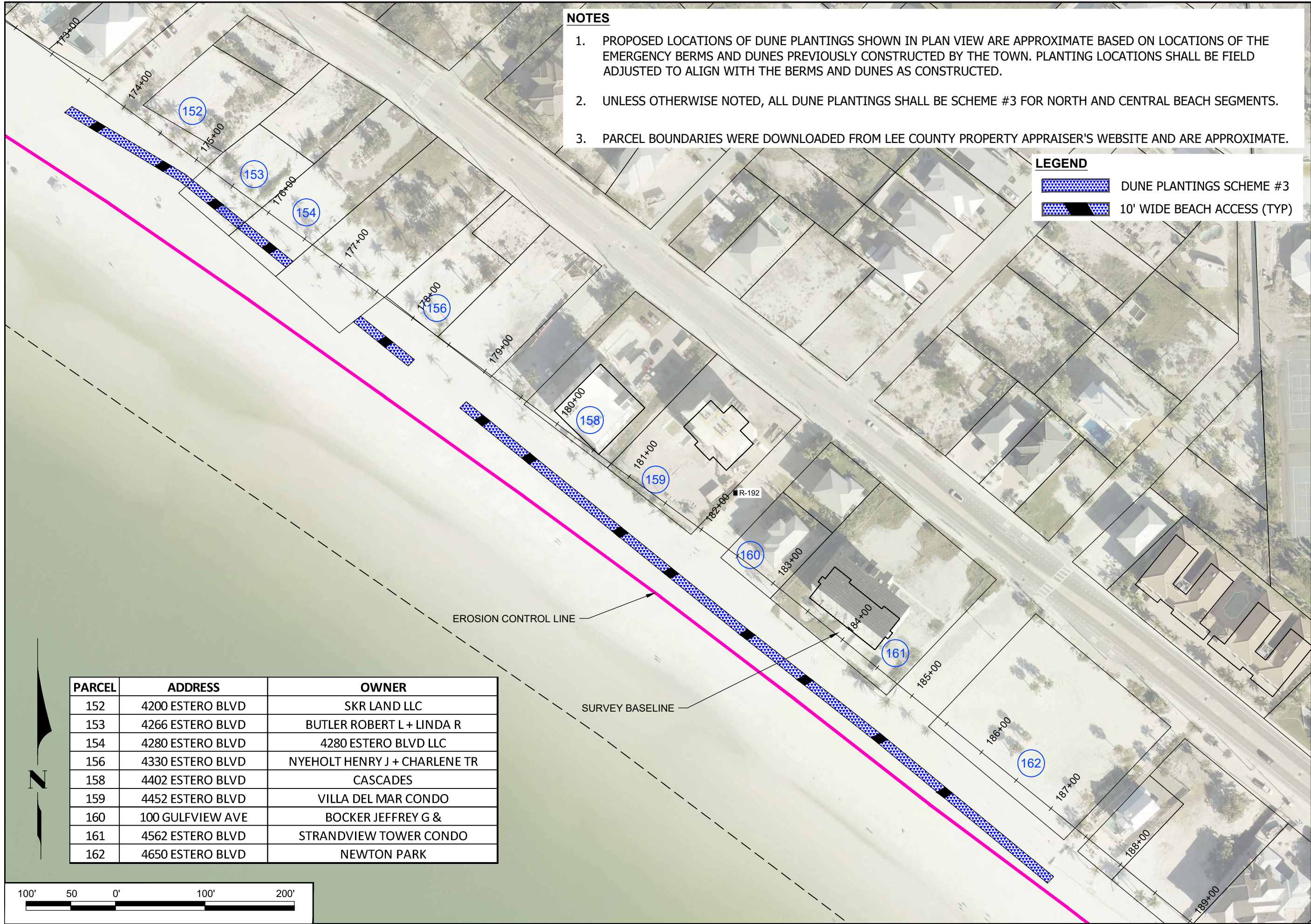
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**LEGEND**

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                         |
|--------|------------------|-------------------------------|
| 152    | 4200 ESTERO BLVD | SKR LAND LLC                  |
| 153    | 4266 ESTERO BLVD | BUTLER ROBERT L + LINDA R     |
| 154    | 4280 ESTERO BLVD | 4280 ESTERO BLVD LLC          |
| 156    | 4330 ESTERO BLVD | NYEHOLT HENRY J + CHARLENE TR |
| 158    | 4402 ESTERO BLVD | CASCADES                      |
| 159    | 4452 ESTERO BLVD | VILLA DEL MAR CONDO           |
| 160    | 100 GULFVIEW AVE | BOCKER JEFFREY G &            |
| 161    | 4562 ESTERO BLVD | STRANDVIEW TOWER CONDO        |
| 162    | 4650 ESTERO BLVD | NEWTON PARK                   |

DATE: 2/3/2025

SCALE: 1"=40'

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SURVEY & MAPPING

ENGINEERING: CA 2464

SURVEYING: LB 2464

PHONE: (239)643-2324

FAX: (239)643-1143

www.coastalengineering.com

E-Mail: info@cecill.com

COASTAL ENGINEERING CONSULTANTS

INC.

Serving Florida Since 1977

28421 BONITA CROSSINGS BLVD

BONITA SPRINGS, FLORIDA 34135

SHEET 15

FILE NO.: 24403-C-15



NOTES

- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
- 2. UNLESS OTHERWISE NOTED, ALL DUNE PLANTINGS SHALL BE SCHEME #3 FOR NORTH AND CENTRAL BEACH SEGMENTS.
- 3. PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

LEGEND

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                          |
|--------|------------------|--------------------------------|
| 166    | 4750 ESTERO BLVD | SHORES OF FT MYERS BEACH CONDO |
| 167    | 4770 ESTERO BLVD | SEASIDE CONDO                  |
| 168    | 4852 ESTERO BLVD | BENT PALMS OF FORT MYERS BEACH |
| 169    | 4902 ESTERO BLVD | ISLAND TOWERS CONDO ASSOC INC  |
| 170    | 4952 ESTERO BLVD | KAHLUA BEACH CLUB CONDO        |
| 172    | 5002 ESTERO BLVD | POINTE SOUTH CONDO             |

APPROXIMATE BEACH FILL

TOWN OF FORT MYERS BEACH  
ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

COASTAL & MARINE ENGINEERING  
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28421 BONITA CROSSINGS BLVD  
BONITA SPRINGS, FLORIDA 34135

SHEET 16  
FILE NO.: 24403-C-16



- NOTES**
- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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  - 3. PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

**LEGEND**

DUNE PLANTINGS SCHEME #3

10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                                                        |
|--------|------------------|--------------------------------------------------------------|
| 174    | 5218 ESTERO BLVD | TURTLE WALK OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION, INC |
| 183    | 5371 ESTERO BLVD | BAHAMA BEACH CLUB CONDO                                      |
| 184    | 5400 ESTERO BLVD | SCHLEESE JOACHIM E TR                                        |

TOWN OF FORT MYERS BEACH

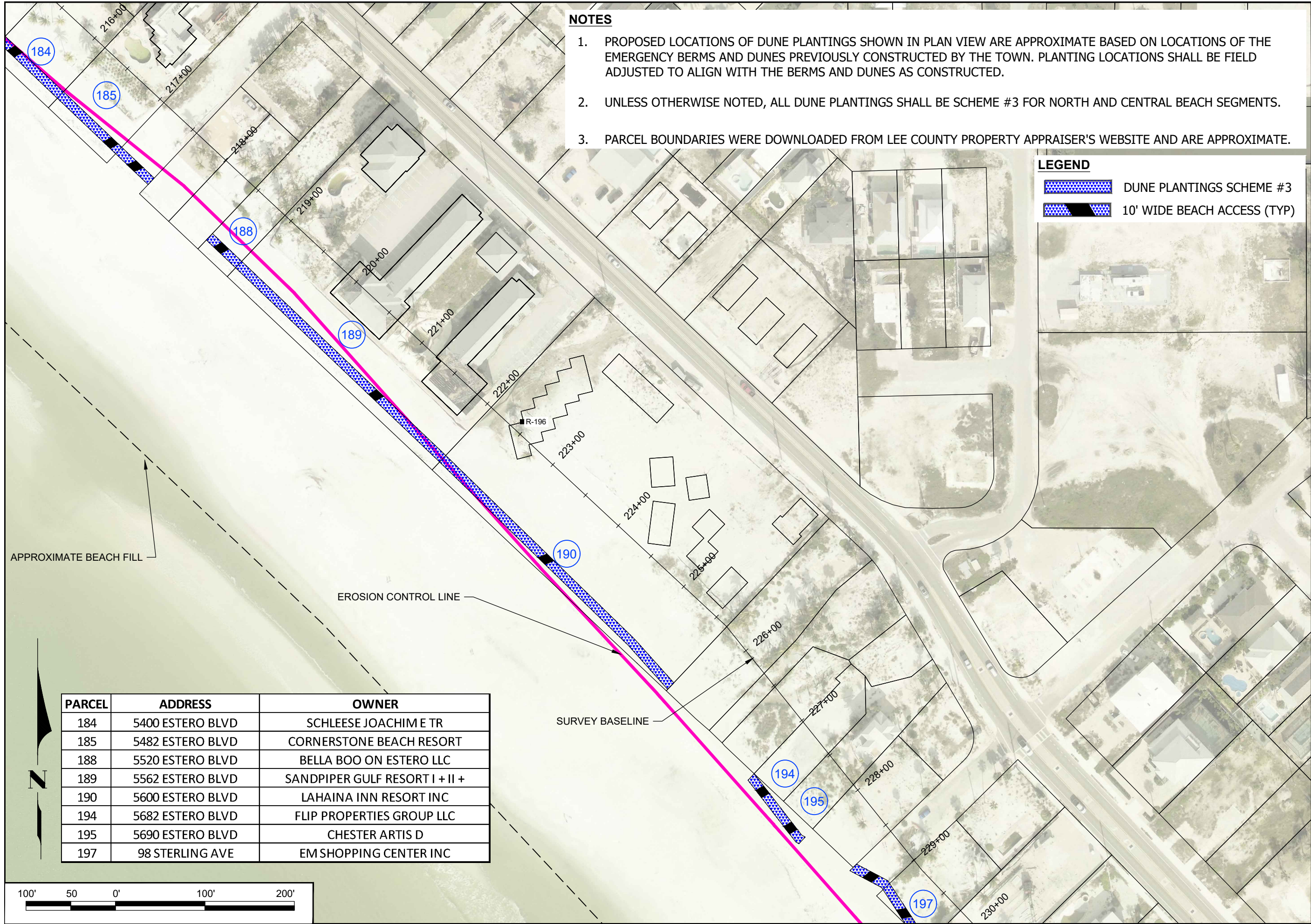
ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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ENVIRONMENTAL & GEOLOGICAL SERVICES  
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ENGINEERING, CA 2464  
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28421 BONITA CROSSINGS BLVD  
BONITA SPRINGS, FLORIDA 34135

SHEET 17  
FILE NO.: 24403-C-17





NOTES

1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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LEGEND

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                          |
|--------|------------------|--------------------------------|
| 184    | 5400 ESTERO BLVD | SCHLEESE JOACHIM E TR          |
| 185    | 5482 ESTERO BLVD | CORNERSTONE BEACH RESORT       |
| 188    | 5520 ESTERO BLVD | BELLA BOO ON ESTERO LLC        |
| 189    | 5562 ESTERO BLVD | SANDPIPER GULF RESORT I + II + |
| 190    | 5600 ESTERO BLVD | LAHAINA INN RESORT INC         |
| 194    | 5682 ESTERO BLVD | FLIP PROPERTIES GROUP LLC      |
| 195    | 5690 ESTERO BLVD | CHESTER ARTIS D                |
| 197    | 98 STERLING AVE  | EM SHOPPING CENTER INC         |

DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TYP  
ACAD NO: 24403  
REF. NO:

SCALE: AS NOTED  
VVA  
MTP  
TYP  
24403 Dune Planting-with-2024-aerial.dwg

TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

COASTAL & MARINE ENGINEERING  
ENVIRONMENTAL & GEOLOGICAL SERVICES  
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www.coastalengineering.com  
E-Mail: info@cecill.com

CLIENT: TOWN OF FORT MYERS BEACH

TITLE: ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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28421 BONITA CROSSINGS BLVD  
BONITA SPRINGS, FLORIDA 34135

SHEET 18  
FILE NO.: 24403-C-18

NO. 24,403  
DATE  
BY

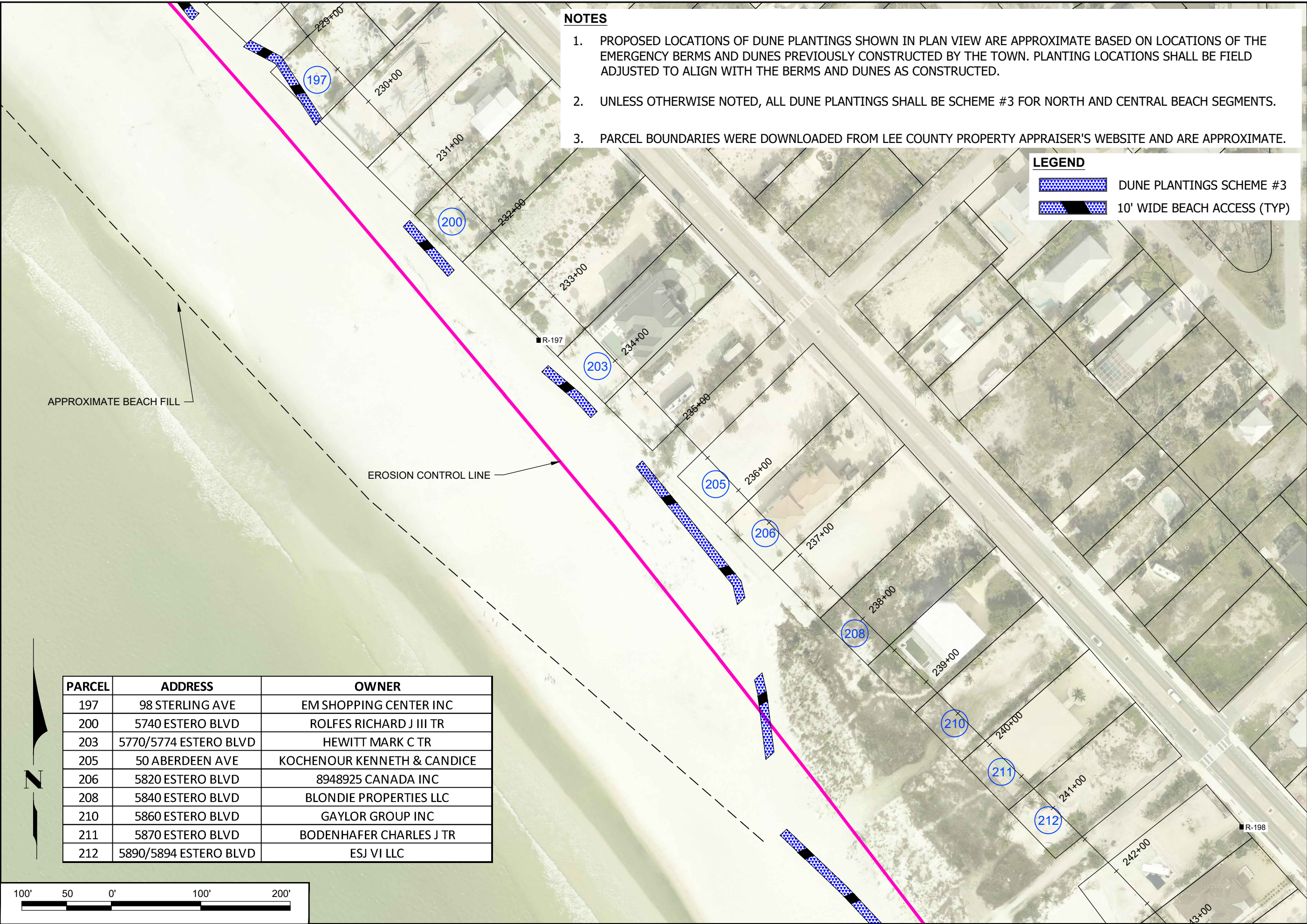
REVISION DESCRIPTION



- NOTES**
- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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**LEGEND**

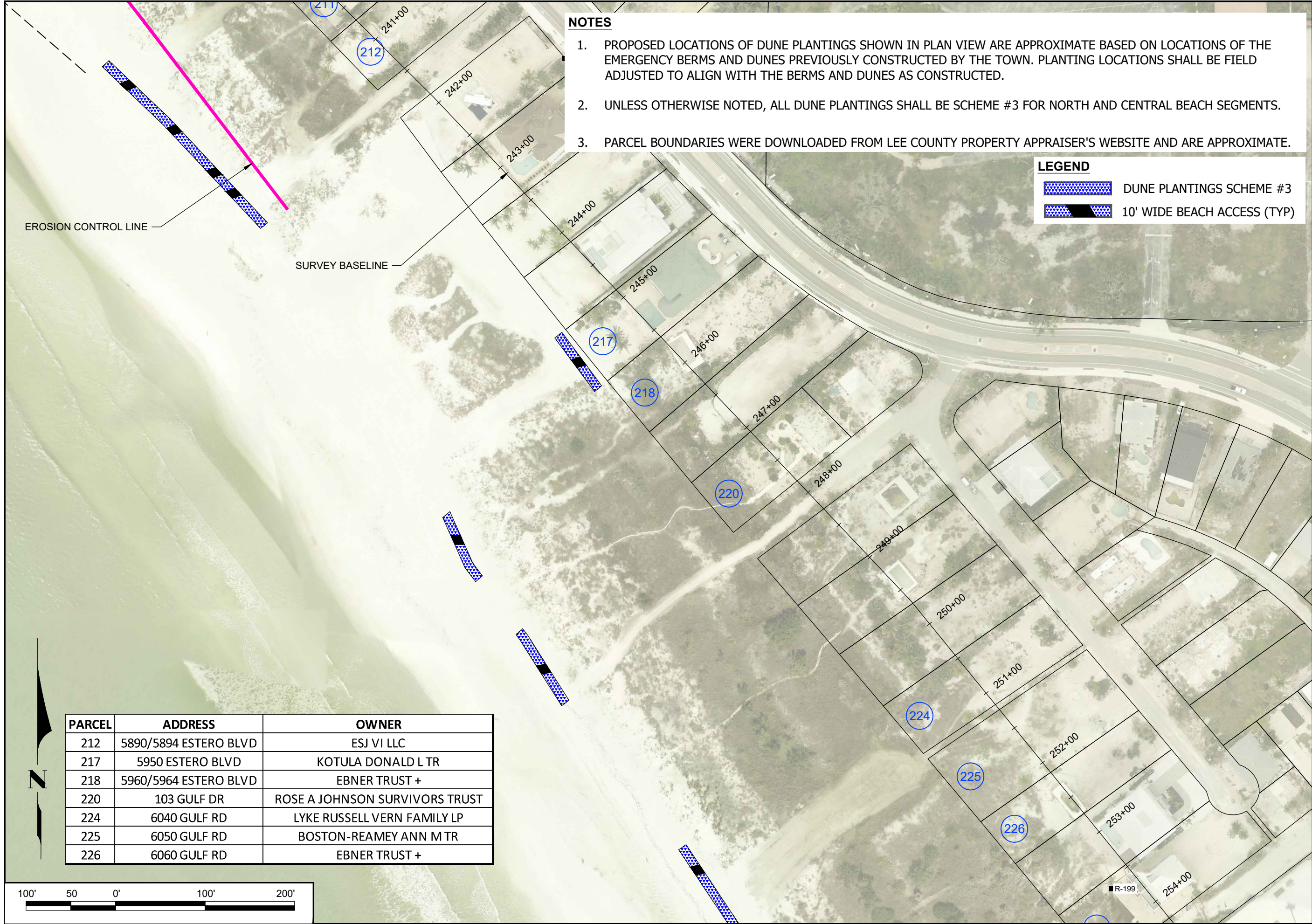
- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)



| PARCEL | ADDRESS               | OWNER                       |
|--------|-----------------------|-----------------------------|
| 197    | 98 STERLING AVE       | EM SHOPPING CENTER INC      |
| 200    | 5740 ESTERO BLVD      | ROLFES RICHARD J III TR     |
| 203    | 5770/5774 ESTERO BLVD | HEWITT MARK C TR            |
| 205    | 50 ABERDEEN AVE       | KOCHENOUR KENNETH & CANDICE |
| 206    | 5820 ESTERO BLVD      | 8948925 CANADA INC          |
| 208    | 5840 ESTERO BLVD      | BLONDIE PROPERTIES LLC      |
| 210    | 5860 ESTERO BLVD      | GAYLOR GROUP INC            |
| 211    | 5870 ESTERO BLVD      | BODENHAFFER CHARLES J TR    |
| 212    | 5890/5894 ESTERO BLVD | ESJ VI LLC                  |

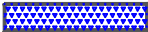
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|----------------|------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------|--|
| DATE: 2/3/2025 |                                    | SCALE: AS NOTED | CLIENT: TOWN OF FORT MYERS BEACH                                                                                          |  |
| DRAWN: VVA     | FB                                 |                 | TITLE: ESTERO ISLAND DUNE VEGETATION PLAN VIEW                                                                            |  |
| CHECKED: MTP   | PG                                 |                 | COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464 |  |
| SEC: TYP       | RNG                                |                 | PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecill.com                                |  |
| ACAD NO: 24403 | Dune Planting-with-2024-aerial.dwg |                 | SHEET 19                                                                                                                  |  |
| REF. NO:       |                                    |                 | FILE NO.: 24403-C-19                                                                                                      |  |
|                |                                    |                 | 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135                                                                 |  |
|                |                                    |                 | Serving Florida Since 1977                                                                                                |  |
|                |                                    |                 | COASTAL ENGINEERING CONSULTANTS INC.                                                                                      |  |
|                |                                    |                 | 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135                                                                 |  |
|                |                                    |                 | SHEET 19                                                                                                                  |  |
|                |                                    |                 | FILE NO.: 24403-C-19                                                                                                      |  |





- NOTES**
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**LEGEND**

 DUNE PLANTINGS SCHEME #3

 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS               | OWNER                          |
|--------|-----------------------|--------------------------------|
| 212    | 5890/5894 ESTERO BLVD | ESJ VI LLC                     |
| 217    | 5950 ESTERO BLVD      | KOTULA DONALD L TR             |
| 218    | 5960/5964 ESTERO BLVD | EBNER TRUST +                  |
| 220    | 103 GULF DR           | ROSE A JOHNSON SURVIVORS TRUST |
| 224    | 6040 GULF RD          | LYKE RUSSELL VERN FAMILY LP    |
| 225    | 6050 GULF RD          | BOSTON-REAMEY ANN M TR         |
| 226    | 6060 GULF RD          | EBNER TRUST +                  |

|                      |                                    |                 |
|----------------------|------------------------------------|-----------------|
| DATE: 2/3/2025       |                                    | SCALE: AS NOTED |
| DRAWN: VVA           | FB.                                |                 |
| CHECKED: MTP         | PG.                                |                 |
| SEC.                 | TYP.                               | RNG.            |
| ACAD NO. 24403       | Dune Planting-with-2024-aerial.dwg |                 |
| REF. NO.             | NO.                                | DATE            |
| BY                   |                                    |                 |
| REVISION DESCRIPTION |                                    |                 |
| 24.403               |                                    |                 |

|                                                                                                                           |                                                |
|---------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| CLIENT: TOWN OF FORT MYERS BEACH                                                                                          | TITLE: ESTERO ISLAND DUNE VEGETATION PLAN VIEW |
| COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEY & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464 |                                                |
| PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecill.com                                |                                                |

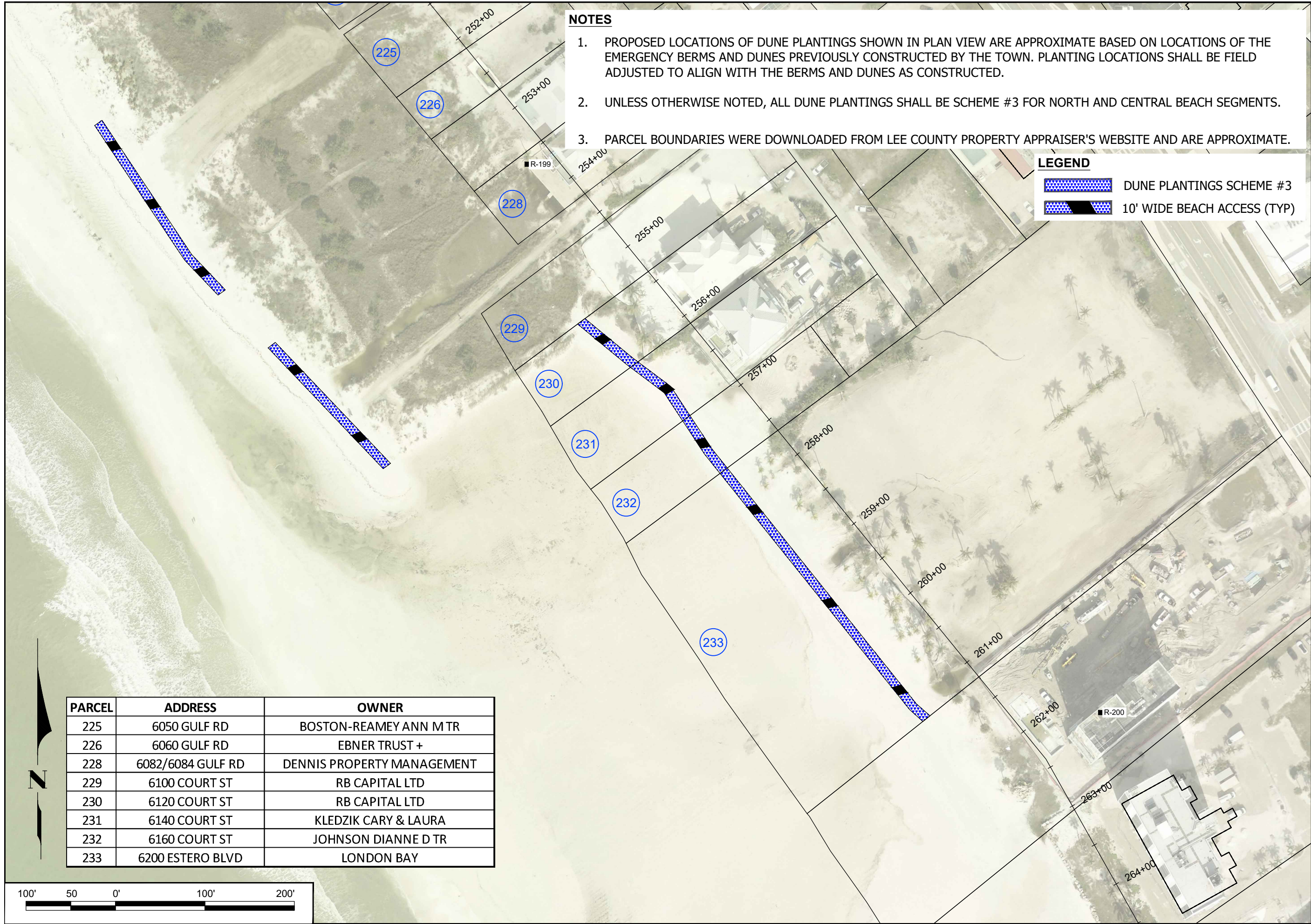
  

|                                      |                            |
|--------------------------------------|----------------------------|
| COASTAL ENGINEERING CONSULTANTS INC. | Serving Florida Since 1977 |
| 28421 BONITA CROSSINGS BLVD          |                            |
| BONITA SPRINGS, FLORIDA 34135        |                            |

|                      |
|----------------------|
| SHEET 20             |
| FILE NO.: 24403-C-20 |





**NOTES**

1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS           | OWNER                      |
|--------|-------------------|----------------------------|
| 225    | 6050 GULF RD      | BOSTON-REAMEY ANN M TR     |
| 226    | 6060 GULF RD      | EBNER TRUST +              |
| 228    | 6082/6084 GULF RD | DENNIS PROPERTY MANAGEMENT |
| 229    | 6100 COURT ST     | RB CAPITAL LTD             |
| 230    | 6120 COURT ST     | RB CAPITAL LTD             |
| 231    | 6140 COURT ST     | KLEDZIK CARY & LAURA       |
| 232    | 6160 COURT ST     | JOHNSON DIANNE D TR        |
| 233    | 6200 ESTERO BLVD  | LONDON BAY                 |

DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TYP  
ACAD NO: 24403  
REF. NO:

SCALE: AS NOTED  
VVA  
MTP  
TYP  
24403 Dune Planting-with-2024-aerial.dwg

TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

COASTAL & MARINE ENGINEERING  
ENVIRONMENTAL & GEOLOGICAL SERVICES  
SURVEY & MAPPING  
ENGINEERING: CA 2464  
SURVEYING: LB 2464  
PHONE: (239)643-2324  
FAX: (239)643-1143  
www.coastalengineering.com  
E-Mail: info@cecill.com

CLIENT: TOWN OF FORT MYERS BEACH

TITLE: ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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BONITA SPRINGS, FLORIDA 34135

SHEET 21  
FILE NO.: 24403-C-21

REVISION DESCRIPTION  
NO. BY DATE

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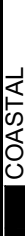
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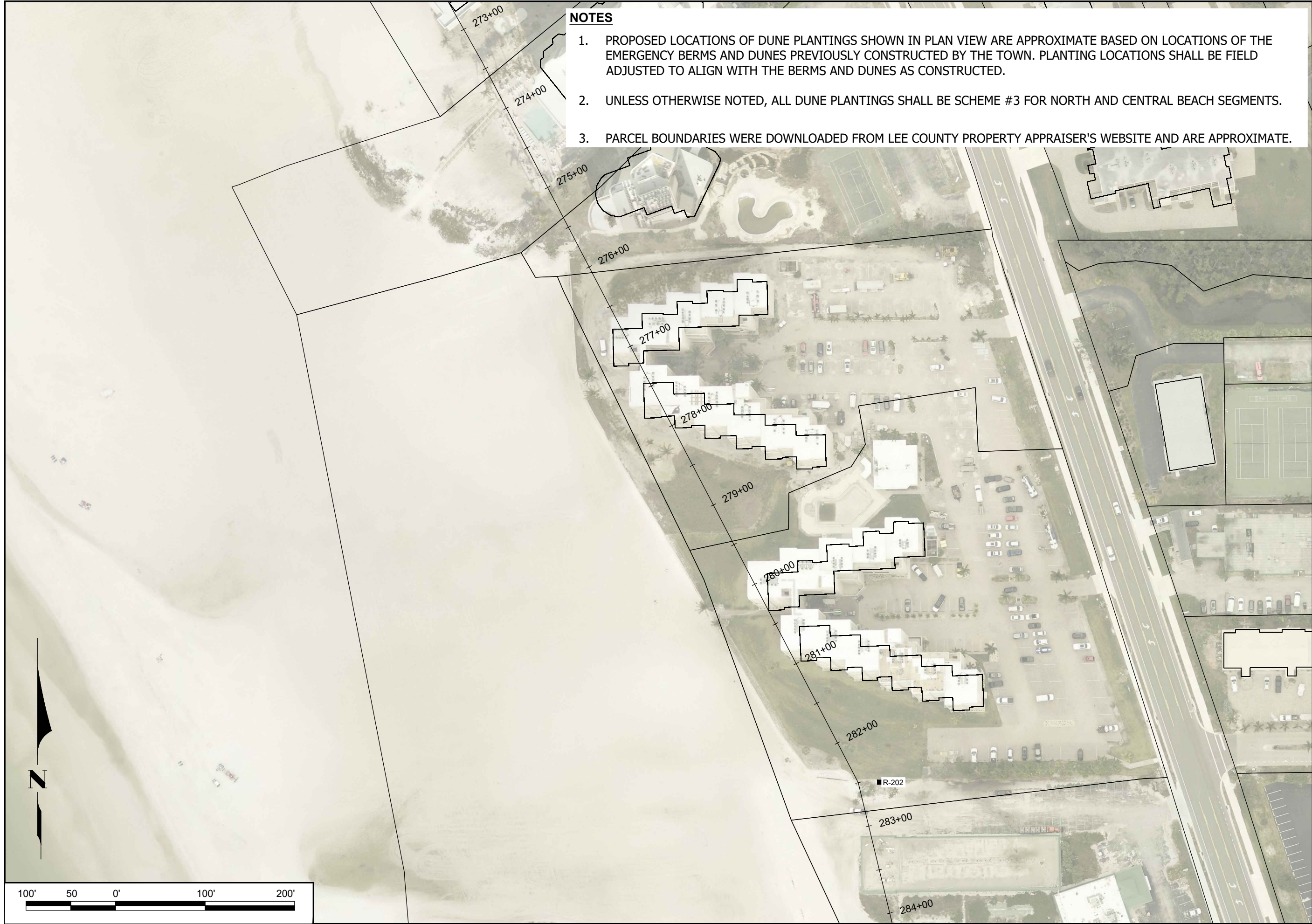


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|                                                                                                                                                                                                                                                                  |  |                                     |  |                      |  |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------|--|----------------------|--|--|
|  <div>COASTAL<br/>ENGINEERING<br/>CONSULTANTS<br/>INC.</div> <div>Serving Florida Since 1977</div> <div>28421 BONITA CROSSINGS BLVD<br/>BONITA SPRINGS, FLORIDA 34135</div> |  | SHEET 22                            |  | FILE NO.: 24403-C-22 |  |  |
|                                                                                                                                                                                                                                                                  |  | ENVIRONMENTAL & GEOLOGICAL SERVICES |  |                      |  |  |
|                                                                                                                                                                                                                                                                  |  | SURVEY & MAPPING                    |  |                      |  |  |
|                                                                                                                                                                                                                                                                  |  | ENGINEERING: CA 2464                |  |                      |  |  |
| SURVEYING: LB 2464                                                                                                                                                                                                                                               |  |                                     |  |                      |  |  |
| PHONE: (239)643-2324                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| FAX: (239)643-1143                                                                                                                                                                                                                                               |  |                                     |  |                      |  |  |
| www.coastalengineering.com                                                                                                                                                                                                                                       |  |                                     |  |                      |  |  |
| E-Mail: info@cecill.com                                                                                                                                                                                                                                          |  |                                     |  |                      |  |  |
| COASTAL & MARINE ENGINEERING                                                                                                                                                                                                                                     |  |                                     |  |                      |  |  |
| CLIENT: TOWN OF FORT MYERS BEACH                                                                                                                                                                                                                                 |  |                                     |  |                      |  |  |
| DATE: 2/3/2025                                                                                                                                                                                                                                                   |  |                                     |  |                      |  |  |
| SCALE: AS NOTED                                                                                                                                                                                                                                                  |  |                                     |  |                      |  |  |
| DRAWN: VVA                                                                                                                                                                                                                                                       |  |                                     |  |                      |  |  |
| F.B.                                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| CHECKED: MTP                                                                                                                                                                                                                                                     |  |                                     |  |                      |  |  |
| PG.                                                                                                                                                                                                                                                              |  |                                     |  |                      |  |  |
| SEC.                                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| TWP.                                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| RING.                                                                                                                                                                                                                                                            |  |                                     |  |                      |  |  |
| ACAD NO. 24403 Dune Planting-with-2024-aerial.dwg                                                                                                                                                                                                                |  |                                     |  |                      |  |  |
| REF. NO. 24 403                                                                                                                                                                                                                                                  |  |                                     |  |                      |  |  |
| DATE                                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| BY                                                                                                                                                                                                                                                               |  |                                     |  |                      |  |  |
| REVISION DESCRIPTION                                                                                                                                                                                                                                             |  |                                     |  |                      |  |  |
| ESTERO ISLAND DUNE VEGETATION                                                                                                                                                                                                                                    |  |                                     |  |                      |  |  |
| PLAN VIEW                                                                                                                                                                                                                                                        |  |                                     |  |                      |  |  |

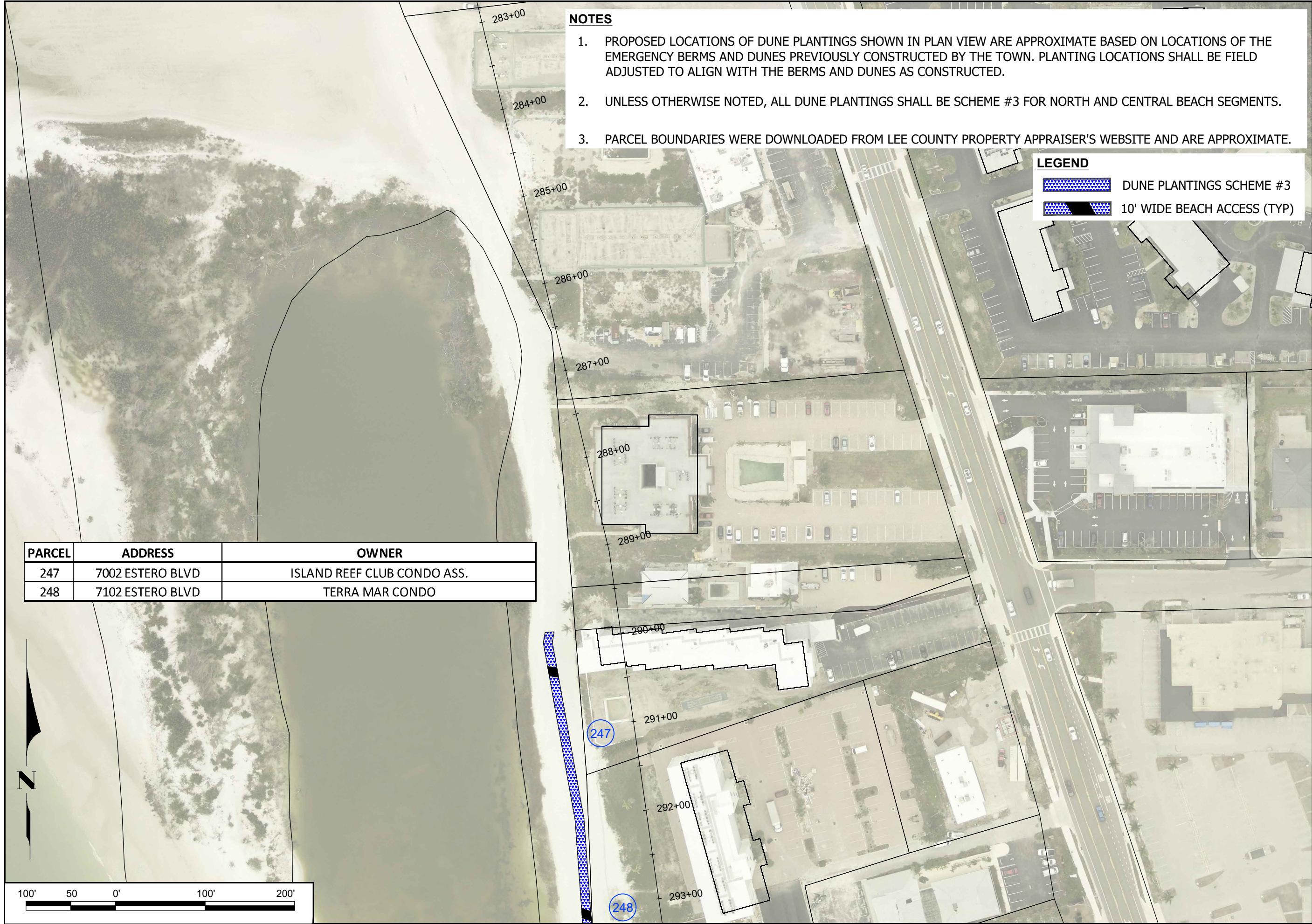




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|                                                                                                                                                                                                                                                                           |                                                                                                                                       |  |                                                      |                 |                                                   |     |                 |      |  |    |  |                      |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------|-----------------|---------------------------------------------------|-----|-----------------|------|--|----|--|----------------------|--|
| <div><div>COASTAL<br/>ENGINEERING<br/>CONSULTANTS<br/>INC.</div><div>Serving Florida Since 1977</div></div> <div>28421 BONITA CROSSINGS BLVD<br/>BONITA SPRINGS, FLORIDA 34135</div> | COASTAL & MARINE ENGINEERING<br>ENVIRONMENTAL & GEOLOGICAL SERVICES<br>SURVEY & MAPPING<br>ENGINEERING: CA 2464<br>SURVEYING: LB 2464 |  | CLIENT:<br>TOWN OF FORT MYERS BEACH                  |                 | DATE: 2/3/2025                                    |     | SCALE: AS NOTED |      |  |    |  |                      |  |
|                                                                                                                                                                                                                                                                           | PHONE: (239)643-2324<br>FAX: (239)643-1143<br>www.coastalengineering.com<br>E-Mail: info@cecill.com                                   |  | TITLE:<br>ESTERO ISLAND DUNE VEGETATION<br>PLAN VIEW |                 | DRAWN: VVA                                        |     | F.B.            |      |  |    |  |                      |  |
|                                                                                                                                                                                                                                                                           |                                                                                                                                       |  |                                                      |                 | CHECKED: MTP                                      |     | P.G.            |      |  |    |  |                      |  |
|                                                                                                                                                                                                                                                                           |                                                                                                                                       |  |                                                      |                 | SEC. TWP. RING.                                   |     |                 |      |  |    |  |                      |  |
|                                                                                                                                                                                                                                                                           |                                                                                                                                       |  |                                                      |                 | ACAD NO. 24403 Dune Planting-with-2024-aerial.dwg |     |                 |      |  |    |  |                      |  |
| SHEET 23<br>FILE NO. 24403-C-23                                                                                                                                                                                                                                           |                                                                                                                                       |  |                                                      | REF. NO. 24.403 |                                                   | NO. |                 | DATE |  | BY |  | REVISION DESCRIPTION |  |





| PARCEL | ADDRESS          | OWNER                       |
|--------|------------------|-----------------------------|
| 247    | 7002 ESTERO BLVD | ISLAND REEF CLUB CONDO ASS. |
| 248    | 7102 ESTERO BLVD | TERRA MAR CONDO             |

NOTES

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LEGEND

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

COASTAL & MARINE ENGINEERING  
ENVIRONMENTAL & GEOLOGICAL SERVICES  
SURVEY & MAPPING  
ENGINEERING: CA 2464  
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BONITA SPRINGS, FLORIDA 34135

TOWN OF FORT MYERS BEACH

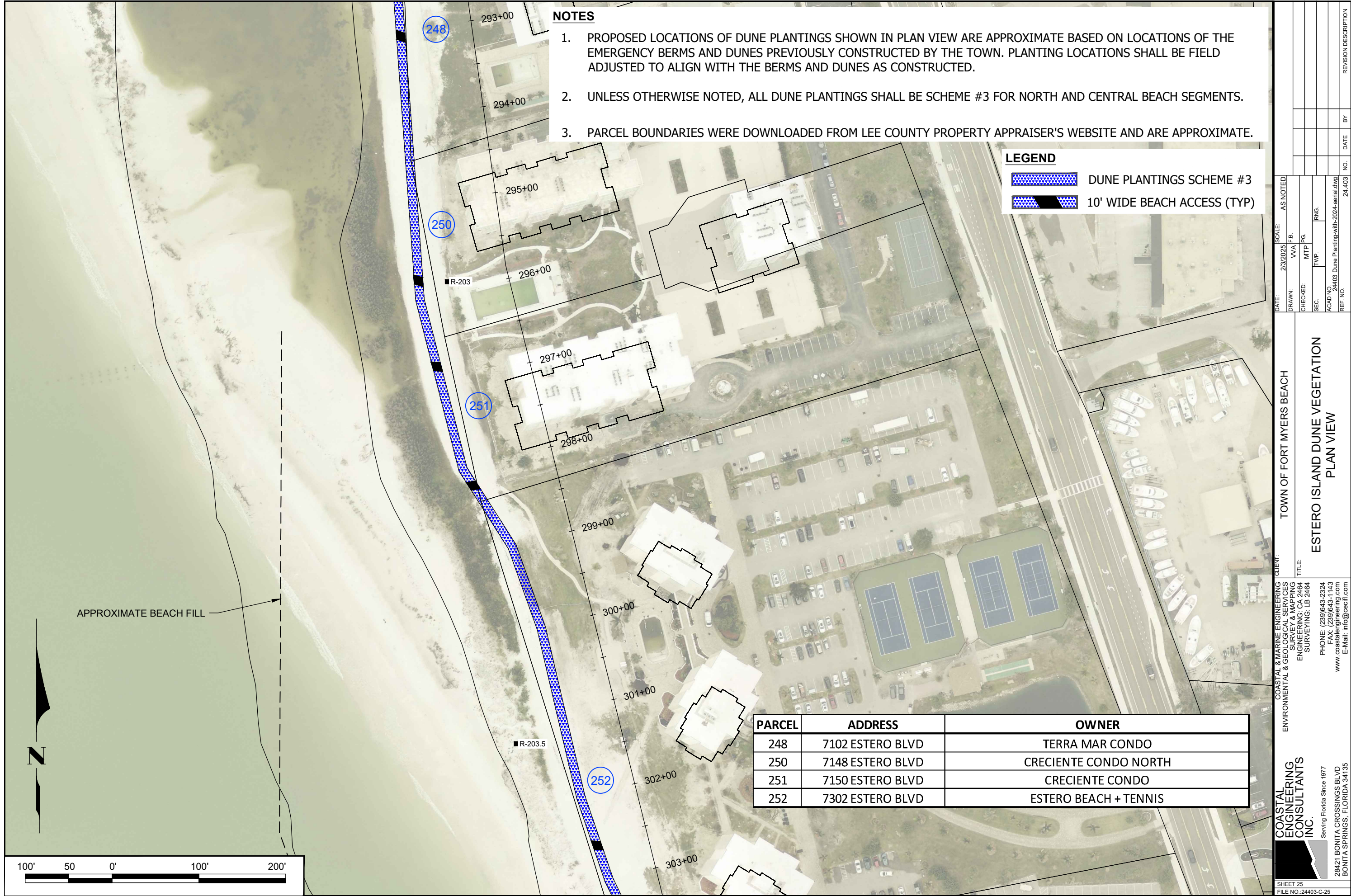
ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

DATE: 2/3/2025  
DRAWN: VVA/FB  
CHECKED: MTP/PG  
SEC: TYP  
ACAD NO: 24403 Dune Planting-with-2024-aerial.dwg  
REF. NO:

SCALE: AS NOTED  
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MTP/PG  
TYP  
RNG  
24.403

NO. 24.403  
DATE  
BY  
REVISION DESCRIPTION

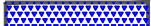




**NOTES**

1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
2. UNLESS OTHERWISE NOTED, ALL DUNE PLANTINGS SHALL BE SCHEME #3 FOR NORTH AND CENTRAL BEACH SEGMENTS.
3. PARCEL BOUNDARIES WERE DOWNLOADED FROM LEE COUNTY PROPERTY APPRAISER'S WEBSITE AND ARE APPROXIMATE.

**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                 |
|--------|------------------|-----------------------|
| 248    | 7102 ESTERO BLVD | TERRA MAR CONDO       |
| 250    | 7148 ESTERO BLVD | CRECIENTE CONDO NORTH |
| 251    | 7150 ESTERO BLVD | CRECIENTE CONDO       |
| 252    | 7302 ESTERO BLVD | ESTERO BEACH + TENNIS |

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TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TWP.  
ACAD NO: 24403 Dune Planting-with-2024-aerial.dwg  
REF. NO.

SCALE: AS NOTED  
VVA  
MTP  
RNG.  
24.403

NO. 24.403  
DATE BY

SHEET 25  
FILE NO.: 24403-C-25

Page 1098 of 1296



- NOTES**
- 1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER              |
|--------|------------------|--------------------|
| 253    | 7389 ESTERO BLVD | BERMUDA DUNES      |
| 254    | 7402 ESTERO BLVD | LEONARDO ARMS II   |
| 255    | 7404 ESTERO BLVD | LEONARDO ARMS I    |
| 256    | 7500 ESTERO BLVD | RIVIERA CLUB CONDO |



TOWN OF FORT MYERS BEACH  
ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

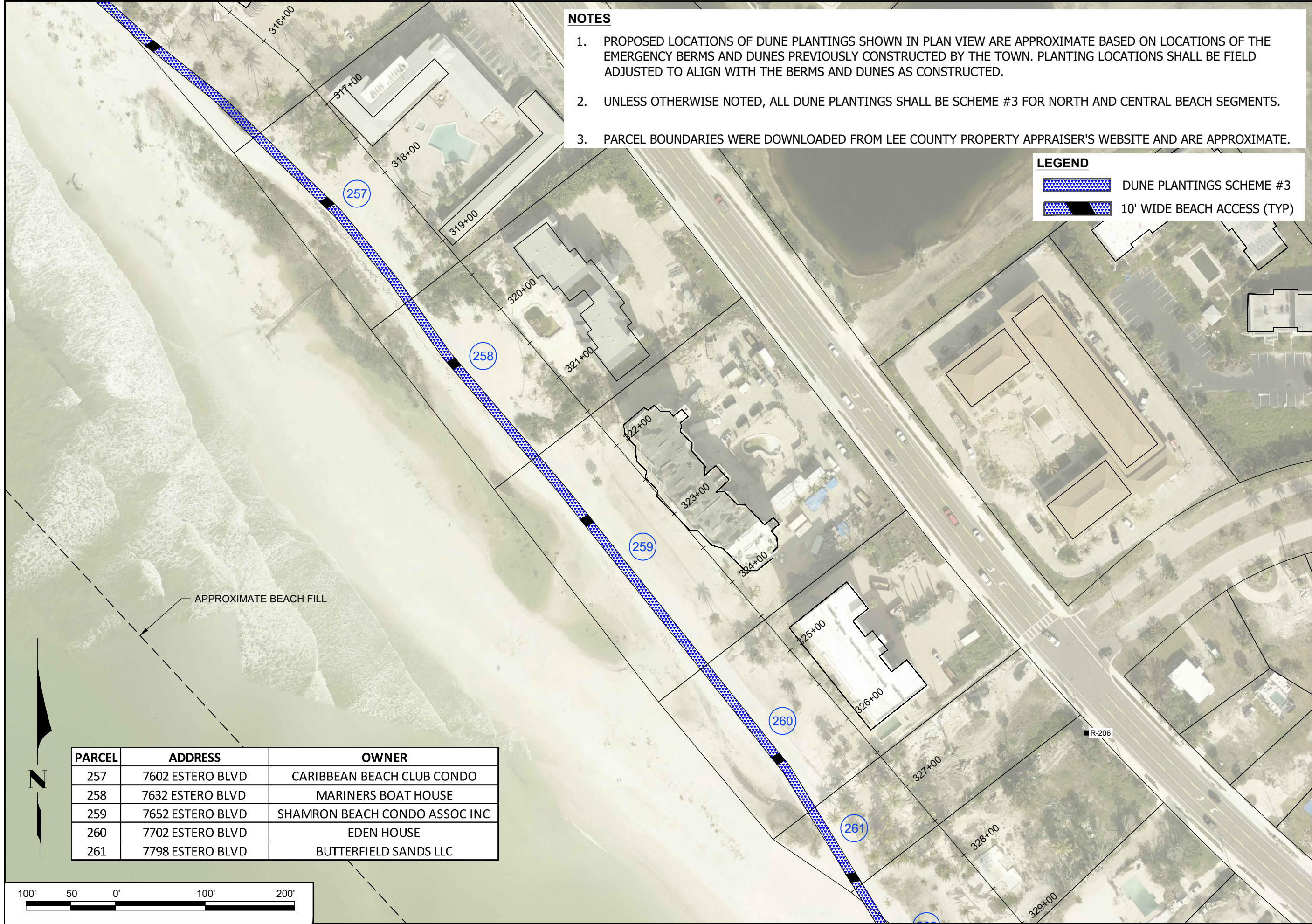
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SHEET 26  
FILE NO.: 24403-C-26

| DATE:                                    | SCALE:     | AS NOTED |
|------------------------------------------|------------|----------|
| 2/3/2025                                 | VVA / F.B. |          |
| DRAWN:                                   | CHECKED:   | SEC.     |
| MTP                                      | MTP        |          |
| PG.                                      | RNG.       |          |
|                                          |            |          |
| ACAD NO.                                 | REF. NO.   | NO.      |
| 24403 Dune Planting-with-2024-aerial.dwg |            | 24 403   |
| REVISION DESCRIPTION                     | DATE       | BY       |
|                                          |            |          |





**NOTES**

1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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**LEGEND**

-  DUNE PLANTINGS SCHEME #3
-  10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                         |
|--------|------------------|-------------------------------|
| 257    | 7602 ESTERO BLVD | CARIBBEAN BEACH CLUB CONDO    |
| 258    | 7632 ESTERO BLVD | MARINERS BOAT HOUSE           |
| 259    | 7652 ESTERO BLVD | SHAMRON BEACH CONDO ASSOC INC |
| 260    | 7702 ESTERO BLVD | EDEN HOUSE                    |
| 261    | 7798 ESTERO BLVD | BUTTERFIELD SANDS LLC         |

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TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

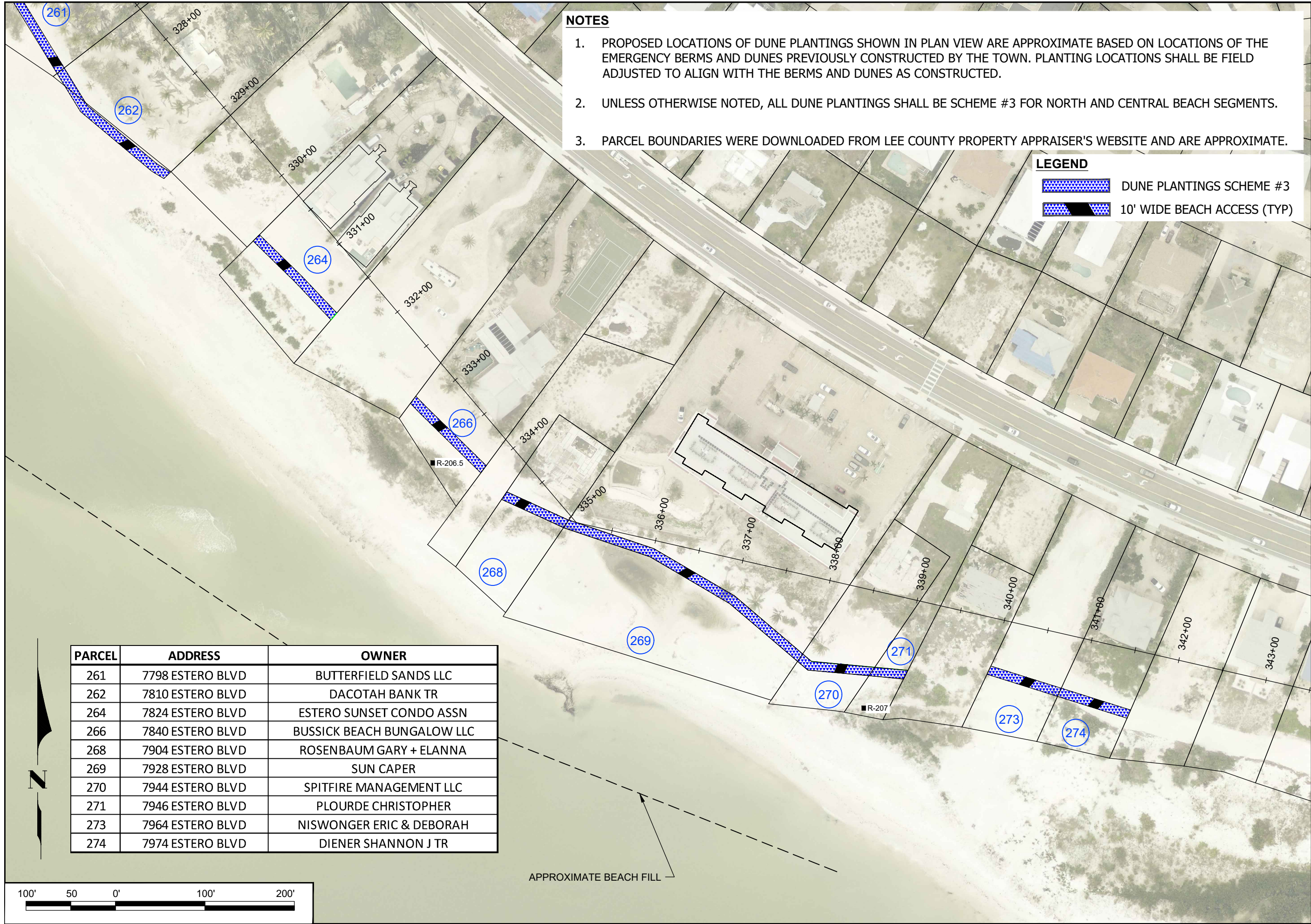
DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TYP  
ACAD NO: 24403  
REF. NO:

SCALE: AS NOTED  
VVA  
MTP  
RNG  
24403 Dune Planting-with-2024-aerial.dwg  
24 403

SHEET 27  
FILE NO.: 24403-C-27

REVISION DESCRIPTION  
BY  
DATE





**NOTES**

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**LEGEND**

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                      |
|--------|------------------|----------------------------|
| 261    | 7798 ESTERO BLVD | BUTTERFIELD SANDS LLC      |
| 262    | 7810 ESTERO BLVD | DACOTAH BANK TR            |
| 264    | 7824 ESTERO BLVD | ESTERO SUNSET CONDO ASSN   |
| 266    | 7840 ESTERO BLVD | BUSSICK BEACH BUNGALOW LLC |
| 268    | 7904 ESTERO BLVD | ROSENBAUM GARY + ELANNA    |
| 269    | 7928 ESTERO BLVD | SUN CAPER                  |
| 270    | 7944 ESTERO BLVD | SPITFIRE MANAGEMENT LLC    |
| 271    | 7946 ESTERO BLVD | PLOURDE CHRISTOPHER        |
| 273    | 7964 ESTERO BLVD | NISWONGER ERIC & DEBORAH   |
| 274    | 7974 ESTERO BLVD | DIENER SHANNON J TR        |

TOWN OF FORT MYERS BEACH

ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

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DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TYP  
ACAD NO: 24403  
REF. NO:

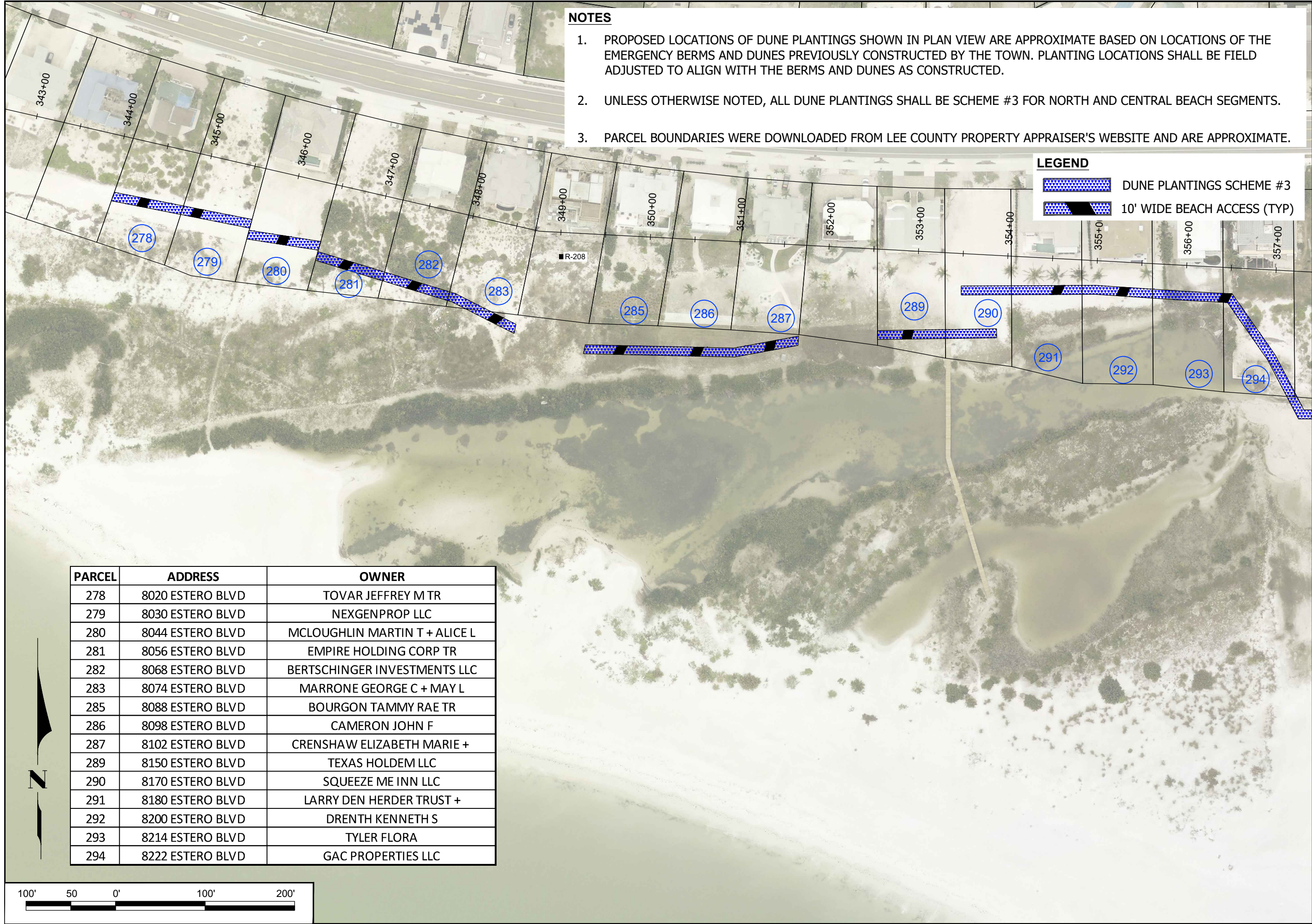
SCALE: AS NOTED  
VVA  
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RNG  
24403 Dune Planting-with-2024-aerial.dwg  
24.403

NO. BY DATE

SHEET 28  
FILE NO.: 24403-C-28

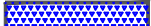
Page 1101 of 1296





- NOTES**
1. PROPOSED LOCATIONS OF DUNE PLANTINGS SHOWN IN PLAN VIEW ARE APPROXIMATE BASED ON LOCATIONS OF THE EMERGENCY BERMS AND DUNES PREVIOUSLY CONSTRUCTED BY THE TOWN. PLANTING LOCATIONS SHALL BE FIELD ADJUSTED TO ALIGN WITH THE BERMS AND DUNES AS CONSTRUCTED.
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**LEGEND**

 DUNE PLANTINGS SCHEME #3

 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                         |
|--------|------------------|-------------------------------|
| 278    | 8020 ESTERO BLVD | TOVAR JEFFREY M TR            |
| 279    | 8030 ESTERO BLVD | NEXGENPROP LLC                |
| 280    | 8044 ESTERO BLVD | MCLOUGHLIN MARTIN T + ALICE L |
| 281    | 8056 ESTERO BLVD | EMPIRE HOLDING CORP TR        |
| 282    | 8068 ESTERO BLVD | BERTSCHINGER INVESTMENTS LLC  |
| 283    | 8074 ESTERO BLVD | MARRONE GEORGE C + MAY L      |
| 285    | 8088 ESTERO BLVD | BOURGON TAMMY RAE TR          |
| 286    | 8098 ESTERO BLVD | CAMERON JOHN F                |
| 287    | 8102 ESTERO BLVD | CRENSHAW ELIZABETH MARIE +    |
| 289    | 8150 ESTERO BLVD | TEXAS HOLDEM LLC              |
| 290    | 8170 ESTERO BLVD | SQUEEZE ME INN LLC            |
| 291    | 8180 ESTERO BLVD | LARRY DEN HERDER TRUST +      |
| 292    | 8200 ESTERO BLVD | DRENTH KENNETH S              |
| 293    | 8214 ESTERO BLVD | TYLER FLORA                   |
| 294    | 8222 ESTERO BLVD | GAC PROPERTIES LLC            |

|                                                   |            |                 |
|---------------------------------------------------|------------|-----------------|
| DATE: 2/3/2025                                    |            | SCALE: AS NOTED |
| DRAWN: VVA / FB                                   |            |                 |
| CHECKED: MTP / PG                                 |            |                 |
| SEC: TYP                                          | RNG:       |                 |
| ACAD NO: 24403 Dune Planting-with-2024-aerial.dwg |            |                 |
| REF. NO:                                          | NO. 24.403 | BY DATE         |
| REVISION DESCRIPTION                              |            |                 |

CLIENT: TOWN OF FORT MYERS BEACH

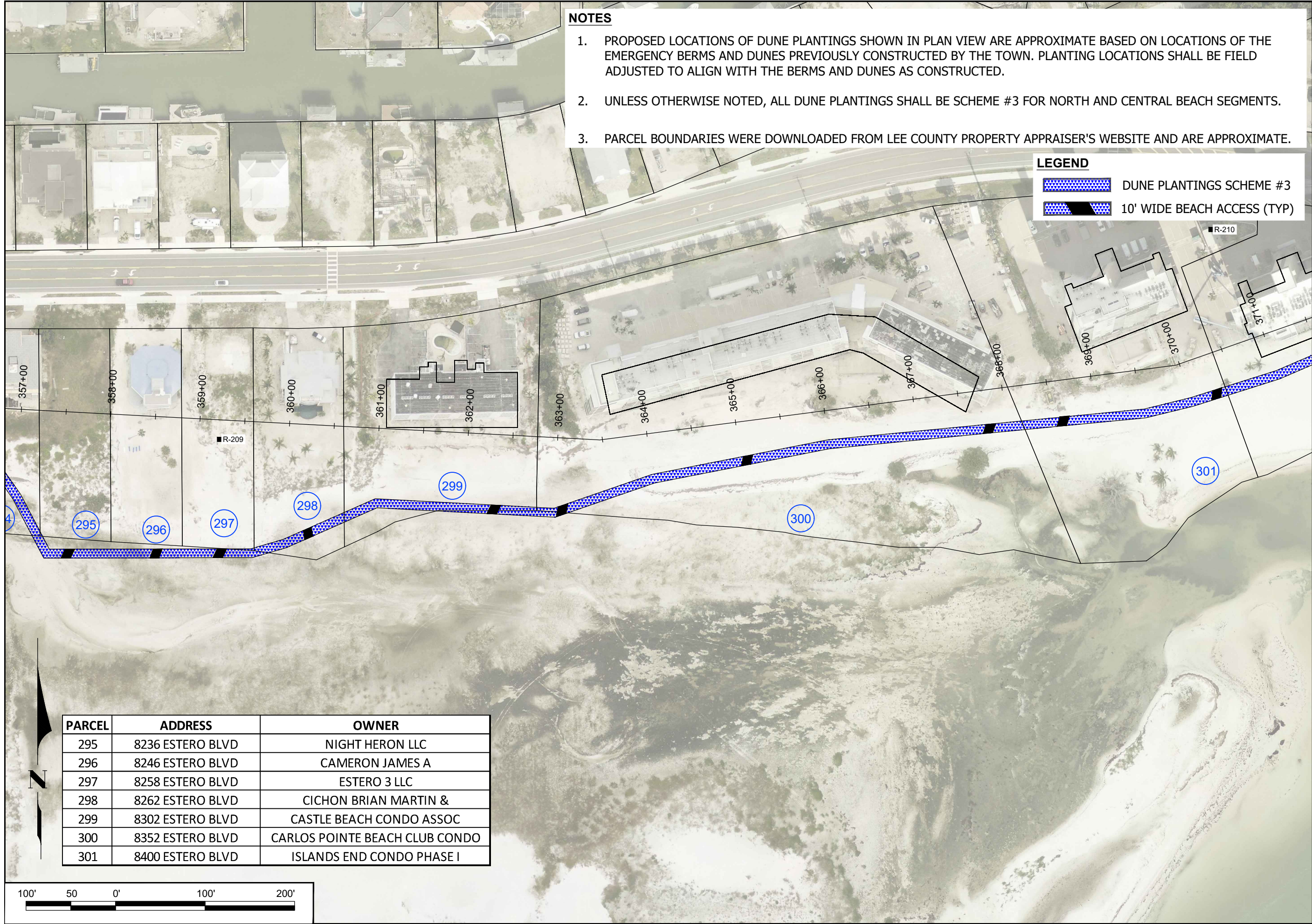
TITLE: ESTERO ISLAND DUNE VEGETATION PLAN VIEW

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SHEET 29  
FILE NO.: 24403-C-29





**NOTES**

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**LEGEND**

- DUNE PLANTINGS SCHEME #3
- 10' WIDE BEACH ACCESS (TYP)

| PARCEL | ADDRESS          | OWNER                          |
|--------|------------------|--------------------------------|
| 295    | 8236 ESTERO BLVD | NIGHT HERON LLC                |
| 296    | 8246 ESTERO BLVD | CAMERON JAMES A                |
| 297    | 8258 ESTERO BLVD | ESTERO 3 LLC                   |
| 298    | 8262 ESTERO BLVD | CICHON BRIAN MARTIN &          |
| 299    | 8302 ESTERO BLVD | CASTLE BEACH CONDO ASSOC       |
| 300    | 8352 ESTERO BLVD | CARLOS POINTE BEACH CLUB CONDO |
| 301    | 8400 ESTERO BLVD | ISLANDS END CONDO PHASE I      |

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CLIENT: TOWN OF FORT MYERS BEACH  
TITLE: ESTERO ISLAND DUNE VEGETATION  
PLAN VIEW

DATE: 2/3/2025  
DRAWN: VVA  
CHECKED: MTP  
SEC: TYP  
ACAD NO: 24403  
REF. NO: 24.403

SCALE: AS NOTED  
VVA  
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24.403

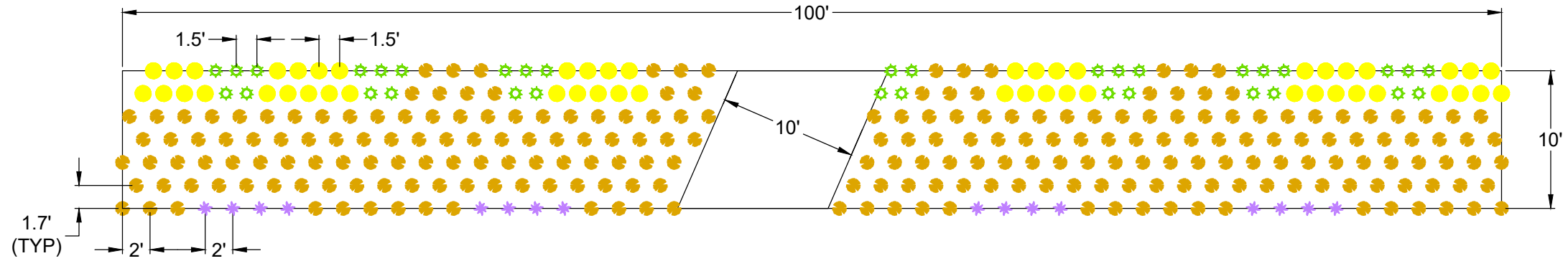
SHEET 30  
FILE NO.: 24403-C-30

REVISION DESCRIPTION  
NO. BY DATE

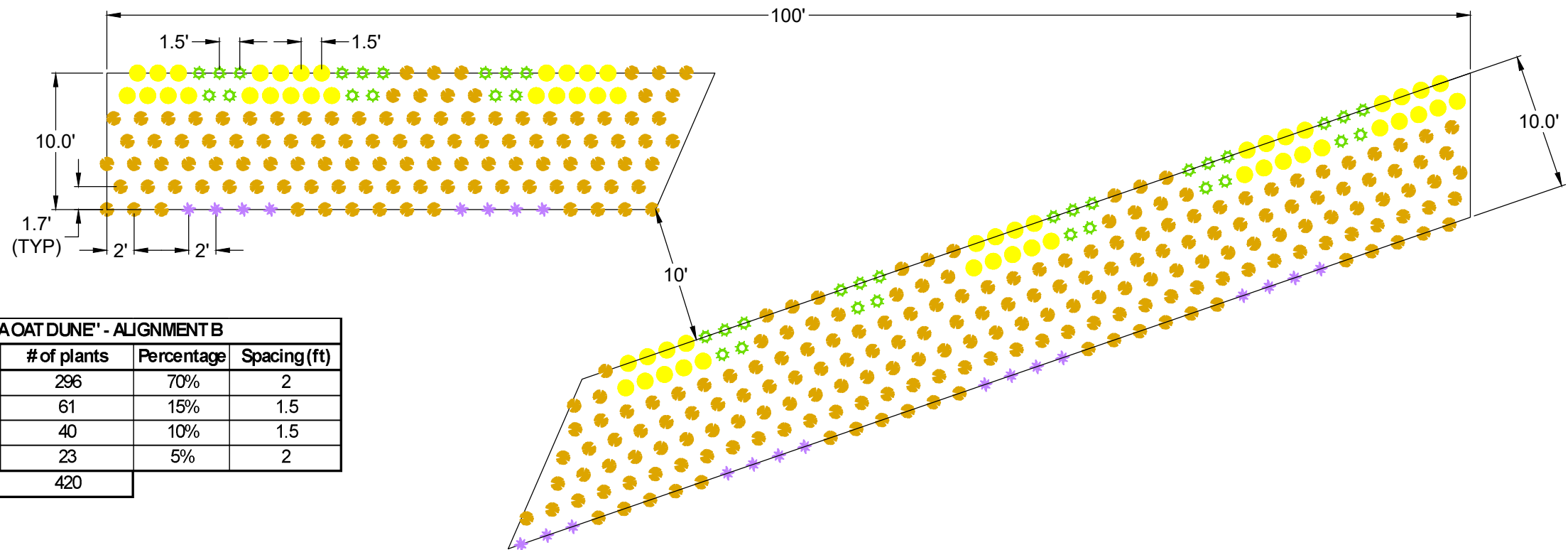




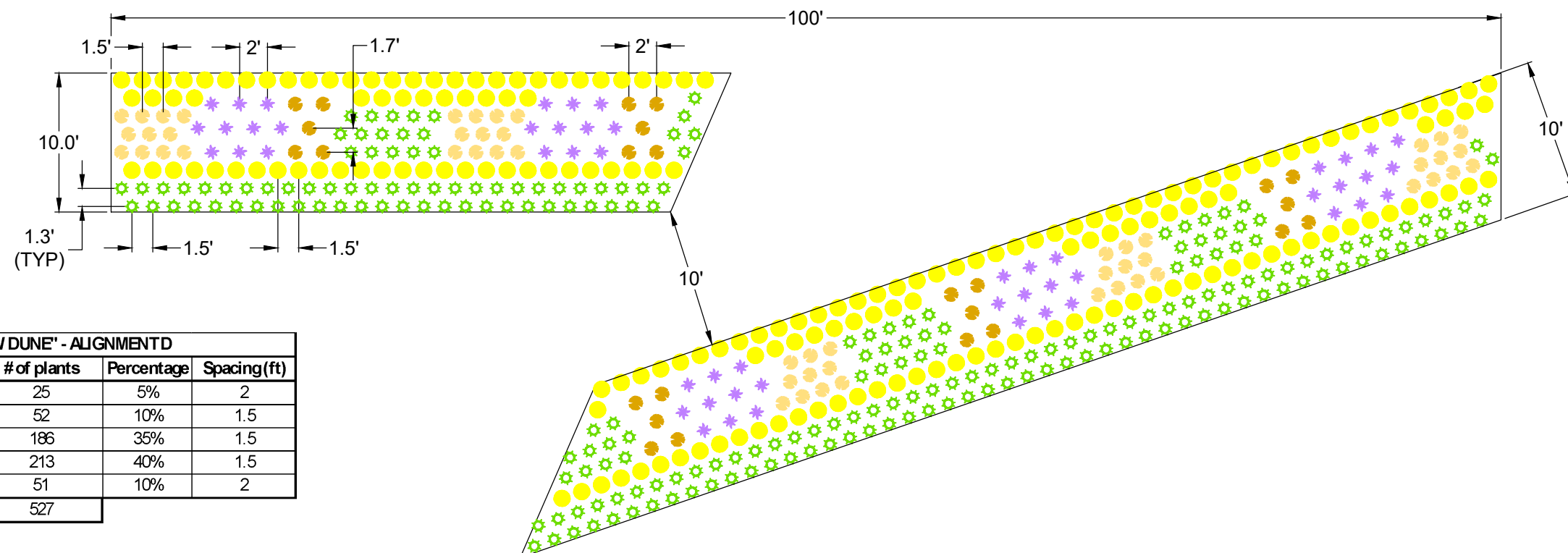
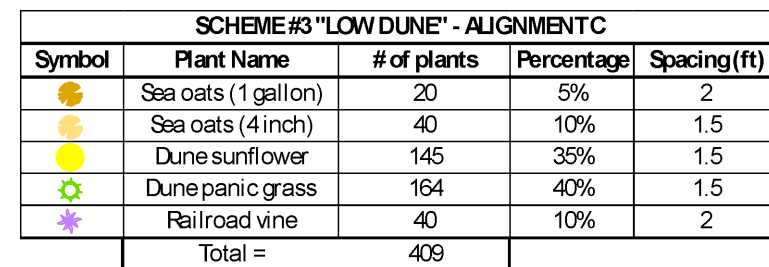
|                                                                                                                                                                                                                                              |  |                                                      |  |                   |                 |                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------|--|-------------------|-----------------|-----------------|
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| SHEET 31<br>FILE NO.: 24403-C-31                                                                                                                                                                                                             |  | SEC.<br>TYP.                                         |  | NO.               | DATE            | BY              |
|                                                                                                                                                                                                                                              |  | ACAD NO.<br>24403 Dune Planting-with-2024-aerial.dwg |  | NO.               | DATE            | BY              |
|                                                                                                                                                                                                                                              |  | REF. NO.                                             |  | NO.               | DATE            | BY              |
|                                                                                                                                                                                                                                              |  | REVISION DESCRIPTION                                 |  | NO.               | DATE            | BY              |



| SCHEME #1 "SEA OAT DUNE" - ALIGNMENT A |                     |             |            |              |
|----------------------------------------|---------------------|-------------|------------|--------------|
| Symbol                                 | Plant Name          | # of plants | Percentage | Spacing (ft) |
|                                        | Sea oats (1 gallon) | 233         | 70%        | 2            |
|                                        | Dune sunflower      | 50          | 15%        | 1.5          |
|                                        | Dune panic grass    | 34          | 10%        | 1.5          |
|                                        | Railroad vine       | 16          | 5%         | 2            |
| Total =                                |                     | 333         |            |              |



| SCHEME #1 "SEA OAT DUNE" - ALIGNMENT B |                     |             |            |              |
|----------------------------------------|---------------------|-------------|------------|--------------|
| Symbol                                 | Plant Name          | # of plants | Percentage | Spacing (ft) |
|                                        | Sea oats (1 gallon) | 296         | 70%        | 2            |
|                                        | Dune sunflower      | 61          | 15%        | 1.5          |
|                                        | Dune panic grass    | 40          | 10%        | 1.5          |
|                                        | Railroad vine       | 23          | 5%         | 2            |
| Total =                                |                     | 420         |            |              |



| SCHEME #3 "LOW DUNE" - ALIGNMENTD                                                   |                     |             |            |             |
|-------------------------------------------------------------------------------------|---------------------|-------------|------------|-------------|
| Symbol                                                                              | Plant Name          | # of plants | Percentage | Spacing(ft) |
|  | Sea oats (1 gallon) | 25          | 5%         | 2           |
|  | Sea oats (4 inch)   | 52          | 10%        | 1.5         |
|  | Dune sunflower      | 186         | 35%        | 1.5         |
|  | Dune panic grass    | 213         | 40%        | 1.5         |
|  | Railroad vine       | 51          | 10%        | 2           |
|                                                                                     | Total =             | 527         |            |             |



1. **Request:**

**Meeting Date: June 16, 2025**

Approve and authorize the Mayor to sign a Quit Claim Deed to Kevin D. and Mary Catherine Turner conveying any interest the Town may or may not have, in property located adjacent to the Turners' property to allow the Turners to complete immediate repairs to a seawall, which is placing their pool at risk of damage.

**Why the action is necessary:**

**What the action accomplishes:**

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town  
Attorney

---

5. **Background:**

Per Town Council's direction at the June 5, 2025 Management & Planning Session, this item is being brought before the Town Council for discussion and approval. The Turners have notified the Town that their pool is at risk of damage due to the absence of needed repairs to an adjacent seawall. By conveyance of the quit claim deed, the Turners will be able to make the needed repairs.

**Attachments:**

1. Quit Claim Deed (2)

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/5/2025  
Approved - 6/8/2025  
Approved - 6/9/2025  
Final Approval - 6/10/2025

**Prepared by:**

Joseph M. Madden Jr.  
Madden Law Firm LLC  
2277 Main St  
Fort Myers, FL 33902

File No. 10267.000  
Consideration: \$10.00

## **Quit Claim Deed**

### **PREPARED WITHOUT EXAMINATION OR REVIEW OF TITLE**

**This Quit Claim Deed** made this 16<sup>th</sup> day of June 2025, between the TOWN OF FORT MYERS BEACH, a municipality of the State of Florida, whose post office address is 2731 Oak Street, Fort Myers Beach, FL 33931, grantor, and KEVIN D. TURNER and MARY CATHERINE TURNER, husband and wife, whose post office address is 406 Madison Ct., Fort Myers, Beach, FL 33931, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

**Witnesseth**, that said grantor, for and in consideration of the sum TEN Dollars (\$10.00) and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim to the said grantee, and grantee's heirs and assigns forever, all the right, title, interest, claim and demand which grantor has in and to the following described land, situate, lying and being in Lee County, Florida to-wit:

**All of that parcel adjacent to the rear lot line of Lots 26 and 27, Block D of subdivision Mound Shell Park, according to the plat thereof as recorded in Plat Book 11, Page 4, of the Public Records of Lee County Florida, lying Northeasterly between the lot line and the mean high water line of the adjacent waterway.**

The Town Council, having reviewed this matter on the date set forth above, has found the property to be surplus and not needed for any Town purpose.

**To Have and to Hold**, the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of grantors, either in law or equity, for the use, benefit and profit of the said grantee forever.

**IN WITNESS WHEREOF**, the Grantor has hereunto set hand and seal on the day and year above written.

Signed, sealed and delivered in the presence of:  
**TWO SEPARATE WITNESSES REQUIRED**

**TOWN OF FORT MYERS BEACH**

Witness: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

Witness: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, by means of ☐ physical presence or ☐ online notarization and who is/are ☐ personally known to me, or ☐ who has/have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
**NOTARY PUBLIC**  
Print Name: \_\_\_\_\_  
Commission No: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

(Notary Seal)

Approved as to form and sufficiency:

\_\_\_\_\_  
Clerk for the Town of Fort Myers Beach  
By: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Town of Fort Myers Beach  
By: Nancy Stuparich

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PURCHASE OF REPLACEMENT PUMPS FOR THE MOSS MARINA PUMP STATION IN A NOT-TO-EXCEED AMOUNT OF \$160,300.00; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

Approval by Town Council is required because the total expenditure for the purchase of replacement pumps at Moss Marina is \$160,300. This amount exceeds the Town's purchasing threshold of \$75,000.00. In accordance with the Town's Procurement Policy, expenditures above this threshold require formal Town Council's expenditure approval.

**What the action accomplishes:**

This action ensures compliance with the Town's purchasing ordinance by securing Town Council ratification of an emergency expenditure exceeding \$75,000.00 (Ord.24-11, Div. Art. V). It authorizes the necessary purchase to maintain critical infrastructure at Moss Marina while upholding transparency and fiscal accountability.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager

5. **Background:**

The Town gets all its potable water through a subaqueous crossing from the Coast Guard station and feeds into the Moss Marine pump station. The station is the main pressure generator for the entire island. The current condition of the pump station is deteriorating and unreliable. The equipment is showing significant signs of aging, including rust, corrosion, and persistent leaks (see attached photo). While the Town's staff have continued to perform maintenance and repairs, the system has reached a point where ongoing repairs are no longer sustainable or effective.

Because of the age, and the specific nature of the station, you can only put in the same pumps that are there. The company that provided them is no longer in business. The pricing and quotes attached are from the sole supplier affiliated with the replacement company. Since the specific pump models are no longer in production, custom fabrication by Barney's Pump, Inc. is required to adapt the replacement units to the Town's current piping configuration.

Additionally, the Florida Department of Environmental Protection (DEP) identified the condition of the Moss Marina pump station as a deficiency in the last Sanitary Survey conducted on May 20, 2025.

**Attachments:**

1. NS25-201, Purchase of Moss Marina Station Replacement Pumps
2. Sole Source Justification Documents
3. Attachment A Barney's Pumps, Inc. Purchase Order (Quotation Number 1033)750
4. Pump Photograph (1)
5. Pump Photograph (2)
6. Pump Photograph (3)
7. Pump Photograph (4)

8. Pump Photograph (5)
9. 05/20/2025 Post-Inspection Follow-up Electronic Correspondence

**Financial Impact:**

\$160,300

**6. Alternative Action**

Not to approve the purchase. However, this could potentially compromise the reliability of the Town's water distribution system leaving the identified DEP deficiency unaddressed.

**7. Management Recommendations:**

Management recommends ratification of these expenditures to comply with the town's purchasing ordinance.

**8. Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison  
Lizzette Roman, Town Clerk Administrative Coordinator  
Jeff Hauge, Community Services Director  
nancy stuparich, Town Attorney  
Jason Freeman, Deputy Town Clerk / Legislative Liaison  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Final Approval - 6/10/2025

## **RESOLUTION NUMBER 25-201**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE PURCHASE OF 2 PENTAIR LAYNE PUMPS AND MOTORS FROM BARNEY'S PUMPS, INC. AS THE SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER FOR THE AMOUNT OF \$160,300.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town of Fort Myers Beach recognizes the importance of reliable equipment at our Moss Marina Pump Station since this is the main supplier of water and pressure for the entire town; and

**WHEREAS**, Funding is available through the Water Department Fund Balance; and

**WHEREAS**, Section 2-480(c)(1)(a) of the Town of Fort Myers Beach Code of Ordinances provides that when it is in the best interest of the Town of Fort Myers Beach, a contract may be awarded without competition when the Town Manager, with the recommendation of the Finance Department Director and Department Director, determines after conducting a good faith review of available sources that there is only one source for the required supply, equipment, service, or construction item; and

**WHEREAS**, Barney's Pumps Inc. has provided a document certifying that they are the sole provider for the pumps the Town needs to the satisfaction of the Town Manager; and

**WHEREAS**, it is in the best interest of the residents of the Town of Fort Myers Beach to execute a Purchase Order with Barney's Pumps Inc. in the amount not to exceed \$160,300.00 for (2) two pumps and motors for the Moss Marina Pump station.

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

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



Section 2. The Town Council hereby approves the sole source purchase from Barney's Pumps Inc. for 2 pumps and motors in the amount of \$160,300.00 and authorizes the Town Manager or his designee to execute any documentation related to the purchase order, which is attached hereto as "Attachment A."

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

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

ADOPTED this \_\_\_\_ day of June, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION:  
SOLE SOURCE ACQUISITION**

**1. Contracting Organization:** The Town of Fort Myers Beach is responsible for this action. The Department of the Town Requesting is Utilities

**2. Description of Action:** This procurement request is to justify the request for goods or services for the justification of a sole source vendor.

**3. Description of Goods or Services:** The purpose of the sole source is to replace the pump that brings water to the island. Water is supplied to the Town of Fort Myers Beach from Lee County near the Mantanzas bridge and fills the water tanks. This is the only water source we have for water on the island.

**4. Authority:** The authority permitting the sole sourcing of services is Town of Fort Myers Beach Ordinance 2007-01, Section 5, subsection C page 6 " Department Director determines in writing, after conducting a good faith review of available sources that there is only one source". "The requisitioning department shall submit to the finance department written justification as to why there is only one source."

**5. Applicability Of Authority:** Barney Pumps, inc is the sole distributor serving the municipal market in the State of Florida.

**6. Efforts to Obtain Competition:** Review of the company is attached to this document.

**7. Fair and Reasonable:** Comparison of cost for similar products are attached but due to the nature of the good or service we require Barney Pumps, Inc. be awarded due to these reasons provided: \_\_\_\_\_

**8. Technical Requirements / Personnel Certification:** We hereby certify that the technical requirements and certifications are accurate.

**9. Department Director Certification:** I hereby certify to the best of my knowledge this justification is accurate and complete.

Jeff Hauge  
Name

[Signature]  
Signature

6-9-25  
Date

Finance Review: \_\_\_\_\_

If over \$20,000 Must go to Town Council for approval

Agenda Date \_\_\_\_\_ Attach Copy for Audit \_\_\_\_\_



**Bryan E. Kates**  
Named Account Executive  
  
PENTAIR FLOW TECHNOLOGIES  
Fairbanks Nijhuis  
+1-781-361-4751 cell  
Bryan.kates@pentair.com

January 1, 2025

Subject: Fairbanks Nijhuis Pumps  
Authorized Municipal Distributor

To whom it may concern,

Thank you for your recent inquiry regarding Fairbanks Nijhuis pumps. Please be aware that Fairbanks Nijhuis, formerly Fairbanks Morse, now includes all Layne/Verti-line products as well. Barney's Pumps, Inc. is the sole distributor serving the municipal market in the state of Florida (exclusive of the panhandle counties west of the Apalachicola River).

Barney's Pumps maintains a staff of factory trained individuals, inventory and shop facilities to support their exclusive geographical territory. They are the sole facility authorized to provide warranty and non-warranty service and repair for our products.

They have locations in Lakeland (863) 665-8500, Coral Springs (954) 346-0669 and Jacksonville (904) 260-0669 to support the Florida municipal market.

If I can be of further assistance, please contact me at 504-491-0320.

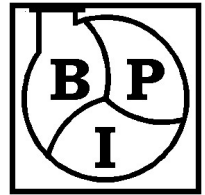
Sincerely,

A handwritten signature in black ink, appearing to read "B.E. Kates", written in a cursive style.

Bryan E. Kates  
Named Account Executive

QUOTATION NUMBER  
1033750

# BARNEY'S PUMPS INC.



Page 1 of 2

P.O. Box 3529 Lakeland, FL 33802-3529  
2965 Barney's Pumps Place Lakeland, FL 33812  
Phone (863) 665-8500  
Fax (863) 666-3858

DATE: May 14, 2025

TO: Town of Ft. Myers Beach  
6231 Estero Blvd.  
Fort Myers Beach, FL 33931

FOR  
SHIPMENT  
TO:

Town of Ft. Myers Beach  
6231 Estero Blvd.  
Fort Myers Beach, FL 33931

PROJECT: Moss Marina Booster Station Pumps

Delivery  
**28-32 Weeks ARO**

Via  
Bestway

From  
Barney's Pumps

F.O.B.  
Customer's Site

Terms  
Net 30

| ITEM | QTY | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | PRICE     |
|------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| A    | 1   | <p>Electrical: <b>460V/3Ø/60Hz</b><br/>Design point: <b>2000GPM @ 47' TDH</b><br/>NOTE: Quote is provided without inspecting pumps in person and therefore cannot be guaranteed as being absolutely complete. If additional, unforeseen costs were to become apparent, BPI will communicate these to the customer prior to proceeding.</p> <p>Set of (2) Pentair-Fairbanks/Layne Verti-Line model 14RL Vertical Turbine Pumps and motors with Field Services as described below<br/>PUMPS<br/>Rated for chlorinated water service<br/>Cast iron head, 8" steel column (flanged), cast iron bowl, Aluminum bronze impeller, 416SS volute wear ring, 416SS shafts and couplings. Shaft seal shall be Cartridge mech seal with SiC/C faces and flush line back to suction can.<br/>Pump column interior and exterior coated with 2 coats Tnemec N140<br/>Pump head interior and exterior coated with Scotchkote 134</p> | \$160,300 |

Prices quoted are firm for 30 days (unless otherwise noted), then subject to adjustment to agree with prices at time of shipment and subject to any tax required by law. We appreciate the opportunity to serve you and trust that we are favored with your order. This quotation is subject to Barney's Pumps standard terms and conditions of sale, and all terms and conditions of Barney's Pumps Terms of Sale & Warranty are incorporated herein by this reference as if fully set forth herein. Please see attached or visit <https://www.barneypumps.com/legal.html>.

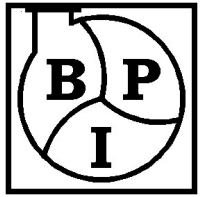
BARNEY'S PUMPS INC.

*JOHN MORY*

Authorized Signature

QUOTATION NUMBER  
1033750

# BARNEY'S PUMPS INC.



Page 2 of 2

P.O. Box 3529 Lakeland, FL 33802-3529  
2965 Barney's Pumps Place Lakeland, FL 33812  
Phone (863) 665-8500  
Fax (863) 666-3858

DATE: May 14, 2025

TO: Town of Ft. Myers Beach  
6231 Estero Blvd.  
Fort Myers Beach, FL 33931

FOR  
SHIPMENT  
TO:

Town of Ft. Myers Beach  
6231 Estero Blvd.  
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PROJECT: Moss Marina Booster Station Pumps

Delivery  
**28-32 Weeks ARO**

Via  
Bestway

From  
Barney's Pumps

F.O.B.  
Customer's Site

Terms  
Net 30

| ITEM       | QTY | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | PRICE |
|------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| A (Cont'd) |     | <p><b>MOTORS</b></p> <p>Vertical Hollowshaft High Thrust 30 HP motor, 1800 RPM, TEFC, premium efficient, Non-reverse ratchet, 286TP frame, steady bushing, 120V space heaters, NC winding thermostats</p> <p><b>FIELD SERVICE</b></p> <p>(1) Day of service to come on-site to verify pump measurements including the head and overall length. (Manufacturer standards change and we must confirm that new heads are still dimensionally compatible with the old suction can and discharge piping.)<br/><b>NOTE: This will require the pump to be pulled and reinstalled. Barney's does not electrically disconnect or connect the pump. Please arrange for an electrician to be onsite to electrically disconnect and connect the pump.</b></p> <p>(1) Day of service to come on-site to install and start-up pump. <b>NOTE: Barney's does not electrically disconnect or connect the pump. Please arrange for an electrician to be onsite to electrically disconnect and connect the pump.</b></p> <p>Delivery is F.O.B. Customer's Site with freight allowed to the customer's site. Barney's Pumps standard terms of sale and warranty apply. Training services are not included. Taxes, anchor bolts, piping, field wiring, etc. are not included.<br/><b><i>If shop drawings are required for approval, please request them from our office.</i></b></p> |       |

The following items are attached: Bulletin \_\_\_\_\_ Performance curve \_\_\_\_\_ Elevation drawing \_\_\_\_\_

Prices quoted are firm for 30 days (unless otherwise noted), then subject to adjustment to agree with prices at time of shipment and subject to any tax required by law. We appreciate the opportunity to serve you and trust that we are favored with your order. This quotation is subject to Barney's Pumps standard terms and conditions of sale, and all terms and conditions of Barney's Pumps Terms of Sale & Warranty are incorporated herein by this reference as if fully set forth herein. Please see attached or visit <https://www.barneypumps.com/legal.html>.

BARNEY'S PUMPS INC.

*JOHN MORY*

Authorized Signature

















DANGER  
VOLTAGE

MICRO SWITCH







**From:** [Vanessa Kraft](#)  
**To:** [Lizzette Roman](#)  
**Subject:** FW: Town of Fort Myers Beach (5364145) Post-Inspection Follow-up  
**Date:** Monday, June 9, 2025 11:17:45 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

---

See below.

## Vanessa Kraft

*Utilities Compliance  
Coordinator, Utilities*  
Town of Fort Myers Beach  
2731 Oak St  
Fort Myers Beach, FL 33931  
Phone: (239) 765-0202



[FMBgov.com](#)



---

**From:** Rivera, Paola <Paola.Rivera@FloridaDEP.gov>  
**Sent:** Friday, May 23, 2025 10:03 AM  
**To:** Vanessa Kraft <vkraft@fmbgov.com>  
**Cc:** Mark Ashton <mashton@fmbgov.com>; Pereira, Steven <Steven.Pereira@FloridaDEP.gov>  
**Subject:** Town of Fort Myers Beach (5364145) Post-Inspection Follow-up

Good morning,

I just wanted to send a quick follow up email including a list short of preliminary deficiencies we found during the inspection that took place **May 20, 2025**. The following items require corrective action:

- The generator on site is routinely exercised by Lee County Utilities (5364048). However, a log is not being kept. Please ensure that records of the exercising are being kept and submit to the department.
- The two pumps located in Moss Marina require maintenance.
  - Pump 1 has moderate corrosion and is leaking more than it should be.
  - Pump 2 has moderate corrosion and is missing a discharge tube.



Please keep in mind these are preliminary deficiencies and are subject to change. I am still working on the report; once it has been approved, DEP will send you a copy of the report along with a Compliance Assistance Offer letter. Until then, you make begin working to address the deficiencies that you can.

Thank you for your attention to this matter.



**Paola A. Rivera**

Environmental Consultant  
Florida Department of Environmental Protection  
South District – Potable Water Compliance  
Direct Number: (239) 344-5711  
Main Number: (239)344-5600



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.



1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO PURCHASE A NEPTUNE ADVANCED METERING INFRASTRUCTURE SYSTEM FROM FERGUSON WATERWORKS, INC., WHO IS A SOLE SOURCE PROVIDER OF THE SYSTEM IN THE STATE OF FLORIDA AS AUTHORIZED IN SECTION 2-480(C) OF THE CODE OF ORDINANCES IN A NOT-TO-EXCEED AMOUNT OF \$480,560.00; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

This action is necessary because the total expenditure of \$480,560 is over the threshold of \$75,000 requiring Town Council approval.

**What the action accomplishes:**

This action enables the town to comply with its purchasing ordinance which requires Town Council ratification of emergency expenditures over \$75,000.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager

5. **Background:**

The Town is in the process of converting its meter reading, monitoring, and billing program to the Neptune Advanced Metering Infrastructure System (AMI). This modernized system utilizes strategically placed antennas across the island to remotely collect water meter readings in real-time.

The AMI System provides a wide range of operational and customer service benefits. It enables fast, accurate, and faster meter readings, significantly reducing labor costs and the potential for human errors. The system also allows for the immediate detection of leaks, no-flow conditions, and possible tampering. It will provide the utility and its customers with detailed hourly consumption data empowering users to better understand and manage their water usage.

However, one of the biggest advantages occurs before, and after emergency situations, specifically hurricanes. You can read the entire system before the storm arrives, so you have a base to start with. Then once the storm has passed you do a complete system wide read again and see where the high usage areas are, whether it be individual houses or general areas. This way you can target your personnel to go out and inspect, repair, and recover your system with greater effectiveness and efficiency. Being able to provide potable water supply quickly after a storm is one of the main public health focus areas. Another key aspect is you do not have to be on the island to read the system because it is all remote.

**Attachments:**

1. 25-202, Purchase of AMI External Antenna System
2. Exhibit A to Resolution 25-202 Sole Source Documentation
3. Ferguson Waterworks - AMI Price Quotation
4. Ferguson Waterworks - AMI Specs

**Financial Impact:**

\$480,560.00

6. **Alternative Action**

Do not approve the purchase.

7. **Management Recommendations:**

Management recommends ratification of these expenditures to comply with the Town's Purchasing Ordinance.

8. **Recommended Approval:**

Mark Ashton, Utilities Manager  
Lizzette Roman, Town Clerk Administrative Coordinator  
Jeff Hauge, Community Services Director  
nancy stuparich, Town Attorney  
Jason Freeman, Deputy Town Clerk / Legislative Liaison  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/10/2025  
Approved - 6/11/2025  
Final Approval - 6/11/2025

## **RESOLUTION NUMBER 25-202**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN JUNE 16, 2025, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH FERGUSON WATERWORKS AS A SOLE SOURCE SUPPLIER FOR THE NEPTUNE ANTENNA SYSTEM. TAKE EMERGENCY PROTECTIVE MEASURES TO INSURE A COMPLETE TRANSITION TO OUR NEW UTILITY BILLING AND METERING SYSTEM. THIS WILL ASSURE NO LOST REVENUE AND PROVIDE FOR A EFFICIENT AND EFFECTIVE BILLING PROGRAM FOR A NOT-TO-EXCEED AMOUNT OF \$480,560.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for an emergency purchase for the Town Manager to make, or authorize others to make, for purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances; and

**WHEREAS**, the Town became aware of the antiquated metering system allowing for lost revenue; and

**WHEREAS**, the Town went under contract for a new metering / billing (CUSI and Neptune 360) program that must work directly with the antenna system; and

**WHEREASE**, **Ferguson** has provided the quote and sole supplier letter for the antenna system; and

**WHEREAS**, on June 16, 2025 the Town Manager entered into an contract with Ferguson Waterworks to provide, install and program the Antenna system to work in conjunction with our present meter system and billing program allowing for a smooth conversion for monitoring our entire distribution system water usage and a consistent supply of data so accurate billing procedures are assured. Thereby ensuring not only a safe and reliable water supply in order to protect the health and welfare of the citizens and visitors of the Town of Ft Myers Beach, but also assuring the revenues to support and protect the financial well-being of that water supply and the Town of Ft Myers Beach; and

**WHEREAS**, the contract with Ferguson Waterworks was for a not-to-exceed amount of \$480,560.00, which requires ratification by the Town Council.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution memorializes and ratifies the actions of the Town to contract with contract with Ferguson Waterworks to provide, install and program the Antenna system to work in conjunction with our present meter system and billing program allowing for a smooth conversion for monitoring our entire distribution system water usage and a consistent supply of data so accurate billing procedures are assured. Thereby ensuring not only a safe and reliable water supply in order to protect the health and welfare of the citizens and visitors of the Town of Ft Myers Beach, but also assuring the revenues to support and protect the financial well-being of that water supply and the Town of Ft Myers Beach for the amount of \$480,560.00 and approves the Town Manager's emergency procurement.

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 roll call vote, the result was as follows:

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

ADOPTED this \_\_\_\_ day of June, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

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

---

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day \_\_\_\_ 2025.

**1. Contracting Organization:** The Town of Fort Myers Beach is responsible for this action. The Department of the Town Requesting is Utilities.

**3. Description of Goods or Services:** A Ferguson / Neptune antenna is necessary to read the water meters remote. The alternative would be for the meters to be read manually, which may lead to misreads and takes up a lot of staff time to read and enter them into the system.

5. **Applicability Of Authority:** Ferguson Waterworks, Inc is the sole authorized Neptune Distributor with a resell supply agreement in in the State of Florida.

7. **Fair and Reasonable:** There are no comparison of cost for similar products are attached but due to the nature of the good or service we require Ferguson Waterwork, Inc. be awarded due to these reasons provided.

9. **Department Director Certification:** I hereby certify to the best of my knowledge this justification is accurate and complete.

Finance Review:

Agenda Date \_\_\_\_\_ Attach Copy for Audit \_\_\_\_\_





July 16<sup>th</sup>, 2024

Mr. Mark Ashton  
Town of Fort Myers Beach  
2731 Oak Street  
Fort Myers Beach, FL 33931

Mr. Ashton,

Please note that Ferguson Waterworks, Inc., is the sole authorized Neptune Distributor with a resell supply agreement in the State of Florida.

The geographical area of responsibility assigned to them includes all Counties within the State of Florida.

Types: Classes of customers exclusively assigned are: Municipalities, private water companies, contractors, and plumbers.

Hence, our Distributor(s) are required to maintain a sufficient inventory of Neptune Water Metering Products to provide customer field servicing.

Thank you in advance for your cooperation.

Sincerely,

*Terry D. Gullett*

Terry D. Gullett  
Senior Territory Manager  
Neptune Technology Group, Inc.



FEL-FT. MYERS WATERWORKS #127  
17323 JEAN STREET  
FT MYERS, FL 33967-9998

Phone: 239-433-0555  
Fax: 239-433-0405

Deliver To:  
From: Tyler Stargel  
tyler.stargel1@ferguson.com  
Comments:

10:42:32 APR 25 2025

Page 1 of 2

FEL-FT. MYERS WATERWORKS #127

Price Quotation

Phone: 239-433-0555

Fax: 239-433-0405

**Bid No:** B337029  
**Bid Date:** 04/25/25  
**Quoted By:** TDS

**Cust Phone:** 239-463-9953  
**Terms:** NET 10TH PROX

**Customer:** TOWN OF FORT MYERS BEACH  
2525 ESTERO BLVD  
815 LAGOON STREET  
FORT MYERS BEACH, FL 33931

**Ship To:** TOWN OF FORT MYERS BEACH  
2525 ESTERO BLVD  
815 LAGOON STREET  
FORT MYERS BEACH, FL 33931

**Cust PO#:**

**Job Name:** INSTALLATION BUDGET

| Item              | Description                        | Quantity | Net Price | UM | Total       |
|-------------------|------------------------------------|----------|-----------|----|-------------|
| N13458000         | GATEWAY R900 CELLULAR V4           | 6        | 14200.000 | EA | 85200.00    |
| N13699106         | AMI COLLECTOR SERVICES             | 6        | 7500.000  | EA | 45000.00    |
|                   | PROFESSIONALLY MANAGED BY NEPTUNE  |          |           |    |             |
|                   | ONGOING MONITORING AND MAINTENANCE |          |           |    |             |
|                   | OF AMI SYSTEM. PAID ANNUALLY PER   |          |           |    |             |
|                   | COLLECTOR                          |          |           |    |             |
| N13070100         | OUTDR UPS SYSTEM ASSY              | 6        | 4575.000  | EA | 27450.00    |
| N13146100         | R900 GATEWAY RF ANTENNA            | 6        | 485.000   | EA | 2910.00     |
| FNAMI             | NEPTUNE - INFRASTRUCTURE INSTALL   | 6        | 50000.000 | EA | 300000.00   |
|                   | TURNKEY INSTALLATION - COAXIAL     |          |           |    |             |
|                   | CABLES, CONNECTORS, GROUNDING KITS |          |           |    |             |
|                   | GROUND RODS, WEATHERPROOFING, AND  |          |           |    |             |
|                   | ANCILLARY RF EQUIPMENT INCLUDED.   |          |           |    |             |
|                   | FEI PROJECT MANAGEMENT FEE         |          |           |    | 20000.00    |
| <b>Net Total:</b> |                                    |          |           |    | \$480560.00 |
| <b>Tax:</b>       |                                    |          |           |    | \$0.00      |
| <b>Freight:</b>   |                                    |          |           |    | \$0.00      |
| <b>Total:</b>     |                                    |          |           |    | \$480560.00 |



**HOW ARE WE DOING? WE WANT YOUR FEEDBACK!**

Scan the QR code or use the link below to  
complete a survey about your bids:

<https://survey.medallia.com/?bidsorder&fc=127&on=45909>

FEL-FT. MYERS WATERWORKS #127  
Price Quotation

Fax: 239-433-0405

10:42:32 APR 25 2025

**Reference No:** B337029

Quoted prices are based upon receipt of the total quantity for immediate shipment (48 hours). SHIPMENTS BEYOND 48 HOURS SHALL BE AT THE PRICE IN EFFECT AT TIME OF SHIPMENT UNLESS NOTED OTHERWISE. QUOTES FOR PRODUCTS SHIPPED FOR RESALE ARE NOT FIRM UNLESS NOTED OTHERWISE.

Due to the uncertain impact of potential tariffs, Ferguson's quotation/proposal has not included any provision or contingency for future tariffs or increase of existing tariffs. Ferguson reserves the right to adjust prices to reflect the impact of any new or increased tariffs that affect our costs at the time of shipment. Ferguson will provide notice of any such adjustments along with documentation supporting the changes.

CONTRACTOR CUSTOMERS: IF YOU HAVE DBE/MBE/WBE/VBE/SDVBE/SBE GOOD FAITH EFFORTS DIVERSITY GOALS/ REQUIREMENTS ON A FEDERAL, STATE, LOCAL GOVERNMENT, PRIVATE SECTOR PROJECT, PLEASE CONTACT YOUR BRANCH SALES REPRESENTATIVE IMMEDIATELY PRIOR TO RECEIVING A QUOTE/ORDER.

Seller not responsible for delays, lack of product or increase of pricing due to causes beyond our control, and/or based upon Local, State and Federal laws governing type of products that can be sold or put into commerce. This Quote is offered contingent upon the Buyer's acceptance of Seller's terms and conditions, which are incorporated by reference and found either following this document, or on the web at <https://www.ferguson.com/content/website-info/terms-of-sale>  
Govt Buyers: All items are open market unless noted otherwise.

LEAD LAW WARNING: It is illegal to install products that are not "lead free" in accordance with US Federal or other applicable law in potable water systems anticipated for human consumption. Products with \*NP in the description are NOT lead free and can only be installed in non-potable applications. Buyer is solely responsible for product selection.



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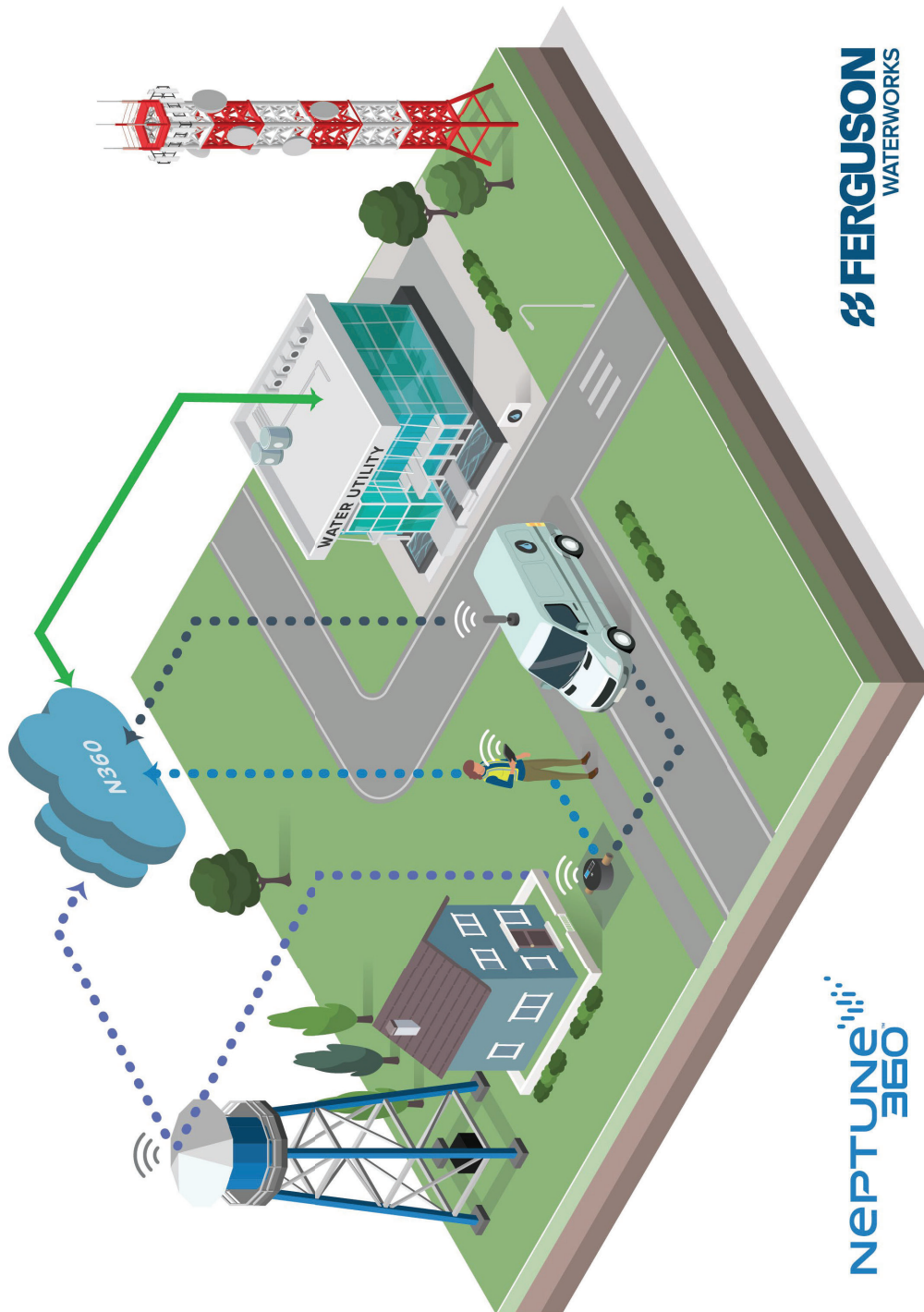
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<https://survey.medallia.com/?bidsorder&fc=127&on=45909>



NEPTUNE<sup>™</sup>  
360

FERGUSON  
WATERWORKS

# Migrate and Automate with Confidence

## Neptune® R900® System: Gateway Fixed Network Data Collector

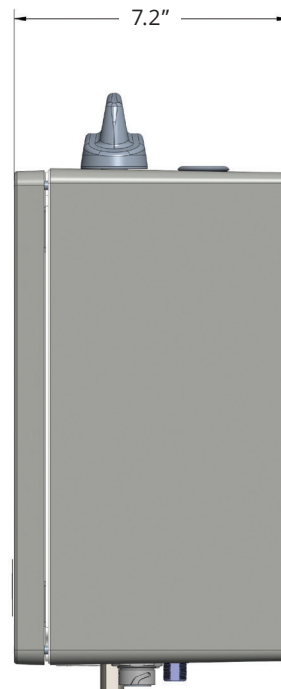
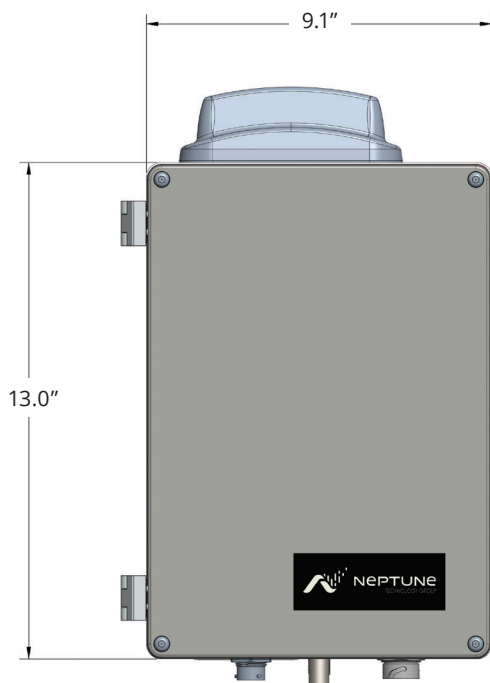


The R900® Gateway helps you quickly identify and fix water-related issues by forwarding meter data from R900® System endpoints. It processes multiple meter readings at once, ensuring you get timely alerts for problems like leaks, reverse flow, and days of no flow, which improves your operations and customer support.

The gateway sends 15-minute meter data updates to the head-end software immediately and continuously, enabling quick verification of AMI connectivity during installation. It also supports remote firmware and configuration updates, reducing the need for on-site visits. The gateway integrates easily into the R900® System, allowing you to transition from a walk-by or mobile AMR system to AMI without reprogramming endpoints. The new gateway architecture includes strong security measures based on the latest NIST recommendations and advanced cybersecurity research.

- Migrate to AMI at your own pace and without reprogramming of endpoints
- Add on-demand read capability
- Maintain compatibility with existing deployed endpoints
- Get meter data updates every 15 minutes for real-time customer service
- Verify AMI connectivity on-site during installation
- Update configuration and firmware remotely





## Specifications

### Receiver

- Dimensions: 13 x 9.1 x 7.2 inches (330 x 231 x 183 mm)
- Weight: 21 lb (9.53 kg) without mounting bracket
- 910-920 MHz
- 50-channel software-defined
- Send meter readings to the head-end software immediately upon receipt
- Capable of handling at least 25,000 R900 endpoints

### Installation Options

- Rooftop
- Pole (2" – 16" diameter)
- Wall
- Water towers

### Power Supplies

- 100-140 VAC UPS
- 195W Solar UPS
- 220W Solar UPS

### Battery Backup

- AC version – UPS provides 8 hours battery backup
- Solar version – 3-day backup battery

### Backhaul Options

- Multi-carrier cellular modem
- Private LAN compatibility via RJ-45 Ethernet Connection

### Environmental

- NEMA 4X enclosure
- Operating temperature: -22°F to +140°F (-30°C to +60°C)
- Storage temperature: -40°F to +185°F (-40°C to +85°C)
- 5-95% non-condensing humidity



**Neptune Technology Group**  
1600 Alabama Highway 229  
Talladega, AL 36078  
800-633-8754 f 334-283-7293

# Neptune® AMI Services

A Product of Neptune Technology Group



**NEPTUNE**  
TECHNOLOGY GROUP

#winyourday

## **Unlock the Power of AMI Data without the Operational Burden**

Neptune's AMI Services solution removes the burden of installing and maintaining an AMI system so that you can get back to the business of water. When you are ready, use assets you already own, combined with Neptune's expertise, to seamlessly transition through your Smart Water journey.

### **What is Neptune's AMI Services Solution?**

Let Neptune manage all aspects of your AMI network, from initial deployment to ongoing operations. Neptune's solution includes the installation, project management, and ongoing monitoring, operation, upkeep, and maintenance of your fixed network.

### **Why Neptune AMI Services?**

Traditional AMI networks either put the burden on you to manage the system throughout its lifespan or lose control of the system to a third-party network that may not focus solely on water utilities.

Neptune's AMI Services allow you to own the network and work directly with our expert team to maintain it for the life of the AMI project.

# Leverage the Power

Benefit from a fully installed, managed, and monitored solution from Neptune.



- Endpoints – Owned + Managed by the Utility



## AMI SERVICES

- Network Monitoring
- Network Installation
- Project Management
- Repair Services



- Data Management and Information Sharing





# Benefits of Neptune AMI Services

## Get Back to the Business of Water

Be free of AMI system installation, maintenance, and monitoring with a turnkey AMI solution. Neptune will monitor, manage, repair, and replace any network components throughout the life of an AMI Services contract.

## The Latest Technology

Systems and technology constantly change. Let Neptune manage the burden of staying current on the latest AMI technology with no resources needed from your team.

## Guaranteed Compatibility

Be confident that your AMI solution will work for the long-term. Third-party network vendors are not focused solely on water and cannot guarantee that your equipment will work in the future. Neptune solutions work with what you already own and will always be compatible.

## Expertise and Efficiencies

Neptune's experience and scale deliver a more cost-effective solution to you. All equipment replacement and personnel are managed for you. No adding headcount or dedicating resources to system maintenance and monitoring.

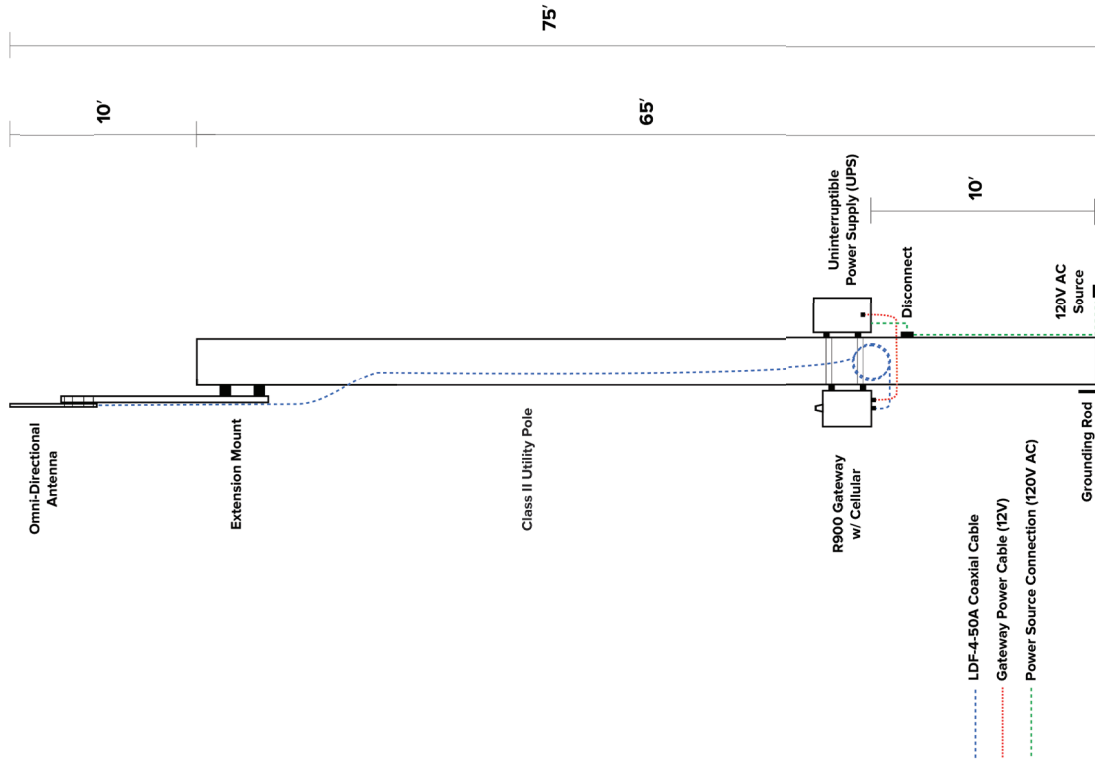


neptunetg.com  
#winyourday

Neptune Technology Group  
1600 Alabama Highway 229  
Tallahassee, AL 36078  
800-633-8754 f 334-283-7293

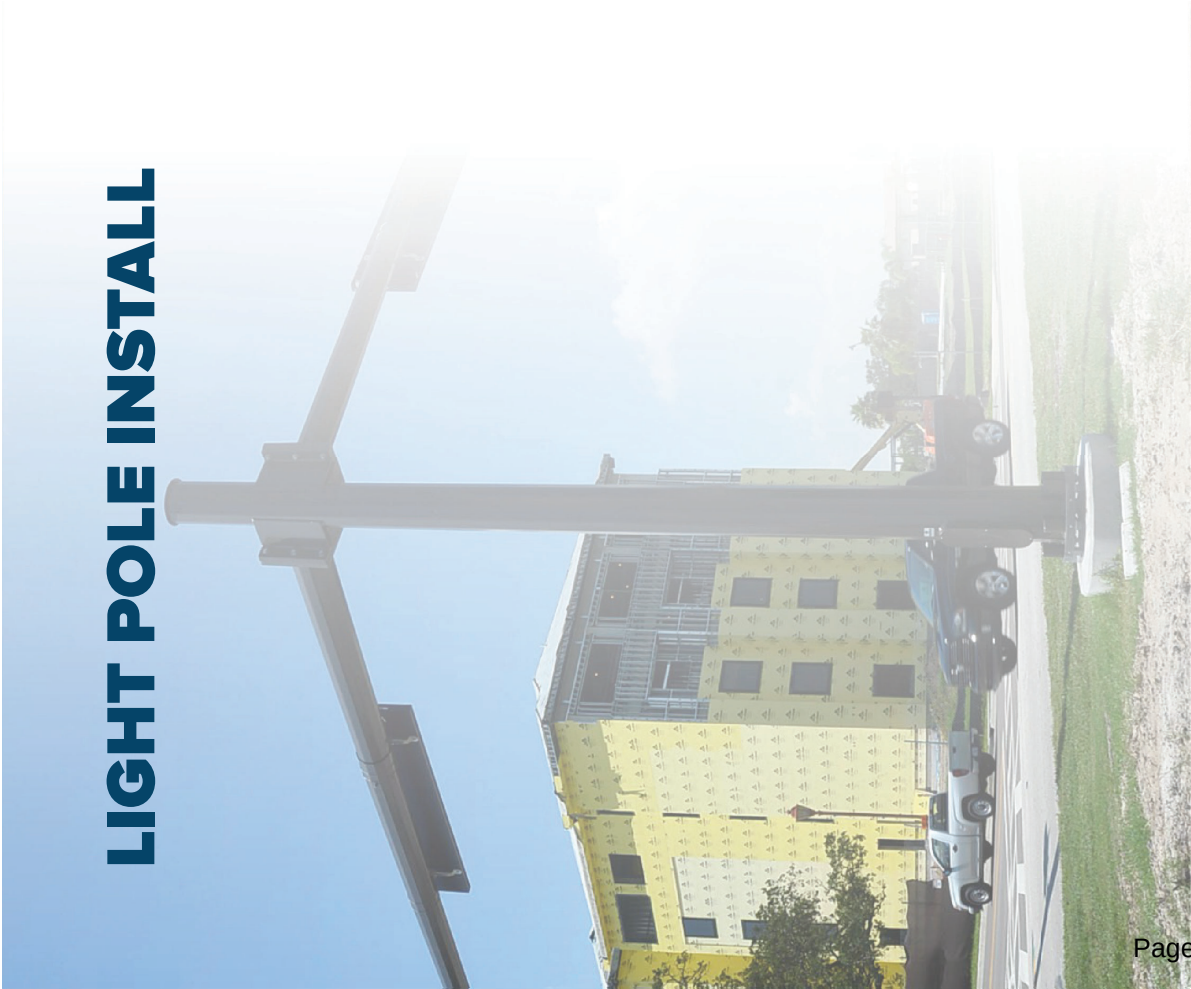
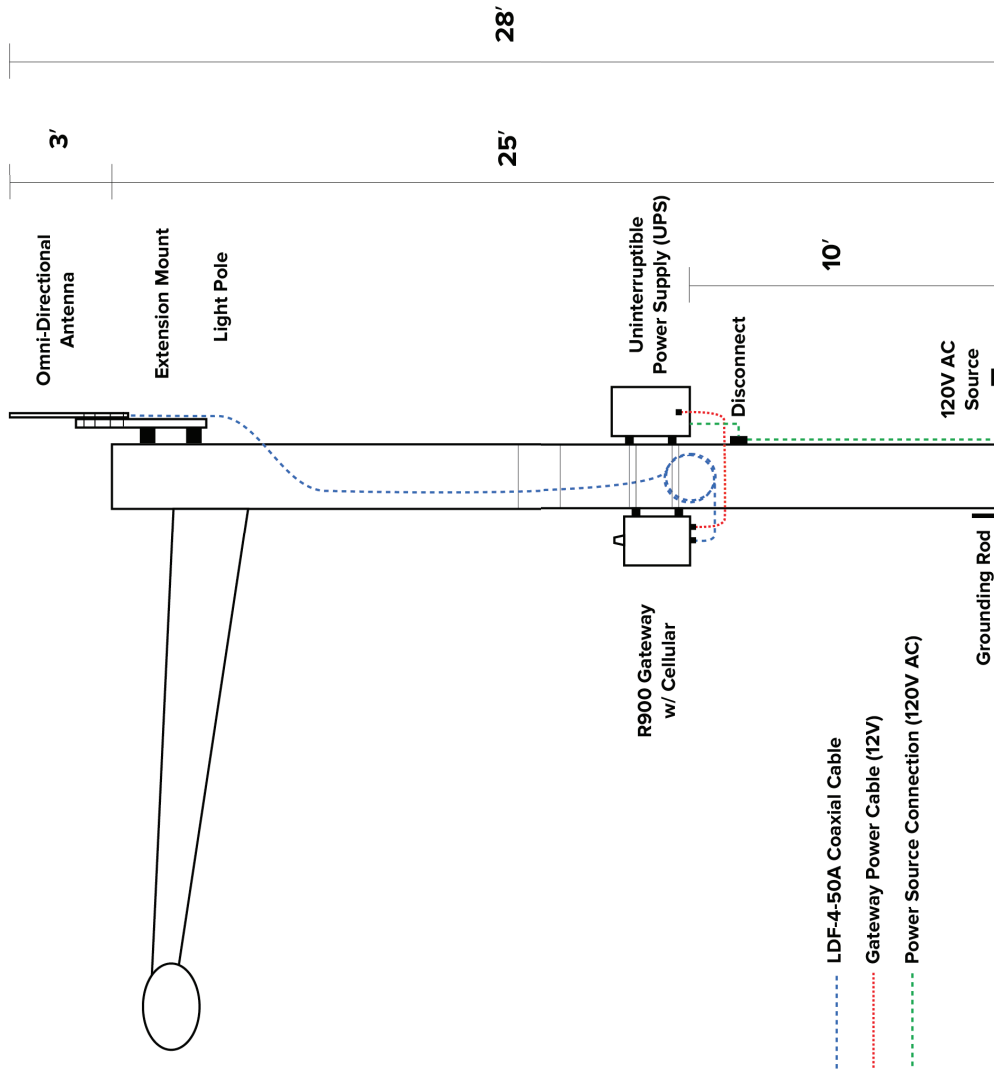


# UTILITY POLE INSTALL

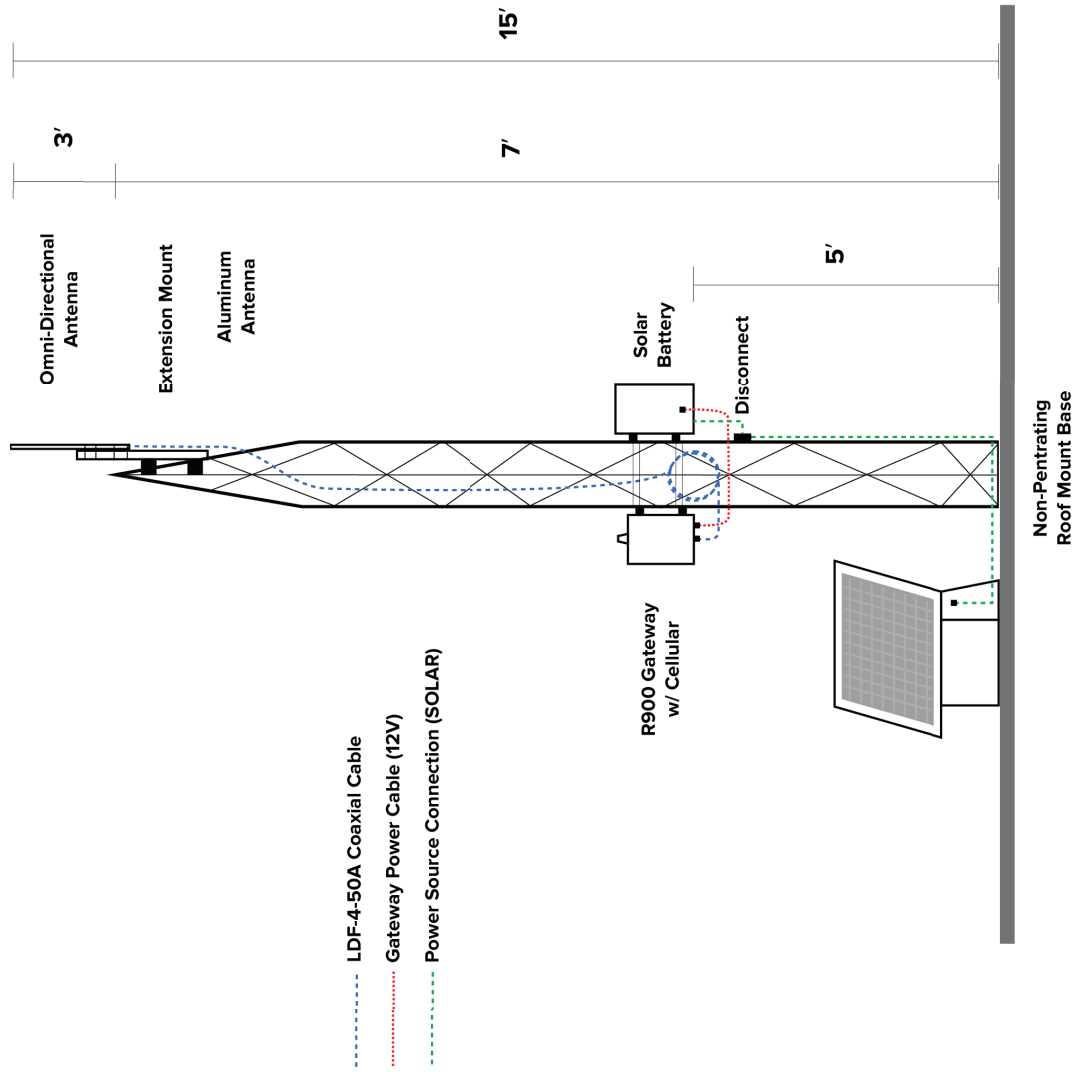




# LIGHT POLE INSTALL



# ROOF INSTALL (SOLAR)



1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO INCREASE THE AMOUNT FOR THE PERFORMANCE OF GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$65,000.00; AMENDING CONTRACT TERMS TO INCLUDE A PROVISION CONCERNING FORCE MAJEURE AND COERCION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE THIRD AMENDMENT AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

The action is necessary to comply with our purchasing ordinance requirement for Town Council to authorize expenditures greater than \$75,000.

**What the action accomplishes:**

The action will authorize a not-to-exceed amount sufficient to cover the remaining anticipated expenditures for utility locates.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

---

5. **Background:**

Pursuant to a competitive procurement process in compliance with state law and Town Code as set forth in RFP-23-03-UT entitled "Stormwater Maintenance and Repair" - in February of 2023 the Town and the ("Firm"), entered into a Service Provider Agreement for Stormwater Maintenance and Repair ("Agreement"). The agreement included a provision for additional services. In June of 2024, the Town was overwhelmed by utility locate requests as a result of two factors: the loss of personnel who were experienced at performing utility locates, which resulted in an extended staffing shortage in the Water Department, and an increased demand for utility locates resulting from underground utility installation as well as the FP&L lighting project. As a result, the Town entered into an agreement with Earthview to provide utility locate services as additional services provided under their contract. Town Council approved a Second Amendment for a total not to exceed \$130,000. Earthview services are expected to continue until it reaches as much as \$65,000. The town is bringing this resolution to Town Council to approve a not-to-exceed amount of \$65,000 retroactive to April 2025.

**Attachments:**

1. NS REV 25-207, Earthview Third Amendment
2. Exhibit A to Resolution 25-207 - Third Amendment to Earthview Agreement
3. 25-54 Earthview Second Amendment Signed
4. 23-69, First Amendment to Earthview Agreement
5. Earthview Agreement- EXECUTED

**Financial Impact:**

The \$65,000 not-to-exceed amount will be the total expense incurred by the Water Fund for these services. To a great extent, it will be offset by savings that resulted from the vacancies experienced in that department.

6. **Alternative Action**

The Town Council may choose to revise the amount or not approve of this contract amendment.

7. **Management Recommendations:**

Management recommends approval of this contract amendment.

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist

Deborah Glavin, Contracts & Procurement Specialist

Jeff Hauge, Community Services Director

nancy stuparich, Town Attorney

Jason Freeman, Deputy Town Clerk / Legislative Liaison

William McKannay, Town Manager

Created/Initiated - 6/10/2025

Approved - 6/10/2025

Approved - 6/10/2025

Approved - 6/10/2025

Approved - 6/11/2025

Final Approval - 6/11/2025

## **RESOLUTION NUMBER 25-207**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO INCREASE THE AMOUNT FOR THE PERFORMANCE OF GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$65,000.00; AMENDING CONTRACT TERMS TO INCLUDE A PROVISION CONCERNING FORCE MAJEURE AND COERCION; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE THIRD AMENDMENT AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair”- in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was amended on the 20<sup>th</sup> day of June 2023 by Resolution 23-69 and on the 3<sup>rd</sup> of February 2025 by Resolution 25-54, and

**WHEREAS**, the Town and the Firm desire to further amend the Agreement to include additional funds for Ground Penetrating Radar services for utility locates in an amount not-to-exceed **\$65,000.00** retroactive to April 1, 2025.

**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 Third Amendment to the Agreement attached hereto as “Exhibit A” between the Firm and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Third Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Third Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach, and shall be retroactive to April 1, 2025.

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

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

ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.



**THIRD AMENDMENT TO SERVICE PROVIDER AGREEMENT  
EARTH VIEW LLC – STORMWATER MAINTENANCE AND REPAIR**

**THIS THIRD AMENDMENT** is made and entered into this 16th day of June 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair as amended on June 20, 2023 and February 3, 2025

**WITNESSETH:**

**WHEREAS**, the services provided by Contractor to date have been beneficial to the Town, and as a result, the parties desire to amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$65,000.00 retroactive to April 1, 2025; and [there is no need to amend the agreement to add ground penetrating radar services since the second amendment included this service as part of the scope of service]

**WHEREAS**, the parties further desire to include and/or modify existing terms and conditions in the initial Agreement as previously amended, and as provided herein.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Amendment amends and supplements the terms and conditions contained in the Agreement. In the event of a conflict between the terms and conditions of the Agreement and terms of this Amendment, the terms and conditions of this Amendment shall prevail.

**1. Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**2. No Coercion For Labor or Services** The Proposer swears under penalty of perjury that the Proposer does not use coercion for labor or services as defined as follows:

**“Coercion” means:**

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**3. Town's Payment Obligation .** The Town's Payment Obligation as provided in Exhibit B in the Agreement and amended by the Second Amendment is hereby increased by an additional \$65,000.00 for additional ground penetrating services Eliminate extra space

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor: Earthview, LLC**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**William McKannay, Town Manager**

**APPROVED AS TO FORM & SUFFICIENCY**

---

**Vose Law Firm, Town Attorney**

## **EXHIBIT B**

1. PAYMENT OBLIGATION: The Town will pay the Provider as follows for all services listed in each Work Order Ticket for ground penetrating services:

1. The Provider will provide utility locate services at the rate of **\$165.00/hr.**

The not-to-exceed amount of the contract for ground penetrating services shall be increased \$65,000, for a total of the contract amount of \$195,000 for this service. will

## **RESOLUTION NUMBER 25-54**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO ADD 1) GROUND PENETRATING RADAR SERVICES IN A NOT-TO-EXCEED AMOUNT OF \$130,000.00; AND 2) STANDARD CONTRACT CLAUSES; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair”- in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was amended on the 20<sup>th</sup> day of June 2023 by Resolution 23-69, and

**WHEREAS**, the Town and the Firm desire to further amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of **\$130,000.00** retroactive to June 1, 2024.

**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 Second Amendment to the Agreement attached hereto as “Exhibit A” between the Firm and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach, and shall be retroactive to June 1, 2024.

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

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

ADOPTED this 3<sup>rd</sup> day of February 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

*Dan Allers*

Dan Allers (Apr 14, 2025 12:57 EDT)

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Dan Allers, Mayor

ATTEST:

*Amy Baker*

Amy Baker (Apr 22, 2025 09:09 EDT)

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Amy Baker, Town Clerk

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

*Nancy Stuparich*

Nancy Stuparich (Apr 15, 2025 18:46 EDT)

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 14<sup>th</sup> day of April 2025.



**SECOND AMENDMENT TO SERVICE PROVIDER AGREEMENT  
EARTH VIEW LLC – STORMWATER MAINTENCE AND REPAIR**

**THIS SECOND AMENDMENT** is made and entered into this 3<sup>rd</sup> day of February 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair.

**WITNESSETH:**

**WHEREAS**, the services provided by Contractor to date have been beneficial to the Town, and as a result, the parties desire to amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to June 1, 2024; and

**WHEREAS**, the parties further desire to include and/or modify existing terms and conditions in the initial Agreement as provided herein; and

**WHEREAS**, Section 119.0701, Fla. Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning a Contractor’s compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern” and any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Amendment amends and supplements the terms and conditions contained in the Agreement. In the event of a conflict between the terms and conditions of the Agreement and terms of this Amendment, the terms and conditions of this Amendment shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology systems of the Town.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2731 OAK STREET  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
AMY@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain

a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name

and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

**8. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**9. Attorneys’ Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

**10. Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**12. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on the Contractor’s social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

**13. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**14. Additional Terms.** Notwithstanding any other provision to the contrary, the parties agree to amend the Scope of Services in the Agreement as provided in Exhibit A to this Amendment and the Town's Payment Obligation as provided in Exhibit B to this Amendment.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:**

\_\_\_\_\_

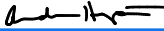
**Print Name:** \_\_\_\_\_

**Company:** Earthview, LLC

**ATTEST:**

  
\_\_\_\_\_  
Amy Baker (Apr 22, 2025 09:09 EDT)  
**Amy Baker, Town Clerk**

**Town of Fort Myers Beach**

  
\_\_\_\_\_  
Andrew Hyatt (Apr 14, 2025 10:51 EDT)  
**Andrew Hyatt, Town Manager**

**APPROVED AS TO FORM & SUFFICIENCY**

  
\_\_\_\_\_  
Nancy Stuparich (Apr 15, 2025 18:46 EDT)  
**Vose Law Firm, Town Attorney**



### **EXHIBIT A ADDENDUM**

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement as directed by the TOWN's representative through Work Order Tickets:

Provider shall locate utilities using Ground Penetrating Radar (GPR) and Radio Detection, and paint and flag findings.

**The DELIVERABLES shall include the cost of:**

1. Locating utilities using Ground Penetrating Radar (GPR) and Radio Detection, and the paint and flags to indicate the findings.

### **EXHIBIT B ADDENDUM**

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. PAYMENT OBLIGATION: The Town will pay the Provider as follows for all services listed in each Work Order Ticket:

1. The Provider will provide utility locate services at the rate of **\$165.00/hr.**

The not-to-exceed amount of this contract amendment will

# 25-54, Earthview Second Amendment Final for signatures

Final Audit Report

2025-04-22

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2025-04-14                                   |
| By:             | Amy Baker (AMY@FMBGOV.COM)                   |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAIkM_hx8J_K0Phadq0r-d-dqEz3s_ika8 |

## "25-54, Earthview Second Amendment Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)  
2025-04-14 - 2:48:05 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature  
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature  
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature  
2025-04-14 - 2:48:11 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature  
2025-04-14 - 2:48:11 PM GMT
-  Email viewed by Andrew Hyatt (andyhyatt@fmbgov.com)  
2025-04-14 - 2:51:32 PM GMT
-  Document e-signed by Andrew Hyatt (andyhyatt@fmbgov.com)  
Signature Date: 2025-04-14 - 2:51:46 PM GMT - Time Source: server
-  Email viewed by Dan Allers (allersd@fmbgov.com)  
2025-04-14 - 4:56:45 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)  
Signature Date: 2025-04-14 - 4:57:02 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)  
2025-04-15 - 10:46:27 PM GMT



Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)

Signature Date: 2025-04-15 - 10:46:56 PM GMT - Time Source: server



Document e-signed by Amy Baker (AMY@FMBGOV.COM)

Signature Date: 2025-04-22 - 1:09:59 PM GMT - Time Source: server



Agreement completed.

2025-04-22 - 1:09:59 PM GMT



## **RESOLUTION NUMBER 23-69**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO CONTINUE SERVICES; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair” - in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), a copy of which is attached as Exhibit “A”; and

**WHEREAS**, the Town and the Firms desire to amend the Agreement to include additional continued services in a not to exceed total of up to \$664,250.00 more to continue services on all of the Town maintained stormwater infrastructure.

**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 First Amendment to the Agreements attached hereto as Exhibit “A”, between the Firms and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town is authorized to take all necessary steps to implement the First Amended Agreement.

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 by the Town Council upon a motion by Mayor Allers and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             | aye |
| Jim Atterholt, Vice Mayor     | aye |
| John R. King, Council Member  | aye |
| Bill Veach, Council Member    | aye |
| Karen Woodson, Council Member | aye |

ADOPTED this 20<sup>th</sup> day of June 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

**Dan Allers**

---

Dan Allers, Mayor

ATTEST:

**Amy Baker**

---

Amy Baker, Town Clerk

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

**John R. Herin, Jr.**

---

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21<sup>st</sup> day of June 2023.



**Attachment 1**

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

**RFP Form C**Proposer: Earth View, LLC**PRICE PROPOSAL FORM**

Note: Forms A, B &amp; C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL  
TO BE DEEMED RESPONSIVE.***Name of Proposer: Earth View, LLCName of authorized representative of Proposer: Allison Murrell, President**Project Cost**

| <b>Storm Drain</b>                                         | <b>Linear feet for<br/>evaluation<br/>purposes only</b>                 | <b>Price Per<br/>Foot</b>    | <b>OR Hourly<br/>Rate</b> |
|------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------|---------------------------|
| Televis 10" to 15" Storm Drain                             | 16,000 <i>16,000</i>                                                    | \$1.50                       | \$ 250 /Hour              |
| Televis 18" to 24" Storm Drain                             | 16,000 <i>24,000</i>                                                    | \$2.00                       | \$ 250 /Hour              |
| Televis 30" to 42" Storm Drain                             | 16,000 <i>24,000</i>                                                    | \$3.50                       | \$ 250 /Hour              |
| Clean 10" to 15" Storm Drain                               | 16,000 <i>16,000</i>                                                    | \$ 4.00                      | \$350 /Hour               |
| Clean 18" to 24" Storm Drain                               | 16,000 <i>24,000</i>                                                    | \$ 6.50                      | \$350 /Hour               |
| Clean 30" to 42" Storm Drain                               | 16,000 <i>24,000</i>                                                    | \$ 8.00                      | \$350 /Hour               |
| <b>Total</b> <del>\$408,000</del> <i>\$ 568,000</i>        | <del>200,000</del>                                                      | \$                           | \$ ____/Hour              |
| <b>Outfall Barnacle Removal</b>                            | <b>Outfall<br/>numbers are<br/>for evaluation<br/>purposes<br/>Only</b> | <b>Price Per<br/>Outfall</b> | <b>OR Hourly<br/>Rate</b> |
| Remove Barnacles 30" to 42" Storm Drain                    | 29 <i>35</i>                                                            | \$ 1,500.00                  | \$ 300 /Hour              |
| Remove Barnacles 10" to 29" Storm Drain                    | 30 <i>35</i>                                                            | \$ 1,250.00                  | \$ 300 /Hour              |
| <b>Total</b> <del>\$81,000</del> <i>\$96,250</i>           | 59                                                                      | \$                           | \$ ____/Hour              |
| <b>Total Project Cost: \$ 489,000.00</b> <i>\$ 664,250</i> |                                                                         |                              |                           |

*24,000*  
*48,000*  
*84,000*  
*64,000*  
*156,000*  
*192,000*

*52,500*  
*43,750*

Instructions: Show the project cost for each deliverable your firm will provide per the requested

**Signature:** Dan Allers  
Dan Allers (Jun 21, 2023 16:57 EDT)  
**Email:** allersd@fmbgov.com

**Signature:** Amy Baker  
AMY BAKER (Jun 21, 2023 10:42 EDT)  
**Email:** AMY@FMBGOV.COM

**Signature:** John R. Herin, Jr.  
John R. Herin, Jr. (Jun 22, 2023 13:06 EDT)  
**Email:** jherin@foxrothschild.com

## **SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT is entered into on this 9<sup>th</sup> day of **January 2023**, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **Earth View, LLC** with an address of **3494 Shearwater St., Naples, FL 34117** (hereafter "Provider").

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

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is **3 years (plus)** commencing on the 9<sup>th</sup> day of **January 2023**, and terminating on the 9<sup>th</sup> day of **January 2026**, with the option for two additional terms of one year each.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
  - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.

- c) **Non-Waiver.** Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
  - d) **Indemnity and Hold Harmless.** The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement..
  - e) **Non-Public Information.** The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
  - f) **Statutory Duties.** The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
  - g) **Disclosure.** The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. **Commencement and Completion of Work.** The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.

6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.
7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C";
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. Contractor is required to comply with the provision of F.S. 119.0701. Specifically, the Contractor is required to keep and maintain the records required the Town to perform the services. Upon request by the Town, Contractor is required to provide the Town with a copy of the requested records, or the ability to inspect and copy records, within a reasonable time and at a cost to the Town that does not exceed the costs established under F.S. chapter 119. Upon completion of the contract the Contractor must transfer, at no cost to the Town, all public records in a format compatible with the Town's information technology system, or, in the alternative, the Contract may retain the records in a manner consistent with F.S. 119.0701(2)(b)4.

**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, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.**

12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. E-Verify. *As a condition precedent to entering into this AGREEMENT*, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
  - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
  - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
  - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
  - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
  - e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in



this section.

15. Prohibition Against Contracting with Scrutinized Companies. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

16. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

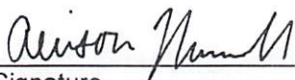
TOWN OF FORT MYERS BEACH

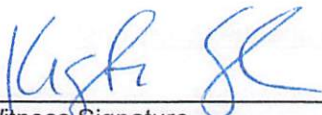
ATTEST:

BY:   
Keith Wilkins, Interim TOWN MANAGER

BY:   
Amy Baker TOWN CLERK

PROVIDER: EARTH VIEW, LLC.

BY:   
Signature

  
Witness Signature

Allison Murrell  
Printed name of person signing

Krista Stone  
Printed name of witness

President  
Title (printed)

**EXHIBIT "A"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS 9th day of January 2023  
BETWEEN THE TOWN AND EARTH VIEW, LLC, PROVIDER.

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

Provider shall furnish all materials, tools, supplies, heavy equipment, vehicles and labor necessary for the maintenance, repair and televising and video recording of all stormwater drains. The Provider shall bear all costs associated with the Project.

Stormwater cleaning shall be performed with hydraulically propelled or mechanically operated cleaning equipment. Selection of equipment shall be based on field conditions, taking into account all relevant factors such as, by example and not limitation, type and quantity of debris to be removed, size of pipe, depth of flow and the like.

Television inspection and video recording of all sewer and storm drains shall be required for the documentation of various field conditions and activities as directed by the TOWN's representative.

Stormwater pipe joint sealing shall be accomplished by the injection of chemical sealing materials into and/or through the joints from within the pipe.

The DELIVERABLES shall include the cost of:

1. Meetings with Town staff to discuss Stormwater drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Storm Drains.

**EXHIBIT "B"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS **9th** day of **January 2023**  
BETWEEN THE TOWN AND **EARTH VIEW, LLC**, PROVIDER.

**PAYMENT OBLIGATION**

1. The Town will pay the Provider as follows for all services listed in each Supplemental Authorization:

**See Attachment 1**

- i. Provider will receive reimbursement for out-of-pocket expenses from the Town as follows: None

**EXHIBIT "C"**

**INSURANCE**

Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract, shall include Contractual Liability and Products and Completed Operations Coverage, and shall be of the following forms and limits:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of \$10,000,000 each occurrence combined single limit or \$10,000,000 each occurrence/\$10,000,000 general aggregate;

Business Automobile Liability Insurance with minimum limits of \$1,000,000 each occurrence. Combined Single Limit or \$1,000,000 each occurrence/\$1,000,000 general aggregate; and

Professional Liability Insurance with minimum limits of \$1,000,000.00.

The establishment of minimum limits of insurance by Town does not reduce or limit the liability or responsibilities of Respondent.

Renewal shall be sent to the Town at least 60 days prior to any expiration date. Consultant shall ensure that its insurer provides a 60 day notification to the Town in the event of cancellation, renewal, or modification of any required insurance coverage requirements that the Consultant is required to meet. The Consultant shall provide the Town with certificates of insurance meeting the required insurance provisions.

# EXHIBIT "D"

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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### FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

**Compliance with Federal Law, Regulations and Executive Orders:** The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide



## **FEDERAL CONTRACT PROVISIONS AND ASSURANCES**

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**Access to Records:** The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**Affirmative Socioeconomic Steps** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**Changes:** To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

**DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

**Domestic Preference for Procurements 200.322** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**License and Delivery of Works Subject to Copyright and Data Rights:** The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

**No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

## **FEDERAL CONTRACT PROVISIONS AND ASSURANCES**

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### **Prohibition on Covered Telecommunications Equipment or Services**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

#### **(b) Prohibitions.**

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

#### **(c) Exceptions.**

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

#### **(d) Reporting requirement.**

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

**Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**Rights to Inventions Made Under a Contract or Agreement:** Exempt from FEMA Public Assistance Funding

**Suspension and Debarment:** (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Procurement of Recovered Materials (§200.323) (Over \$10,000):** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**Termination for Cause and Convenience (over \$10,000):** See Standard Purchase Order and/or Contract Terms and Conditions

**Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000):** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):** Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **FEDERAL CONTRACT PROVISIONS AND ASSURANCES**

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**Clean Air Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act (over \$150,000):** 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Administrative, Contractual, or Legal Remedies (over \$250,000):** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

### **CONSTRUCTION ACTIVITIES**

**Equal Employment Opportunity Clause (§60-1.4):** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor



## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Davis Bacon Act:** Exempt under FEMA Public Assistance Funding

**Copeland Anti-Kickback Act:** Exempt under FEMA Public Assistance Funding



## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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### STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

**Applicable Laws** - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

**Data Collection:** The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

**Equal Employment Opportunity:** No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

**Inspector General Cooperation:** The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**Lobbying:** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

**Local Preference:** Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

**Physical Access and Inspection:** Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

**Record Retention:** A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

## FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

**Statutory Notices Relating to Unauthorized Employment:** The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

**Statutory Notices Relating to Subcontracts:** Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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Compliance with Federal Law, Regulations, And Executive Orders  
and Acknowledgement of Federal Funding

**Certification**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the County for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the County and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The County may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Earth View, LLC

Date 11/17/2022

Authorized Signature   
Allison Murrell, President

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

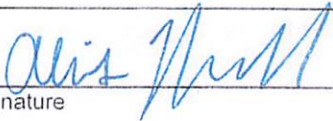
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
and VOLUNTARY EXCLUSION

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Collier County, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

Earth View, LLC

By: 

Signature

Allison Murrell, President

Name and Title

3494 Shearwater Street

Street Address

Naples, FL 34117

City, State, Zip

Registered awaiting UEI

UEI Unique Entity Identifier (for SAM.gov verification)

11/17/2022

Date

Sub-Recipient Name: Collier County Board of County Commissioners

DEM Contract Number: TBD

FEMA Project Number: TBD



**EXHIBIT I**  
**FEDERAL CONTRACT PROVISIONS AND ASSURANCES**

| COLLIER COUNTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------|-----------------------------|-----------|------|----------------|----|-------------------|----|-----------------|----|-------------------------|-----|------------------------|-----|--------------------|-----|--------------------------------------|---|
| ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <b>A. PRIME VENDOR/CONTRACTOR INFORMATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| PRIME NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                | PRIME FEID NUMBER                                                         |                            | CONTRACT DOLLAR AMOUNT                                                         |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Earth View, LLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | 20-1083164                                                                |                            | \$489,000.00                                                                   |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                | VETERAN? Y <input type="checkbox"/> N <input checked="" type="checkbox"/> |                            | IS THE ACTIVITY OF THIS CONTRACT?                                              |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                | DBE? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>     |                            | CONSTRUCTION? Y <input type="checkbox"/> N <input checked="" type="checkbox"/> |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | MBE? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>     |                            | CONSULTATION? Y <input type="checkbox"/> N <input checked="" type="checkbox"/> |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | WBE? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>     |                            | OTHER? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>        |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | SDB SA? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>  |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| IS THIS SUBMISSION A REVISION?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                | Y <input type="checkbox"/> N <input checked="" type="checkbox"/>          |                            | IF YES, REVISION NUMBER _____                                                  |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <b>B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                  |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| DBE M/WBE VETERAN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | SUBCONTRACTOR OR SUPPLIER NAME | TYPE OF WORK OR SPECIALTY                                                 | ETHNICITY CODE [See Below] | SUB/SUPPLIER DOLLAR AMOUNT                                                     | PERCENT OF CONTRACT DOLLARS |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | N/A                            |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| TOTALS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <b>C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| NAME OF SUBMITTER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                | DATE                                                                      |                            | TITLE OF SUBMITTER                                                             |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Allison Murrell                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | 11/17/2022                                                                |                            | President                                                                      |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| EMAIL ADDRESS OF PRIME (SUBMITTER)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                | TELEPHONE NUMBER                                                          |                            | FAX NUMBER                                                                     |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| amurrell@evllc.com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                | 239-434-5200                                                              |                            | 239-435-7202                                                                   |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.                                                                                                                                                                                       |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other: not of any other group listed</td><td>O</td></tr> </tbody> </table> |                                |                                                                           |                            |                                                                                |                             | ETHNICITY | CODE | Black American | BA | Hispanic American | HA | Native American | NA | Subcont. Asian American | SAA | Asian-Pacific American | APA | Non-Minority Women | NMW | Other: not of any other group listed | O |
| ETHNICITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | CODE                           |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Black American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | BA                             |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Hispanic American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | HA                             |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Native American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | NA                             |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Subcont. Asian American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | SAA                            |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Asian-Pacific American                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | APA                            |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Non-Minority Women                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | NMW                            |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| Other: not of any other group listed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | O                              |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| <b>D. SECTION TO BE COMPLETED BY COLLIER COUNTY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| DEPARTMENT NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                | COLLIER CONTRACT # (IFB/RFP or PO/REO)                                    |                            | GRANT PROGRAM/CONTRACT                                                         |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
| ACCEPTED BY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                |                                                                           |                            | DATE                                                                           |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                           |                            |                                                                                |                             |           |      |                |    |                   |    |                 |    |                         |     |                        |     |                    |     |                                      |   |

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**LOBBYING CERTIFICATION**  
**(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

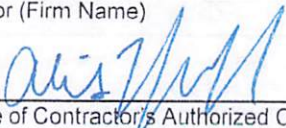
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Earth View, LLC

Contractor (Firm Name)

  
Signature of Contractor's Authorized Official

Allison Murrell, President

Name and Title of Contractor's Authorized Official

11/17/2022

Date



# Attachment 1

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

## RFP Form C

Proposer: Earth View, LLC

### PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL  
TO BE DEEMED RESPONSIVE.***

Name of Proposer: Earth View, LLC

Name of authorized representative of Proposer: Allison Murrell, President

### Project Cost

| Storm Drain                                     | Linear feet for<br>evaluation<br>purposes only               | Price Per<br>Foot    | OR Hourly<br>Rate   |
|-------------------------------------------------|--------------------------------------------------------------|----------------------|---------------------|
| Televis 10" to 15" Storm Drain                  | 16,000                                                       | \$1.50               | \$ <u>250</u> /Hour |
| Televis 18" to 24" Storm Drain                  | 16,000                                                       | \$2.00               | \$ <u>250</u> /Hour |
| Televis 30" to 42" Storm Drain                  | 16,000                                                       | \$3.50               | \$ <u>250</u> /Hour |
| Clean 10" to 15" Storm Drain                    | 16,000                                                       | \$ 4.00              | \$ <u>350</u> /Hour |
| Clean 18" to 24" Storm Drain                    | 16,000                                                       | \$ 6.50              | \$ <u>350</u> /Hour |
| Clean 30" to 42" Storm Drain                    | 16,000                                                       | \$ 8.00              | \$ <u>350</u> /Hour |
| <b>Total</b> \$408,000                          | <del>200,000</del>                                           | \$                   | \$ ____ /Hour       |
| Outfall Barnacle Removal                        | Outfall<br>numbers are<br>for evaluation<br>purposes<br>Only | Price Per<br>Outfall | OR Hourly<br>Rate   |
| Remove Barnacles 30" to 42" Storm Drain         | 29                                                           | \$ 1,500.00          | \$ <u>300</u> /Hour |
| Remove Barnacles 10" to 29" Storm Drain         | 30                                                           | \$ 1,250.00          | \$ <u>300</u> /Hour |
| <b>Total</b> \$81,000                           | <b>59</b>                                                    | \$                   | \$ ____ /Hour       |
| <b>Total Project Cost: \$ <u>489,000.00</u></b> |                                                              |                      |                     |

Instructions: Show the project cost for each deliverable your firm will provide per the requested

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

scope of work. Include the fees associated with each proposed deliverable.

Fees should be detailed to the extent possible per deliverable.

The Total Unit Price Cost shall include all fees and reimbursements for out of pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

The Total Unit Price Cost shall include the cost of:

1. Meetings with Town staff to discuss Stormwater Drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Stormwater Drains.

Payments will be made on each deliverable upon receipt and acceptance by the Town.

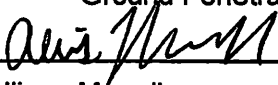
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**Additional Services**

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, linear foot rate and staff positions available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

| Additional Work          |                                             |
|--------------------------|---------------------------------------------|
| <u>Title:</u>            | <u>Hourly Rate/Per<br/>Linear Foot Rate</u> |
| Grout Services           | \$350.00/Hour                               |
| Add rows as necessary    |                                             |
| Ground Penetrating Radar | \$200.00/Hour                               |

By: 

Date: 11/17/2022

Name: Allison Murrell

Title: President

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF AN ALUMINUM BOAT FROM SCULLY'S ALUMINUM BOATS, INC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER FOR THIS BOAT FOR A NOT-TO-EXCEED AMOUNT OF \$120,778.00; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

Town Council approval of this purchase is required since it exceeds the \$75,000 threshold that requires Town Council approval.

**What the action accomplishes:**

This action satisfies the requirements of the Town's purchasing ordinance and enables the Town to purchase the aluminum boat.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town is in need of a boat for code enforcement purposes. Such a boat may be purchased from the General Services Administration (GSA) Federal Acquisition Service contract that was awarded to Scully Aluminum Boats, Inc for a price of \$120,778. The code enforcement lien of \$725,840 that was collected by the town in November of 2024 may be used to fund this purchase.

**Attachments:**

1. 25-91, Authorizing Purchase of Scully's Aluminum Boat
2. 25-91, Attachment B-GSA Contract Award

**Financial Impact:**

The cost of the aluminum boat is \$120,778 and may be funded by the Code Enforcement Lien that was collected in November 2024 in the amount of \$725,840.

6. **Alternative Action**

The Town Council may choose to deny this request.

7. **Management Recommendations:**

Management recommends approval of this purchase.

8. **Recommended Approval:**

Joe Onzick, Finance Director  
Thomas Yozzo, Emergency Services Director  
nancy stuparich, Town Attorney  
Amy Baker, Town Clerk  
William McKannay, Town Manager

Created/Initiated - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Approved - 6/9/2025  
Final Approval - 6/10/2025

## **RESOLUTION NUMBER 25-91**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF AN ALUMINUM BOAT FROM SCULLY'S ALUMINUM BOATS, INC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER FOR THIS BOAT FOR A NOT-TO-EXCEED AMOUNT OF \$120,778.00; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town wishes to purchase an aluminum boat model 2684LC2 with center console for a total not-to-exceed amount of \$120,778.00; and

**WHEREAS**, Section 2-480(f) of the TOWN OF FORT MYERS BEACH Code of Ordinances provides that when it is in the best interest of the TOWN OF FORT MYERS BEACH, the TOWN OF FORT MYERS BEACH may cooperatively purchase from any other government agency, which has competitively bid and awarded any contract for any product or service at the awarded price, if the original bid specifications and award allow it and if the other governmental agency's procurement complies with the TOWN OF FORT MYERS BEACH's competitive bid policy; and

**WHEREAS**, the Scully's Aluminum Boats, Inc. was awarded contract number GS-07F-0159W by the General Services Administration (GSA) Federal Acquisition Service as part of a multiple award schedule for the marine craft category #336612 as a result of satisfying rigorous federal procurement requirements; and

**WHEREAS**, an aluminum boat model 2684LC with center console is listed on the GSA catalogue associated with this contract and is a model that satisfies the town's requirements; and

**WHEREAS**, the Fort Myers Beach Town Council finds contracts awarded by the General Services Administration (GSA) Federal Acquisition Service to meet procurement standards equivalent to those of the Town of Fort Myers Beach; and

**WHEREAS**, pursuant to this finding, the Town has chosen to "piggyback" on the existing agreement between GSA Federal Acquisition Services and Scully's Aluminum Boats, Inc. ("Contractor"), whereby the Contractor has authorized the Town to "piggyback" on the competitive pricing provided to the federal government in Contract # GS-07F-0159W for the desired boat; and

**WHEREAS**, the Town collected a Code Enforcement Lien of \$725,840.00 in November 2024, and it is available to fund this purchase.

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

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

Section 2. The Town Council hereby approves the purchase order with Contractor for one (1) aluminum boat model 2684LC with center console in the not-to-exceed amount of \$120,778.00 and authorizes the Town Manager or his designee to execute any documentation related to the purchase order, which is attached hereto as “Attachment A.” Also attached are Contract Award (“Attachment B”) and Quote (“Attachment C”).

Section 3. This resolution shall take effect immediately upon its adoption.

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

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John King, Council Member     | _____ |
| Bill Veach, Council Member    | _____ |
| Karen Woodson, Council Member | _____ |

ADOPTED this 16<sup>th</sup> day of June, 2025, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of June 2025.

# GENERAL SERVICES ADMINISTRATION

## Federal Acquisition Service

### Authorized Federal Supply Schedule FSS Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*®, a menu-driven database system. The INTERNET address GSA *Advantage!*® is: [GSAAAdvantage.gov](https://GSAAAdvantage.gov).

## Multiple Award Schedule

FSC Group: 19

Contract number: GS-07F-0159W

Contract period: December 21, 2024 - December 21, 2029

Contractor:

Scully's Aluminum Boats, Inc.  
1015 Stephenville Rd.,  
Morgan City, LA 70380  
(985) 385-1323  
(985) 384-5146

[shane@scullyfab.com](mailto:shane@scullyfab.com)

Contract administration source.

Shane M. Scully

Address: Same as above

Phone/Fax Number: Same as above

E-mail: Same as above

Business size: Small

For more information on ordering, go to the following website: <https://www.gsa.gov/schedules>



Price list current as of Modification #PS-0026 effective 05/31/2024

\*This is the MOST RECENTLY awarded Contractor Initiated Modification and does  
NOT include any Mass Modifications

Prices Shown Herein are Net (discount deducted)

## CUSTOMER INFORMATION

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

| SINs   | SIN Title             |
|--------|-----------------------|
| 336612 | Marine Craft          |
| OLM    | Order-Level Materials |

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

| SINs   | Model  | Price          |
|--------|--------|----------------|
| 336612 | 3612BV | See Price List |

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item. N/A

2. Maximum order: \$250,000.00 PER SIN

3. Minimum order: \$100.00

4. Geographic coverage (delivery area). Domestic, 50 states, Washington, DC, Puerto Rico, US Territories and to a CONUS or consolidation point for orders received from overseas activities.

5. Point(s) of production (city, county, and State or foreign country). Morgan City, LA 70380

6. Discount from list prices or statement of net price.

SIN 336612 - 1% from the accepted pricelist. For calculation of the GSA Schedule price (price paid by customers ordering from the GSA Schedule, and the price to be loaded into GSA Advantage), the

contractor should deduct the appropriate basic discount from the list price and use the following calculation to include the IFF (currently .75%):

Negotiated price divided by (1 Minus .0075) which equates to Negotiated price divided by 0.9925

Example:  $(\$100,000 / 0.9925) = \$100,755.67$

7. Quantity discounts. SIN 336612- Additional 1% - 5+

8. Prompt payment terms. Net 30 days. Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9. Foreign items (list items by country of origin). Not Applicable

10a. Time of delivery. Shipped 150 days after receipt of order.

10b. Expedited Delivery. On a case by case basis.

10c. Overnight and 2-day delivery. N/A

10d. Urgent Requirements. N/A

11. F.O.B. point(s). Origin-Prepay and Add

12a. Ordering address(es). Same as Contractor Address

12b. Ordering procedures: See Federal Acquisition Regulation (FAR) 8.405-3.

13. Payment address(es). Same as Contractor Address

14. Warranty provision. Standard Commercial Warranty Terms & Conditions. Customer should contact contractor for a copy of the warranty.

15. Export packing charges, if applicable. Not Applicable

16. Terms and conditions of rental, maintenance, and repair (if applicable). Not Applicable

17. Terms and conditions of installation (if applicable). Not Applicable

18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable). Not Applicable

18b. Terms and conditions for any other services (if applicable). Not Applicable

19. List of service and distribution points (if applicable). Not Applicable

20. List of participating dealers (if applicable). Not Applicable

21. Preventive maintenance (if applicable). Not Applicable

22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants). Not Applicable

22b. If applicable, indicate that Section 508 compliance information is available for the information and communications technology (ICT) products and services and show where full details can be found (e.g. contractor's website or other location.) ICT accessibility standards can be found at:  
<https://www.Section508.gov/>.

Not Applicable

23. Unique Entity Identifier (UEI) number. FM4LL3MBZFY6

24. Notification regarding registration in System for Award Management (SAM) database.

1. **Request:**

**Meeting Date:** June 16, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AWARDDING ITB-25-04-PR TO PERSONS SERVICE CORP AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; APPROVING AN AGREEMENT BETWEEN THE TOWN AND PERSONS SERVICE CORP TO INSTALL FIELD TURF (GRASS), PICKLEBALL COURTS AND WALKING PATH TO FINISH THE BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$450,615.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

**What the action accomplishes:**

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Jeff Hauge, Community  
Services Director

5. **Background:**

The Bay Oaks Recreational Campus Redevelopment Project has been in the works for a number of years. Due to Hurricanes and storms, the Town was delayed in finishing the project. The project is scheduled to be done by August 31, 2025. It will provide a multi-use field, walking path, 4 pickleball courts and picnic areas.

**Attachments:**

1. Final 25-208, Approving ITB-25-04-PR Agreement Bay Oaks (1)
2. Exhibit A - DRAFT Agreement Bay Oaks Recreational Campus
3. Bay Oaks Recreational Campus Project Bid Winner
4. Bidding document (1)
5. Bid Response Letter
6. FMB\_001 Bid Bond\_Cashier's Check
7. FMB\_003 Official Bid Form
8. FMB\_004 Contractor's Qualification Questionnaire
9. FMB\_005 DBE Participation Form
10. FMB\_019 Public Entities Crime Form
11. FMB\_021 Non-Collusion Affidavit
12. FMB\_022 Trench Safety Affidavit (If Required)
13. FMB\_023 Material Manufacturers
14. FMB\_024 List of Sub-Contractors (2)
15. FMB\_025 Plant and Equipment Schedule
16. FMB\_100 Affidavit Certification Immigration Laws
17. Signed Copy of Addendum(s)

**Financial Impact:**

\$1,000,000 Grant through the Department of Interior and a \$1,000,000 match from the Town of Fort Myers Beach, using ARPA funds. Procured through the Town's ITB process.

6. **Alternative Action**

Do not accept the recommendations and give back the \$1,000,000 grant from the Department of Interior.

7. **Management Recommendations:**

Accept the Bid, Approve the Agreement between Town and Persons Service Corp for the Bay Oaks Recreational Campus Redevelopment Project, Authorized the Town Manager to Execute the Agreement, and Provide for an Effective Date subject to final legal approval of Construction Contract.

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison  
Jeff Hauge, Community Services Director  
nancy stuparich, Town Attorney  
Jason Freeman, Deputy Town Clerk / Legislative Liaison  
William McKannay, Town Manager

Created/Initiated - 6/11/2025  
Approved - 6/11/2025  
Approved - 6/11/2025  
Approved - 6/11/2025  
Final Approval - 6/11/2025

## **RESOLUTION NUMBER 25-208**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AWARDING ITB-25-04-PR TO PERSONS SERVICE CORP AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; APPROVING AN AGREEMENT BETWEEN THE TOWN AND PERSONS SERVICE CORP TO INSTALL FIELD TURF (GRASS), PICKLEBALL COURTS AND WALKING PATH TO FINISH THE BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$450,615.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town of Fort Myers Beach is seeking to complete the remaining items within the Bay Oaks Recreational Campus Redevelopment Project including a multi-use field, walking path, 4 pickleball courts and picnic areas.; and

**WHEREAS**, the Town of Fort Myers Beach solicited an ITB in May 2025 to receive competitive bids for the Bay Oaks Recreational Campus Redevelopment Project; and

**WHEREAS**, the Town of Fort Myers Beach received grant funding to assist with the funding of this project and requires work to be done by the current deadline of August 2025; and

**WHEREAS**, the Town received a single complete bid response from Persons Services Corp, and the project management Town staff have determined this most responsive and responsible bidder to complete the work; and

**WHEREAS**, pursuant to a competitive procurement process in compliance with State Law and Town Code, and the requirements stated in ITB-25-04-PR “Bay Oaks Recreational Campus Redevelopment Project,” the Town awards the bid to Persons Services Corp; and

**WHEREAS**, it is in the best interest of the Town to award the project to Persons Service Corp. and execute an agreement as soon as possible.

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



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

Section 2. The Town Council hereby awards the bid as provided herein to Persons Services Corp and authorizes the Town Manager to negotiate, prepare and sign an agreement for the bid services, subject to legal review.

Section 3. This resolution shall take effect immediately upon adoption.

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

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

ADOPTED this 16th day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_\_ 2025.

**FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM**  
(1 of 12 Pages)

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**CONSTRUCTION CONTRACT AGREEMENT**

Contract No. ITB-25-04-PR

Council Award Date: June 16, 2025

**AGREEMENT**

THIS AGREEMENT (also referred herein as "Contract") is made this 2nd day of June 2025 by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and Persons Services, Corp, a Florida corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH:

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

**ARTICLE 1.     WORK**

The CONTRACTOR shall commence and complete all work for the Bay Oaks Recreational Redevelopment Campus Project as provided in ITB-25-04-PR in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services for the redevelopment is attached and marked as Exhibit "A".

**ARTICLE 2.     CONTRACT SUM**

2.1.    The TOWN shall pay the CONTRACTOR, for the performance of the work described in Exhibit "A", not to exceed the sum of \$450,615.00 as provided in Exhibit B.

**ARTICLE 3.     PROGRESS PAYMENTS**

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1.    Contractor will invoice the Town for semimonthly billing.

3.2.    Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims

or unused units as provided in the Contract Documents.

#### **ARTICLE 4. CONTRACT DOCUMENTS**

The Term “**Contract Documents**” shall include the Public Construction Bond; Certificates of Insurance; and response from Contractor

But in the conflict - prevail

Exhibit

#### **ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. All services set forth in Exhibit A shall be completed no later than August 30, 2025.
- 5.3. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.4. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Amendment. The parties also recognize that delays, expense, and difficulties involved in proving financial loss in a legal proceeding and the actual loss suffered by the TOWN occurs if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required in 5.2 and 5.3.

The TOWN shall have the right to deduct all damages due from the final payment request as well as any retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN, which have been estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the

TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

## **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.**

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has reviewed the Contract Documents, and the nature and extent of the work required to be performed, the locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

## **ARTICLE 7. GENERAL CONDITIONS**

### **7.1 RESPONSIBILITY OF THE CONTRACTOR.**

The CONTRACTOR shall be responsible for the maintenance of the construction site and the performance of all services in Exhibit A until completion.

It shall bear the risk or any losses resulting from unknow conditions of the property including but not limited to existing underground infrastruture different from what condition of the work (define the work) until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Caution shall be exercised by the CONTRACTOR in any grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground infrastructure broken or dislocated during construction for which sufficient underground information has been shown on the plans.

#### **ARTICLE 8. TERMINATION FOR CONVENIENCE**

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

#### **ARTICLE 9. PUBLIC RECORDS**

The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract.

If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, [FMBPUBLICRECORDS@FMBGOV.COM](mailto:FMBPUBLICRECORDS@FMBGOV.COM), 2731 OAK STREET, FORT MYERS BEACH, FLORIDA 33931.**

Contractor further agrees to indemnify and hold the Town harmless against any and all claims,

damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this Agreement by an authorized party or agent that it shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection. The parties acknowledge the exchange and receipt of additional consideration for this indemnification, which shall survive the termination of this Agreement.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not



affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis by the TOWN's. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Any dispute arising out of or relating to any of the contract documents or this Agreement shall be first submitted to mediation for resolution. The parties shall mutually agree upon a mediator and equally divide the expenses of such mediation. In the event of an impasse and litigation, the parties agree to each pay their own attorney fees and costs.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.
- 10.13 The parties recognize that funding in whole or in part for the services is provided by a grant from the US Department of Interior administered by Florida DEP, a copy of which is attached as **Exhibit XXXX**.  
The contractor has read and acknowledges its responsibility, and the responsibility of the subcontractor agrees that it, shall comply with any and all terms and conditions of the grant as may be applicable.

## **ARTICLE 11. CONTRACT TERMS REQUIRED BY FLORIDA LAW**

**11.1. Compliance/Consistency with Section 768.28, Florida Statute** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statute and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**11.2 Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by

appropriations.

**11.3 E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**11.4 Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**11.5 Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11.6 Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**11.7 Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**11.8 No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the

debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Florida Stat. to any person for the purpose of exploitation of that person.

**11.9 Force Majeure** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

**11.10 Venue and Jurisdiction** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.

IN WITNESS WHEREOF, TOWN and CONTRACTOR have signed this agreement in duplicate originals. One original has been retained by the Town Clerk, and one original has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
(Secretary)

(Corporate Seal)

\_\_\_\_\_  
(Persons Services Corp.)

BY: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

TOWN OF FORT MYERS BEACH COUNCIL  
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: \_\_\_\_\_  
Town Clerk

BY: \_\_\_\_\_  
Town Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Town Attorney

DRAFT

**EXHIBIT "A"**

**SCOPE OF SERVICES:**

1. The Contractor will perform the following services under this Agreement:

The Town of Fort Myers Beach seeks to contract with a qualified Contractor for the construction of improvements to the Bay Oaks Recreational Campus located at 2731 Oak Street in Fort Myers Beach, Florida. The Contractor for the Bay Oaks Project is responsible for all tools, materials, labor, supervision, and equipment for the project. The Bay Oaks Project encompasses various tasks, such as irrigation, recreational facilities construction such as a new multi-sport field sod, pickleball courts, and a loop trail. The listed description of work is not intended to be all inclusive and effective coordination will be necessary between the general contractor overseeing this project and the project manager executing other elements of the redevelopment. The contractor is responsible for reviewing all documentation associated with this project and shall be responsible for notifying the Town of any conflicts or deficiencies during review which would affect the Contractor's final project costs.



**EXHIBIT “B”**

**SCHEDULE OF VALUES**  
**TOWN OF FORT MYERS BEACH**

[illegible]

**Total Bid Amount: Four Hundred Fifty Thounsand six hundred fifteen dollars and 00/100.**

---

**Compliance with Federal Law, Regulations, And Executive Orders and  
Acknowledgement of Federal Funding**

**Certification**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name \_\_\_\_\_

Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**SCHEDULE OF VALUES**  
**TOWN OF FORT MYERS BEACH**  
**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**

[illegible]

**Total Bid Amount: Four Hundred Fifty Thounsand six hundred fifteen dollars and 00/100.**



## Bay Oaks Redevelopment

### CLARIFICATIONS AND EXCLUSIONS

1. The following costs are specifically excluded:
  - a. Architectural, engineering or design services or fees.
  - b. Expediting or fee costs for civil infrastructure/utilities permitting.
  - c. The design, processing and/or recording of utility easements.
  - d. Permit fees or their expediting costs.
  - e. Governmentally imposed bond premiums, impact or other development fees.
  - f. 3<sup>rd</sup> party testing & inspections, required by the building permit.
  - g. Utility relocation.
  - h. Formal/Off site Dewatering services. (casual dewatering on site is included if needed)
  - i. Underground obstruction removal.
  - j. Pickleball accessories & equipment.
2. The following general clarifications apply:
  - a. Costs to address unforeseen conditions, unique soils, extreme site compaction needs or deleterious materials encountered have not been included.
  - b. Contractor has not included costs associated with demolition or removal of above or below grade structures, piping or removal or relocation of existing monitoring wells.
  - c. Costs to address unforeseen or unidentified utilities, conduits or services encountered below grade have not been included. In general, abandoned utilities or other construction shall remain in place buried within the new work wherever practical.
3. Scope of work included is exclusively limited to the following:
  - a. Hydro seed field area in lieu of sod due to time of year.
  - b. Construct (4) outdoor pickleball courts. Allowance of \$38,000 per court has been included.
  - c. Install walking trail utilizing crushed shell or other most cost effective material.
  - d. Install underground empty conduit for future pickleball area court lighting. (1) 3" conduit up to 100' LF in length included.
  - e. Install and cap underground water line to pickleball court area for future drinking fountain. (1) ½" water line up to 100' LF in length included.



# PERSONS

## SERVICES CORP.



Response to Solicitation

## FORT MYERS BEACH

### Bay Oaks Recreational Campus Redevelopment Project

Due: June 9, 2025 – 12:30 pm

Point of Contact:

Samantha Vincenty

[svincenty@personsservices.com](mailto:svincenty@personsservices.com)

954-290-8075





June 9, 2025

Town of Fort Myers Beach  
2731 Oak Street  
Fort Myers Beach, FL 33931

Re: ITB-25-04-PR

On behalf of Persons Services Corp., I am pleased to submit this Response to the Town of Fort Myers Beach.

Persons Services Corp. (PSC) stands out as a Construction Management and General Contracting firm with over 45 years of experience managing global construction, infrastructure, industrial, and disaster recovery programs. Our team's unique blend of expertise and experience has enabled us to successfully complete demolition and construction projects for Florida's public and private sectors. We take pride in our reputation for delivering safe, high-quality, and performance-driven work.

Upon reviewing PSC's credentials, proven experience, and comprehensive internal capabilities, we are confident that you will appreciate how we have been able to serve some of the most demanding owners continually and have remained in business for over four decades. PSC is the ideal company to serve you as Construction Manager for the Bay Oaks Recreational Campus Redevelopment Project.

I, Samantha Vincenty, certify that the ITB documents have been thoroughly reviewed and acknowledged. I affirm that all information in this submittal is complete and accurate. We have the necessary personnel, equipment, and time to ensure this commitment is unwavering.

Sincerely,

A handwritten signature in black ink that reads "Samantha Vincenty". The signature is fluid and cursive, with the first name being more prominent.

Samantha Vincenty  
Regional General Manager | 954-616-5106 x339  
[svincenty@personsservices.com](mailto:svincenty@personsservices.com)  
[www.personsservices.com](http://www.personsservices.com)



**FMB:001 - BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we

Persons Services Corp. as Principal, and  
(BIDDER'S Name)United States Fire Insurance Company a Corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto TOWN OF FORT MYERS BEACH TOWN COUNCIL, LEE COUNTY, FLORIDA, a Florida municipal corporation,

in the SUM OF \$ Five percent of total bid amount

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this 9th day of June, 2025

WHEREAS, said Principal is herewith submitting a Bid Proposal for the construction of:

**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT  
ITB-25-04-PR**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the TOWN and provide other Insurance as may be required to the TOWN within such time period as the TOWN may allow, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said TOWN in money the difference between the amount of the Bid of said Principal and the amount for which said TOWN may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said TOWN if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal

By: Witness Signature

Witness as to Surety

By: Witness SignatureO. McCrary Otts, IVPersons Services Corp.

Principal

Samuel V. VungUnited States Fire Insurance Company

Surety's Name

O. McCrary Otts, IV

By: As-Attorney-In-Fact, Surety



Affix Corporate Seals and attach proper Power of Attorney for Surety.



**POWER OF ATTORNEY  
UNITED STATES FIRE INSURANCE COMPANY  
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

12436

**KNOW ALL MEN BY THESE PRESENTS:** That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

J. William Goodloc, III, O. McCrary Otts, IV, Charlene C. Stout, Katherine H. Gilmore

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties: **Fifty Million Dollars (\$50,000,000)**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

**IN WITNESS WHEREOF**, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 28th day of September, 2021.

**UNITED STATES FIRE INSURANCE COMPANY**



State of New Jersey }  
County of Morris }

Matthew E. Lubin, President

On this 28th day of September, 2021, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.



Melissa H. D'Alessio (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 9<sup>th</sup> day of June 20 25

**UNITED STATES FIRE INSURANCE COMPANY**



Michael C. Fay, Senior Vice President



**FMB:003 - OFFICIAL BID FORM**  
(1 of 5 Pages)

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FOR

**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**

**ITB-25-04-PR**

Bids are to be submitted by

**Monday, June 9, 2025 @ 12:30 P.M. LOCAL TIME**

to:

**TOWN OF FORT MYERS BEACH  
VIA DEMANDSTAR.COM**

**BID OPENING:**

**LOCATION: Town Hall  
Town Hall Council Chambers  
2731 Oak Street  
Fort Myers Beach, FL. 33931**

**Monday, June 9, 2025 @ 1:00 P.M. LOCAL TIME**

BIDDER: Persons Services Corp.  
(Individual or Firm Name)



**FMB:003 - OFFICIAL BID FORM**  
(2 of 5 Pages)

**Monday, June 9, 2025**  
(DATE)

**12:30 PM LOCAL TIME**  
(TIME)

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

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**  
**ITB-25-01-PR**

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
  - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
  - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent

**FMB:003 - OFFICIAL BID FORM**

(3 of 5 Pages)

(100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.

- (c) In the event of any conflict between the Invitation to Bid and Ordinance 24-11, the provisions of the ordinance will prevail. A copy of ordinance 24-11 is available on the TOWN'S website.

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: May 15, 2025 Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. 2 Dated: May 28, 2025 Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 75 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 90 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.

**FMB:003 - OFFICIAL BID FORM**  
(4 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Vincenty, Samantha  
(Name of License Holder)

CGC1537916  
(State Certificate No.)

Broward County Local Business Tax Receipt  
Business Tax Receipt No. (Specify jurisdiction)

180-312717 General Contractor  
(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this  
9th day of June, 2025.

Samantha Vincenty

By: Printed

Samantha Vincenty

By: Signature

TITLE:

Regional General Manager

Company Name

Persons Services Corp.

Mailing Address

1835 S. Perimeter Rd, suite 175, Fort Lauderdale, FL 33309 957-290-8075

City, State, and Zip

Samantha Vincenty

Contact Person

svincenty@personsservices.com

E-mail / Contact Person

957-290-8075

Telephone Number

Fax Number

ATTEST:

[Signature]  
Secretary

(Seal)







## FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(1 of 7 Pages)

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: Persons Services Corp.

☒ CORPORATION - Date of Incorporation: 04/03/2019 State of Florida  
Incorporation: Alabama

If Out of State Corporation, currently authorized to do business in Florida,  
give date of such authorization: May 21, 2019

☐ PARTNERSHIP - Date of Organization: \_\_\_\_\_ Nature of Partnership: General ☐  
Limited ☐  
Association ☐

☐ INDIVIDUAL - Name and Address of Owner \_\_\_\_\_

☐ JOINT VENTURE - Between \_\_\_\_\_  
Name Title  
And \_\_\_\_\_  
Name Title  
Date of Agreement \_\_\_\_\_

☐ OTHER - Explain \_\_\_\_\_

Parent Company Office Address (if any): \_\_\_\_\_

Principal Office Address: 4474 Halls Mill Rd, Mobile, AL 36693

Name of Project (if applicable): Bay Oaks Recreational Redevelopment Project

Person to Contact: Samantha Vincenty

Title: Regional General Manager

Telephone  
No.: 954-616-5106

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**  
(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the BIDDER.

1. How many years has your organization been in business as a \_\_\_\_\_ Contractor under your present name?

45

2. Under what other or former names has your organization operated?

None

3. List below your organizations Officers, Owners or Partners:

| NAME               | TITLE     | ADDRESS                              | DATE<br>ASSUMING POSITION |
|--------------------|-----------|--------------------------------------|---------------------------|
| Paul F Persons, Jr | President | 4474 Halls Mill Rd, Mobile, AL 36693 | 4/3/2012                  |
| Paul Stevens       | Partner   | 10280 NW 52nd Ter, Doral, FL 33178   | 2019                      |
|                    |           |                                      |                           |
|                    |           |                                      |                           |
|                    |           |                                      |                           |



**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**  
(3 of 7 Pages)

4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

| JURISDICTION | TRADE | STATE CERT. NO. | TOWN'S COMP. NO. | STATE REG. NO. | TOWN'S OCC. LIC. NO. | STATE PERMIT | EXPIRE DATE |
|--------------|-------|-----------------|------------------|----------------|----------------------|--------------|-------------|
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |
|              |       |                 |                  |                |                      |              |             |

5. List jurisdictions in which your organization's partnership or trade name is filed:

N/A

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it?

YES ☐

NO ☒

See Sheet No. \_\_\_\_\_

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES ☐

NO ☒

See Sheet No. \_\_\_\_\_

6.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?

YES ☐

NO ☒

See Sheet No. \_\_\_\_\_

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another?

YES ☐

NO ☒

If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project?

YES ☐

NO ☒

If so, state the name of the individual, other organization, when, where and the reason therefore:

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(4 of 7 Pages)

9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified BIDDER or Qualified BIDDER for construction contracts? YES ☐ NO ☒
- If so, for what type of work? \_\_\_\_\_
- Give details and reason: \_\_\_\_\_
10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:
- Our total number of teammates is 277
- (use extension sheet if necessary and reference sheet number herein: \_\_\_\_\_)
11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
- 11.1 Name and present position or capacity
  - 11.2 Years of construction experience, type of work, position or capacity and cost range
  - 11.3 Years of related construction experience, type of work, position or capacity and cost range
  - 11.4 Brief education and professional registrations (see attached 01)
12. List of type of work normally provided by your own work forces:
- PSC can self-perform the following: Piping Fabrication & Modularization, Plumbing, Mechanical/Process Piping, HVAC, Plant Maintenance Specialty Tradesmen, Earthwork, Sitework & Underground Utilities.
13. Indicate type of contracting undertaken by your organization and number of years' experience:
- As General Contractor 41 Years Commercial Type
- As Sub-Contractor 49 Years Industrial Plumbing / Civil Type
14. Attach the prime construction contracts your organization has underway on this date 04/30/2025
- The list shall include the following information:* (reference sheet numbers herein: \_\_\_\_\_)
- 14.1 Project Title and Location
  - 14.2 Contractor or Sub-Contractor
  - 14.3 Contract Amount and Date of Contract
  - 14.4 Percent of Project Constructed by Sub-Contractors
  - 14.5 Percent Complete
  - 14.5 Project Manager or Superintendent
  - 14.6 Required Completion Date
  - 14.7 Name, Address and Telephone Number of Owner
  - 14.8 Designing Architect/Engineer and Address (see attached 02)



**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**  
(5 of 7 Pages)

15. Attach a list of the no fewer than five (5) prime construction contracts involving construction projects similar to this Project, specifically within the influence of tidal currents, completed in the past seven (7) years by your organization.

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 15.1 Project Title, Location, and Brief Description of Work Performed
- 15.2 Contractor or Sub-Contractor
- 15.3 Contract Amount and Date of Contract
- 15.4 Percent of Project Constructed by Sub-Contractors
- 15.5 Date Complete
- 15.6 Project Manager or Superintendent
- 15.7 Required Completion Date
- 15.8 Name, Address and Telephone Number of Owner
- 15.9 Designing Engineer and Address
- 15.10 Volume, Pump Distance, Monthly Production Rate (see attached 03)

16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed. **None**

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 16.1 Project Title and Location
- 16.2 Contractor or Sub-Contractor
- 16.3 Original Contract Amount and Date
- 16.4 Final Contract Amount
- 16.5 Percent of Project Constructed by Sub-Contractors
- 16.6 Project Manager or Superintendent
- 16.7 Required Completion Date
- 16.8 Name, Address and Telephone Number of Owner
- 16.9 Town Sponsoring Department

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

United States Fire Insurance Co - Address: P.O. Box 160927, Mobile, AL 36616  
Contact Name: McCrary Otts - motts@higginbotham.com - (251) 473-4600

19. List no less than three (3) and preferably five (5) financial references:

Regions Bank - Mobile, AL - Scottie Green - VP - scottie.green@regions.com - (251) 391-1486  
Beard Equipment Co - Mobile, AL - Brandon Cruthirds - bcruthirds@beardequipment.com - (251) 456-1993  
Consolidated Pipe - Houston, TX - James Shelton - james.shelton@cspipe.com - (281) 214-7060  
Mike Hoffman's Equipment Service - Buffy Singley - buffy@hoffmanpetroleum.com - (251) 666-8994

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**  
(6 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?  
USA POB \$17,000,000.00

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?  
Largest Project \$30,000,000.00

Dated at Fort Lauderdale this 9 day of June 2025

Persons Services Corp.

Name of Organization

BY: *Samantha Vung*

Regional General Manager

Title of Person Signing

(If Corporation Affix Corporate Seal)

STATE OF FLORIDA )  
COUNTY OF LEE )  
BROWARD

SWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE,

2025, by means of ☒ physical presence or ( ) online notarization, personally appeared \_\_\_\_\_

SAMANTHA VINCENTY as REG GENERAL MGR of PERSONS SERVICES CORP

☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

My commission expires:



*Olga Lucia Cala*  
NOTARY PUBLIC— State of Florida





## **SAMANTHA VINCENTY**

### **General Manager**

Samantha has more than 20 years of management experience in the construction industry. She is a talented team lead, providing operations, estimating, scheduling, team building, and management support to complex projects with rigorous deadlines. She has numerous years of experience with Higher Education construction and CMAR project delivery.

Based out of PSC's Fort Lauderdale Office, Samantha supports her project management teams with unfettered access to any corporate resources needed to deliver projects at the highest level of customer satisfaction.

#### **BACKGROUND**

##### **EDUCATION**

Wester Governor's  
University, MBA, Healthcare  
Management

City University of New York,  
BA, Communications

##### **YEARS EXPERIENCE**

Industry – 20

##### **CERTIFICATIONS**

LEED Accredited  
OSHPD & AHCA

#### **EXPERIENCE – PROJECT MANAGER**

##### **GFI CAPITAL RESOURCES**

The Ritz-Carlton Residences  
The Villa Collection  
Miami Beach, FL

##### **HUDSON CAPITAL GROUP**

Quay Plaza  
Fort Lauderdale, FL

##### **AD1 GLOBAL**

Fairfield Inn & Suites  
Tamarac, FL

##### **CITY OF POMPAÑO BEACH**

Ali Cultural Center  
Pompano Beach, FL

##### **JACKSON MEMORIAL**

Labor + Delivery OR Remodel  
Miami, FL

##### **MIAMI DADE COLLEGE**

MDC West Campus  
Doral, FL

##### **RIVERSIDE HOTEL**

Spa + Amenities Center  
Miami Beach, FL

##### **TOWN OF DAVIE**

Boys & Girls Club Reno  
Davie, FL

##### **TOWN OF JUPITER**

City Hall Phase II  
Jupiter, FL

##### **CITY OF TAMARAC**

Colony West Clubhouse/  
Cart Barn  
Tamarac, FL



## **BILLY MARTIN, JR.**

### **General Superintendent**

Billy has more than 30 years of experience in the construction industry. His diverse portfolio of successful commercial and industrial projects includes New School Facilities, Office Complexes, Medical Facilities, Detention Centers, Mixed-Use Retail Construction, Aviation, Multi-Family, and Hospitality among others.

Solution-oriented, Mr. Martin is highly experienced in site logistics, job site quality, scheduling, labor relations, and customer management.

As General Superintendent, Billy provides day-to-day team leadership, ensuring projects are completed on time and in line with quality and safety standards.

### **BACKGROUND EXPERTISE**

- Institutional Facility Construction
- Education Facility Construction
- Site Safety
- OSHA Compliance
- Labor Force Coordination
- Planning and Scheduling
- Budget Administration
- Field Management

### **CERTIFICATIONS**

- AGC Certification
- OSHA 30-Hour
- OSHA 10-Hour
- OSHA 1926 Review Training, Project Accident Investigation
- Construction Education Foundation Inc. 30-Hour Safety Training
- MSHA Safety Training
- Quoin Stormwater Management
- McCarthy Building Management and Leadership
- Certified Lead Testing and Abatement
- Crane and Rigging Safety
- Confined Space Training

### **EXPERIENCE**

#### **CITY OF DAPHNE**

Daphne Justice Center  
Daphne, AL

#### **DFW INTERNATIONAL AIRPORT**

Terminal D Expansion  
Dallas, TX

#### **BLUE CROSS BLUE SHIELD**

Corporate Headquarters  
Richardson, TX

#### **BALDWIN COUNTY SCHOOL BOARD**

Robertsdale High School Addition  
Robertsdale, AL

#### **CYPRESS-FAIRBANKS INDEPENDENT SCHOOL DISTRICT**

Cypress Fairbanks ISD High School  
Cypress, TX

#### **AIRPORT AUTHORITY OF THE CITY OF GULF SHORES**

Gulf Shores Airport New Terminal  
Gulf Shores, AL

#### **DALLAS COUNTY**

Detention Center S. Tower  
Dallas, TX

#### **DALLAS COUNTY**

Southwestern Institute of  
Forensic Sciences (SWIFS)  
Dallas, TX







# JASON OTTILIGE

## Project Manager

Jason Ottilige is a seasoned Construction Project Manager with over 20 years of experience in disaster response and six years in construction management. His responsibilities include overseeing all phases of construction projects, from planning and budgeting to execution and closeout. He coordinates subcontractors, manage schedules and costs, ensure quality and safety standards are met, and serves as the primary liaison between clients, architects, and field teams to ensure timely, successful project delivery.

At Persons Services Corp., Jason oversees multiple residential and commercial reconstruction projects, including resorts, storage facilities, and condominiums. Jason excels at coordinating vendors, managing budgets, creating construction schedules, and ensuring quality execution from planning to completion.

His background in emergency operations equips him with strong leadership, logistical coordination, and problem-solving skills, making him a reliable asset for complex, high-pressure construction environments.

## EXPERIENCE

**PINK SHELL RESORT & MARINA**  
Hurricane Hospitality Renovation  
Fort Myers Beach, FL

**FLORIDA COMMERCE**  
Rebuild FL CDBG-DR Hurricane Ian  
South Florida

**METRO STORAGE**  
Hurricane Commercial Renovation  
Tamiami, FL

**CONGRESS JEWELERS**  
Hurricane Commercial Build Back  
Sanibel, FL

**BEACHAVEN ASSOC.**  
Hurricane Residential Renovation  
Siesta Key, FL

**ISLAND BREEZE CONDO**  
Hurricane Residential Renovation  
Fort Myers Beach, FL

## BACKGROUND YEARS EXPERIENCE Industry – 20

## CERTIFICATIONS

- ICS – 100 Certified
- ICS – 200; 800.b
- IS-00100.b; 00120.a;  
00130; 00200.b; 00899.b
- NIMS Certified IS-  
00700.a
- Radiological Emergency  
management IS-0003
- TS10 Debris Management
- TS27 Logistics Operations
- OSHA 10, 30, 40  
HAZWOPER
- ATTSA Traffic Control  
Course
- Qualified Stormwater  
Management Inspector  
Certified



# Kenneth Temple

## Superintendent

Kenneth Temple is a seasoned Construction Superintendent with over 30 years of experience managing commercial and residential projects from ground-up construction to high-end renovations. His project portfolio includes multi-story condominiums, hotels, restaurants, and extensive remodeling work throughout New York, Mississippi, and Florida. Kenneth's areas of expertise include subcontractor coordination, OSHA compliance, site logistics, and quality control. He is known for delivering multimillion-dollar projects on time, within budget, and to the highest standards of craftsmanship.

### BACKGROUND YEARS EXPERIENCE

Industry – 30

### CERTIFICATIONS

- OSHA 30-Hour
- Forklift Extended Reach Safety Training
- AAMA-Certified Window Installer

At Persons Services Corp., Kenneth consistently excels in the daily responsibilities of a construction superintendent, including site supervision, scheduling, and enforcing safety protocols. He ensures projects align with architectural and structural plans, coordinates subcontractors and inspections, and manages material deliveries and staging with precision. His hands-on leadership, attention to detail, and proactive problem-solving keep projects on track while upholding quality standards and fostering strong relationships with clients, vendors, and inspectors.

### EXPERIENCE

#### CITY OF DANIA BEACH

Nyberg-Swanson House Renovation  
City of Dania Beach, FL

#### FOUR POINTS SHERATON

10-Sotry Hotel Build Out  
Biloxi, MS

#### SCORES GENTLEMEN'S & STEAKHOUSE

Restaurant Build Out  
New York, NY

#### INN BY THE SEA

75 Unit 5-Story Condominium  
Pass Christian, MS

#### TOWN OF JUPITER

City Hall Phase II  
Jupiter, FL

#### UNCLE JACKS STEAKHOUSE

Restaurant Build Out  
New York, NY







# SHARLENE ROCA

## Project Administrator

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As Project Administrator, Sharlene is an integral member of the project team responsible for delivering building development projects of varying size and complexity. She is responsible for all aspects of construction and administration alongside accounting.

Utilizing Procore, Sharlene works closely with project leadership to manage financial controls and reporting for the project budget, assembling contracts and change orders. Sharlene excels as a team player with demonstrated interpersonal and organizational skills.

### BACKGROUND

#### EDUCATION

Miami Dade College  
Computer Operations

#### YEARS EXPERIENCE

Industry – 15

### EXPERIENCE

#### MIAMA DADE COLLEGE

MDC West Campus  
Doral, FL

#### MIAMI DADE COUNTY SCHOOLS

International Studies Preparatory  
Academy "ISPA"  
Coral Gables, FL

#### 1116 LOVE STREET LLC

Love Street Mixed-Use  
Jupiter, FL

#### CITY OF POMPANO BEACH, FL

Ali Cultural Center  
Pompano Beach, FL

#### BROWARD COLLEGE

Broward College  
Fort Lauderdale, FL

#### TOWN OF DAVIE

Davie Boys & Girls Club  
Davie, FL

#### CITY OF TAMARAC

Colony West Clubhouse/  
Cart Barn  
Tamarac, FL

#### TOWN OF JUPITER

City Hall Phase II  
Jupiter, FL

## for Construction and SEC -04/30/2025

| Job Name            | Owner                                   | Architect                            | Project Manager | Contract Date | Contract Amount          | % Comp        | to           |
|---------------------|-----------------------------------------|--------------------------------------|-----------------|---------------|--------------------------|---------------|--------------|
| ol                  | Morgan Co Board of Educa.               | McKee & Associates                   | C. Pelletier    | 12/14/22      | \$ 4,161,600.00          | 91%           |              |
|                     | 235 Hwy 67-S Decatur, AL                | 631 S Hull St., Montgomery           |                 |               |                          |               |              |
| xpansion            | Beard Equipment                         | PSE Desings, Inc                     | C. Elder        | 01/12/24      | \$ 4,934,531.00          | 93%           |              |
| , AL                | 2480 E-I-65 Mobile, AL                  | 1000 Hillcrest, Mobile, AL           |                 |               |                          |               |              |
| ilding              | Kaleo Home Base LLC                     | Dalrymple/Sallis Architecture        | L. Cooke        | 12/11/23      | \$ 20,579,774.00         | 82%           |              |
| ama City, FL        | Po Box 567 Conway, AR                   | 503 E Gov. St, Pensacola, FL         |                 |               |                          |               |              |
| dition              | Baldwin County Schools                  | McKee & Associates                   | C. Pelletier    | 02/09/24      | \$ 5,099,350.00          | 88%           |              |
| tsdale, AL          | 2600 Hand Ave, Bay Minnette AL          | 631 S Hull St., Montgomery           |                 |               |                          |               |              |
| rkforce             | Alabama Community College               | Goodwyn Mills Caywood, LLC           | L. Cooke        | 05/10/24      | \$ 13,360,139.95         | 59%           |              |
| prise AL            | PO Box 1300 Enterprise AL 36331         | 11 N Water St-15250, Mobile, AL      |                 |               |                          |               |              |
| nter                | City of Daphne                          | Walcott Adams Verneville             | C. Pelletier    | 06/18/24      | \$ 5,702,275.51          | 56%           |              |
| iphone36526         | 1705 Main St Daphne AL 36526            | One S School Fairhope, AL 36532      |                 |               |                          |               |              |
| : Terminal          | Airport Auth of Gulf Shores             | Barge Design Solutions               | T. Shields      | 07/17/24      | \$ 6,891,826.87          | 90%           |              |
| Shores AL           | 1155 Commerce GS 36542                  | 2047 W Main St Dothan, AL 36542      |                 |               |                          |               |              |
| entary              | Baldwin County Schools                  | Lathan Associates Arch PC            | B. Harris       | 07/23/24      | \$ 11,406,523.00         | 52%           |              |
| : AL 36526          | 2600 Hand Ave, Bay Minnette AL          | 300 Chase Park S Hoover, AL 36507    |                 |               |                          |               |              |
| c Center            | City of Rainbow City                    |                                      |                 | 09/01/24      | \$ 7,605,287.00          | 37%           |              |
| C AL35906           | 3700 Rainbow Drive                      |                                      |                 |               |                          |               |              |
| hne                 | Halle Properties LLC                    | Plump Engineering, Arch.             | B. Corrigan     | 02/01/25      | \$ 3,325,286.63          | 39%           |              |
| e AL 36526          | 20225 N Scottdale AZ 85255              | 914 E. Katella Ave, Anaheim CA       |                 |               |                          |               |              |
| nter                | Mobile County Commission                | Williamson Blackstock Arch           | B. Harris       | 09/06/24      | \$ 23,151,607.00         | 33%           |              |
| Mobile AL           | 205 Gover. St Mobile, AL 36644          | 2204 1st AS Birmingham AL 35233      |                 |               |                          |               |              |
| erville             | Halle Properties LLC                    | Plump Engineering, Arch.             | B. Corrigan     | 10/05/24      | \$ 3,307,100.95          | 71%           |              |
| kwy MS              | 20225 N Scottdale AZ 85255              | 914 E. Katella Ave, Anaheim CA       |                 |               |                          |               |              |
| J Building          | University of South Alabama             | Stacy Norman Architects, LLC         | L. Cooke        | 10/10/24      | \$ 87,146,602.66         | 29%           |              |
| AL 36688            | 307 Univer. Mobile AL 36688             | 126 Tichenor Auburn AL 36830         |                 |               |                          |               |              |
| ilet                | Apogee Properties LLC                   | Maurin Architecture, PC              | T. Robinson     | 01/15/25      | \$ 1,423,012.53          | 67%           |              |
| e, Atmore, AL 36502 | 406 E. Nashville Ave, Atmore, AL 36502  | 601 St Anthony St, Mobile, AL 36603  |                 |               |                          |               |              |
| iesburg             | Halle Properties LLC                    | WSP USA, Inc                         | Corrigan        | 02/25/25      | \$ 3,928,536.23          | 18%           |              |
| ttisburg, MS 39401  | 20225 N Scottdale AZ 85255              | 1226 West Washington, Temple AZ      |                 |               |                          |               |              |
| Center              | City of Gulf Shores Alabama             | Police Facility Design Group         | B. Harris       | 03/01/25      | \$ 20,987,223.00         | 6%            |              |
|                     | 1905 West 1st St. Gulf Shores, AL 36547 | 500 Grand Blvd. Kansas City MR 64106 |                 |               |                          |               |              |
| Mill                | Novellis                                |                                      | L. Cooke        | 05/01/25      | \$ 48,207,461.71         | 4%            |              |
| Alabama             | 15944 Bay Minette, AL 36507             |                                      |                 |               |                          |               |              |
| rm Pond             | City of Gulf Shores Alabama             | Police Facility Design Group         | B. Harrtis      | 04/01/25      | \$ 334,584.80            | 28%           |              |
|                     | 1905 West 1st St. Gulf Shores, AL 36547 | 500 Grand Blvd. Kansas City MR 64106 |                 |               |                          |               |              |
| <b>TOTALS</b>       |                                         |                                      |                 |               | <b>\$ 271,218,138.04</b> | <b>56.00%</b> | <b>\$118</b> |

|             |                             |  |        |          |                 |     |  |
|-------------|-----------------------------|--|--------|----------|-----------------|-----|--|
| ouse        | City of Dania Beach         |  | T. Fay | 08/05/24 | \$ 1,245,053.00 | 95% |  |
| i, FL 33004 | 100 W Dania Beach, FL 33004 |  |        |          |                 |     |  |



|                         |                                           |                              |          |          |                         |            |            |
|-------------------------|-------------------------------------------|------------------------------|----------|----------|-------------------------|------------|------------|
|                         | Town of Jupiter                           |                              | T. Fay   | 08/19/24 | \$ 3,046,124.00         | 52%        |            |
| Jupiter FL 33458        | 210 Military Trail, Jupiter FL 33458      |                              |          |          |                         |            |            |
|                         | City of Pompano Beach                     |                              | T. Fay   | 02/25/25 | \$ 1,239,718.00         | 0%         |            |
| Pompano Beach, FL 33061 | 100 West Atlantic Blvd. Pompano, FL 33060 |                              |          |          |                         |            |            |
| Modular                 | Govern. Of Virgin Islands                 | Division of Engineering      | C. Elder | 10/01/23 | \$ 555,288.00           | 90%        |            |
| hill, VI                | 8201 Dub Base, St. Thomas VI              | 6002 Est Anna, Christian. VI |          |          |                         |            |            |
| Project                 | Virgin Island Fire Services               | Jaredina Design Group        | C. Elder | 11/20/23 | \$ 5,838,915.00         | 25%        |            |
| Croix, VI               | 3019 Orange Grove, St. Croix VI           | #33 Drongigens St. Thomas VI |          |          |                         |            |            |
| <b>TOTALS</b>           |                                           |                              |          |          | <b>\$ 11,925,098.00</b> | <b>38%</b> | <b>\$:</b> |

ence for Construction

| Project Name  | Address                     | City           | ST. | Zipcode | Owner                            | Start Date | End Date |
|---------------|-----------------------------|----------------|-----|---------|----------------------------------|------------|----------|
|               | 600 Dunlap Drive            | Mobile         | AL  | 36602   | Alabama Shipyards                | 10/6/2021  | 1/30/20  |
| Recovery      | 14716 County Rd 49          | Summerdale     | AL  | 36580   | Baldwin County Commission        | 7/1/2024   | 3/30/20  |
| nd Hardscape  | 351 North Broad St          | Mobile         | AL  | 36602   | Bishop State Community Collage   | 7/13/2022  | 1/19/20  |
|               | 351 North Broad St          | Mobile         | AL  | 36610   | Bishop State Community Collage   | 3/1/2023   | 7/31/20  |
|               | 2724 Old Shell Road         | Mobile         | AL  | 36607   | Burnham Vital Care               | 1/17/2022  | 6/14/20  |
| Memphis       | 245 W Broadway              | West Memphis   | AR  | 72301   | Century One LLC                  | 6/13/2022  | 5/31/20  |
| ndo           | 2660 Mcingvale              | Hernando       | MS  | 38632   | Century One LLC                  | 1/15/2023  | 11/7/20  |
| obia          | 328 E Main St               | Senatobia      | MS  | 38668   | Century One LLC                  | 12/29/2022 | 2/15/20  |
| TN            | HWY 51 & Robins Rd          | Covington      | TN  | 38019   | Century One LLC                  | 12/23/2019 | 6/21/20  |
| Horn Lake, MS | 1700 Goodman Road West      | Horn Lake      | MS  | 38637   | Century One LLC                  | 10/19/2020 | 4/9/20   |
| Southaven, MS | 1101 Church Rd              | Southaven      | MS  | 38671   | Century One LLC                  | 3/2/2020   | 8/17/20  |
| Winchester    | 7050 Winchester Road        | Memphis        | TN  | 38215   | Century One LLC                  | 5/20/2021  | 11/17/20 |
| Shelby        | Shelby/Ross Road            | Memphis        | TN  | 38017   | Centrury One LLC                 | 6/6/2023   | 6/30/20  |
|               | 29450 N. Main St            | Daphne         | AL  | 36526   | Moal Associates                  | 3/9/2022   | 1/23/20  |
| Addition      | 4474 Halls Mill Road        | Mobile         | AL  | 36693   | Consolidated Pipe & Supply       | 10/21/2022 | 2/14/20  |
|               | 2415 E. University Dr       | Auburn         | AL  | 36830   | Dash Express Auburn LLC          | 4/1/2019   | 12/2/20  |
|               | 101 Bienville Blvd          | Dauphin Island | AL  | 36528   | Marine Envrion Sciences          | 10/15/2021 | 9/21/20  |
| enter         | 15203 Lillja Road           | Houston        | TX  | 77396   | WT Byler CO                      | 8/8/2019   | 6/30/20  |
|               | 3700 Dauphin St             | Mobile         | AL  | 36608   | MPRSD Properties                 | 12/14/2020 | 11/3/20  |
|               | 6450 US Hwy 90 Suite J      | Spanish Fort   | AL  | 36527   | PP Hospitality Group LLC         | 1/15/2023  | 3/21/20  |
|               | 13366 Illinois Street       | Elberta        | AL  | 36530   | Baldwin County Schools           | 1/5/2024   | 11/8/20  |
|               | Vaughn Street               | Montgomery     | AL  | 36529   | Express Wash On Vaughn           | 5/4/2022   | 10/16/20 |
|               | 250 Taft Drive              | Spencer        | TN  | 38585   | Farmer & Associates              | 9/19/2022  | 5/31/20  |
| ree           | 115 S 15th Ave              | Steinhatchee   | FL  | 32359   | Farmer Ranier Steinhatchee LLC   | 4/12/2021  | 11/1/20  |
|               | 1004 N Fayetteville St.     | Asheboro       | NC  | 21203   | Farmer & Associates              | 12/30/2022 | 2/25/20  |
|               | 849 S. Main Street          | Dyer           | TN  | 38330   | Farmer Ranier Dyer               | 1/17/2022  | 8/23/20  |
|               | 1310 South Main             | Graham         | NC  | 27253   | Farmer -Graham NC LLC            | 1/20/2023  | 11/5/20  |
|               | 440 W Bacon St              | Pembroke       | GA  | 31321   | Farmer & Associates              | 11/16/2022 | 9/18/20  |
| ake Shelby    | 1-21 Acorn Lane             | Gulf Shores    | AL  | 36542   | State of AL Dept of Conservation | 9/8/2022   | 1/19/20  |
| er            | 5837 Three Notch Road       | Theodore       | AL  | 36582   | Mobile Community Action          | 12/5/2022  | 11/30/20 |
|               | 11 University Blvd          | Mobile         | AL  | 36605   | Hollon Dental                    | 3/14/2022  | 8/31/20  |
|               | McGowin Park                | Mobile         | AL  | 36693   | AL Mobile Satchell, LLC          | 10/3/2022  | 12/21/20 |
|               | 9301 Holsberry Rd           | Pensacola      | FL  | 32534   | Shellco                          | 8/26/2024  | 4/30/20  |
|               | 2015 Gateway Plave          | Opeleika       | AL  | 36801   | The Chambliss Group              | 2/13/2023  | 8/20/20  |
|               | 5451 Able Court             | Mobile         | AL  | 36693   | Learning Tree Inc                | 5/10/2022  | 1/30/20  |
|               | 4315 Halls Mill Rd          | Mobile         | AL  | 36693   | Persons Development              | 9/15/2024  | 2/15/20  |
| il            | 1501 Old Shell Rd           | Mobile         | AL  | 36607   | McGill Toolen High School        | 3/28/2024  | 7/31/20  |
| e Bldg.       | 2451 University Hospital Dr | Mobile         | AL  | 36609   | USA Health Univesity Hospital    | 8/20/2021  | 5/12/20  |
| nette         | 501 McMeans Ave             | Bay Minette    | AL  | 36507   | Richardson Inc                   | 7/1/2019   | 1/17/20  |
| ld            | Hwy 90 Azalea Rd            | Mobile         | AL  | 36693   | Richardson Inc                   | 6/6/2023   | 6/30/20  |
|               | 2369 Dauphin Island Parkway | Mobile         | AL  | 36605   | Richardson Inc                   | 2/1/2019   | 7/29/20  |
| dale, AL      | 21141 State Highway 59      | Robertsdale    | AL  | 36567   | Richardson Inc                   | 11/15/2019 | 4/29/20  |
| s, AL         | 3350 Schillinger Road N     | Semmes         | AL  | 36575   | Richardson Inc                   | 9/1/2021   | 5/6/20   |
| i Fort, AL    | 30390 Highway 181           | Spanish Fort   | AL  | 36527   | Richardson Inc                   | 10/5/2020  | 4/26/20  |
| ity           | 2821 Palmer Ave             | Texas City     | TX  | 77590   | Richardson Inc                   | 9/27/2021  | 5/13/20  |
| AL            | 3911 20th Avenue            | Valley         | AL  | 36584   | Richardson Inc                   | 9/7/2020   | 4/19/20  |
| ila           | 5825 W Nine Mile RD         | Pensacola      | FL  | 32526   | Richardson Inc                   | 7/29/2022  | 12/10/20 |
|               | 2966 St. Stephens Road      | Pritchard      | AL  | 36612   | R.F. Myers Enterprises LLC       | 4/1/2020   | 10/9/20  |
| ces           | 1051 Old Warrior            | Bessemer       | AL  | 35023   | Robbie D. Wood Inc.              | 2/9/2024   | 10/31/20 |
|               | 1402 Industrial Parkway     | Saraland       | AL  | 36571   | Delaney Property Group           | 12/21/2020 | 5/14/20  |
| ss Demo       | 5400 Rangeline Road         | Mobile         | AL  | 36619   | Tom Herndon                      | 2/22/2023  | 5/31/20  |

|               |                               |              |    |       |                               |            |          |
|---------------|-------------------------------|--------------|----|-------|-------------------------------|------------|----------|
|               | 4077 Hamilton                 | Theodore     | AL | 36582 | Inland Property               | 6/24/2020  | 1/27/20  |
|               | 6450 US 90                    | Spanish Fort | AL | 36527 | Saad Development Co.          | 2/15/2021  | 12/3/20  |
| l - New Labs  | 161 Dogwood Lane              | Mobile       | AL | 36608 | St. Paul's Episcopal School   | 6/3/2021   | 3/15/20  |
| il - Phase II | 161 Dogwood Lane              | Mobile       | AL | 36608 | St. Paul's Episcopal School   | 11/1/2022  | 7/31/20  |
| ations        | 3601 Springhill Business Park | Mobile       | AL | 36608 | TREC, LLC                     | 9/2/2020   | 10/29/20 |
|               | 7500 Interchange RD           | Irvington    | AL | 36544 | United Rentals                | 11/13/2019 | 4/21/20  |
| uilding       | 307 University Blvd           | Mobile       | AL | 36609 | University of South Alabama   | 7/25/2021  | 10/23/20 |
|               | 353 Northside Drive           | Valdosta     | GA | 31602 | Bay Area Building Solutions   | 3/10/2023  | 7/20/20  |
|               | 2900 Kirby Parkway            | Memphis      | TN | 38119 | Bay Area Building Solutions   | 3/3/2023   | 9/29/20  |
|               | 7395 US 64                    | Memphis      | TN | 38133 | Bay Area Building Solutions   | 3/8/2023   | 9/29/20  |
|               | 2250 Bessemer Road # 200      | Birmingham   | AL | 35208 | Bay Area Building Solutions   | 7/31/2023  | 12/31/20 |
|               | 540 Professional Drive        | Macon        | GA | 31201 | Bay Area Building Solutions   | 4/3/2023   | 9/29/20  |
|               | 2847 Poplar Ave               | Memphis      | TN | 38111 | Bay Area Building Solutions   | 3/10/2023  | 10/10/20 |
|               | 5107 Summer Ave               | Memphis      | TN | 38122 | Bay Area Building Solutions   | 3/10/2023  | 10/10/20 |
|               | 2015 Cherokee Ave SW          | Cullman      | AL | 35055 | Mahogany Properties           | 1/28/2023  | 10/26/20 |
| ille          | 8325 Southside Blvd           | Jacksonville | FL | 32256 | Silver creek Group            | 10/30/2022 | 12/31/20 |
|               | 306 Stribling Lane            | Brandon      | MS | 39208 | Cinco Aguilas Development LLC | 5/24/2021  | 12/14/20 |
|               | 7280 Lavendar Lane            | Daphne       | AL | 36526 | Cinco Aguilas Development LLC | 8/16/2024  | 5/30/20  |
|               | 11701 Memorial Parkway SW     | Huntsville   | AL | 35803 | Cinco Aguilas Development LLC | 4/19/2021  | 11/12/20 |
|               | 2850 County Road 210 W        | St. Johns    | FL | 32259 | Cinco Aguilas Development LLC | 6/1/2021   | 4/22/20  |
|               | NEQ- Hwy 29 & Hull RD         | Athens       | GA | 30601 | Cinco Aguilas Development LLC | 6/22/2023  | 4/30/20  |
|               | 11559 Atlantic Blvd.          | Jacksonville | FL | 32225 | Cinco Aguilas Development LLC | 2/1/2022   | 1/30/20  |
| GA            | 503 Lakeland Plaza            | Cummings     | GA | 30040 | Cinco Aguilas Development LLC | 6/29/2022  | 5/31/20  |
| on            | 1475 Hwy 231                  | Hazel Green  | AL | 35750 | Manhogany Properties          | 11/21/2022 | 2/26/20  |
|               | 4150 Goodman Rd               | Horn Lake    | MS | 38637 | Cinco Aguilas Development LLC | 5/5/2023   | 4/1/20   |
|               | 8612 Hwy 51 N                 | Millington   | TN | 38053 | Cinco Aguilas Development LLC | 6/23/2023  | 5/30/20  |
|               | 789 Business Park Dr          | Prattville   | AL | 36066 | Cinco Aguilas Development LLC | 3/31/2023  | 12/15/20 |
| k             | 9766 Hwy 92                   | Woodstock    | GA | 30188 | Cinco Aguilas Development LLC | 6/9/2022   | 12/30/20 |
| othy Rd       | 3201 Atlanta Hwy              | Athens       | GA | 30606 | Cinco Aguilas Development LLC | 2/27/2023  | 11/15/20 |
| /             | 3576 Austin Peay Highway      | Memphis      | TN | 38128 | Cinco Aguilas Development LLC | 4/1/2024   | 12/30/20 |
|               | 1863 Main St.                 | Madison      | MS | 39110 | Cinco Aguilas Development LLC | 3/20/2024  | 11/30/20 |
|               | 789 Business Park Dr          | Prattville   | AL | 36066 | Cinco Aguilas Development LLC | 4/17/2023  | 9/29/20  |
|               | 23065 John Reid Pkwy          | Scottsboro   | AL | 35769 | Mahogany Properties           | 8/1/2022   | 7/31/20  |
|               | 1130 University Blvd          | Tuscaloosa   | AL | 35401 | Cinco Aguilas Development LLC | 4/2/2023   | 9/22/20  |
| oplar         | 3294 Poplar Ave               | Memphis      | TN | 38111 | BWW 18.002 Memphis LLC        | 1/26/2021  | 8/11/20  |
| 'hitten Roar  | 1998 Whitten Road             | Memphis      | TN | 38133 | BWW 19.005 Kirby LLC          | 2/22/2021  | 1/3/20   |
| ls            | 7525 NW 33 Rd                 | Davie        | FL | 33024 | Town of Davie                 | 11/1/2023  | 11/18/20 |
| ation         | 2075 Periwinkle Way Unit #35  | Sanibel      | FL | 33957 | Congress Jewelers             | 3/11/2024  | 11/26/20 |
|               |                               |              |    |       |                               |            |          |



TOWN of FORT MYERS BEACH

Not Applicable / None

BID NO. ITB-25-04-PR

**FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

NOTE: This form must be signed by the person who will sign or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S  
NAME: \_\_\_\_\_  
EST. DOLLAR VALUE OF PROPOSED  
WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_  
EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_  
EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_  
EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ \_\_\_\_\_

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: \_\_\_\_\_ %

Persons Services Corp.  
CONTRACTOR NAME

Samanta Viny  
SIGNATURE

June 9, 2025  
DATE

**FMB:019 – PUBLIC ENTITIES CRIME FORM**

(1 of 2 Pages)

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES****THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to Town of Fort Myers Beach  
(Print name of public entity)  
by Samantha Vincenty  
(Print individual's name and title)  
for Persons Services Corp.  
(Print name of entity submitting sworn statement)  
whose business address is 1835 S. Perimeter Rd, suite 175  
Fort Lauderdale, FL 33309

and (if applicable) its Federal Employer Identification Number (FEIN) is 63 - 1237523  
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:  
\_\_ - \_\_ - \_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
- A. A predecessor or successor of a person convicted of a public entity crime; or

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person.



**FMB:019 – PUBLIC ENTITIES CRIME FORM**

(2 of 2 Pages)

- B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

☒ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)





I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

*Samantha Vincent*

(Signature)

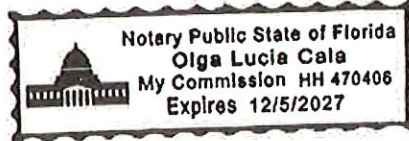
STATE OF FLORIDA )  
COUNTY OF BROWARD

SWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by means of ☒ physical presence or ( ) online notarization, personally appeared SAMANTHA VINCENT as REG GENERAL MANAGER of PERSONS SERVICES CORP

☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

*[Signature]*  
Notary Public Signature

My commission expires:



**FMB:021 – NON-COLLUSION AFFIDAVIT**State of Florida )County of Broward )

\_\_\_\_\_ being first duly sworn, deposes and says that:

- 1) He/she is the Representative, (Owner, Partner, Officer, Representative or Agent) of Persons Services Corp., the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

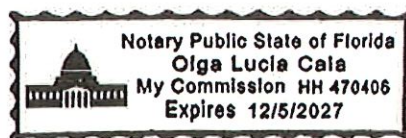
By: *Samantha Vincenty*Samantha Vincenty

(Printed Name)

**ACKNOWLEDGEMENT**STATE OF FLORIDA )COUNTY OF BROWARD

SWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by means of (☒) physical presence or ( ) online notarization, personally appeared SAMANTHA VINCENTY as REG GENERAL MANAGER of PERSONS SERVICES CORP

(☒) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.



My commission expires:

Notary Public Signature *Olga Lucia Cala*



**FMB:022 – TRENCH SAFETY AFFIDAVIT**

(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

BIDDER acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The BIDDER further identifies the costs as follows:

Trench Safety Item: Trench safety for underground utilities where applicable.  
(Description)

One thousand dollars and 00/100.  
(Cost written in words)

TOTAL \$ 1,000.00

**FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE**

COMPANY NAME: Persons Services Corp.

DATE: June 9, 2025

BY:   
(Signature)

(Print Name)

Samantha Vincenty

**FMB:023 – MATERIALS MANUFACTURERS LIST**

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The BIDDER is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, BIDDER shall furnish the manufacturer named in the TOWN'S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

Bay Oaks Recreational Campus Redevelopment Project

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The BIDDER lists the following manufacturers of the major equipment (LIST)

| <u>MATERIAL</u>                     | <u>MANUFACTURER</u>         |
|-------------------------------------|-----------------------------|
| 1. <u>Underground water piping.</u> | <u>Ferguson Waterworks.</u> |
| 2. <u>Concrete supplier.</u>        | <u>Cemex Fort Myers.</u>    |
| 3. _____                            | _____                       |
| 4. _____                            | _____                       |
| 5. _____                            | _____                       |
| 6. _____                            | _____                       |

Signed \_\_\_\_\_

*Samantha Ung*

Name of BIDDER Persons Services Corp.

**FMB:024 - LIST OF SUB-CONTRACTORS**

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any BIDDER who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the BIDDER/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:  
Town of Fort Myers Beach

The BIDDER identifies the following firm as the proposed subcontractor of the:  
Bay Oaks Recreational Campus Redevelopment Project

Name of Firm: Persons Services Corp.

Address and Phone: 1835 S. Perimeter Rd, suite 175, Fort Lauderdale, FL 33309, Phone: 954-616-5106

Contact Person: Samantha Vincenty

| <u>Other Subcontractor and Address</u>                                                | <u>Specialty</u>             |
|---------------------------------------------------------------------------------------|------------------------------|
| 1. <u>ICS Materials, Inc. 16301 Palm Beach Blvd. Unit 3,</u><br><u>Alva, FL 33920</u> | <u>Site/Civil Contractor</u> |
| 2. _____                                                                              | _____                        |
| 3. _____                                                                              | _____                        |

Signed





### FMB:25 –EQUIPMENT SCHEDULE

\* \_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\* \_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\* \_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

NOTE: Provide separate tables for each type of equipment including name and manufacturer. Use separate lines for each major item. Use additional pages if necessary.



**FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT**BID NO: ITB-25-04-PRPROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT  
PROJECTPROJECT

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Persons Services Corp.

Samantha Viny  
(Signature)

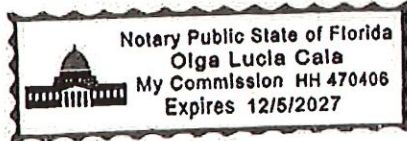
Reg. General Manager June 9, 2025  
(Title) (Date)

STATE OF FLORIDA)  
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by means of ☒ physical presence or ( ) online notarization, personally appeared SAMANTHA VINY as REG. GENERAL MANAGER of PERSONS SERVICES CORP

☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

My commission expires:



[Signature]  
NOTARY PUBLIC – State of Florida

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**



## ADDENDUM TO PROPOSAL

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ITB-25-04-PR

Addendum No.: 1

PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT

Date of Issue: May 15, 2025

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The following inquiries were received regarding the above reference RFP:

Q. Requesting Plans and Specifications.

A. Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.

Q. Site Visits

A. Site Visits are available from 8:30am to 4:30pm weekdays, no appointment necessary.

Address: 2731 Oak St, Fort Myers Beach FL 33931

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Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature: \_\_\_\_\_



## ADDENDUM TO PROPOSAL

ITB-25-04-PR

Addendum No.: 2

**PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**

**Date of Issue: May 28, 2025**

The following inquiries were received regarding the above reference ITB:

**Q.** Request for drawings

**A.** Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.

**Q.** Can you clarify whether the installation of the pickleball courts will be done by others or by the awarded contractor.

**A.** The awarded contractor is responsible.

**Q.** Site drawing shows sidewalks and milling, are they part of the scope?

**A.** No, the scope includes irrigation, sod, pickleball courts and a loop trail.

Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature: 





**ADDENDUM TO PROPOSAL**

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**ITB-25-04-PR**

**Addendum No.: 1**

**PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**

**Date of Issue: May 15, 2025**

---

**The following inquiries were received regarding the above reference RFP:**

**Q. Requesting Plans and Specifications.**

**A. Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.**

**Q. Site Visits**

**A. Site Visits are available from 8:30am to 4:30pm weekdays, no appointment necessary.**

**Address: 2731 Oak St, Fort Myers Beach FL 33931**

---

Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature: \_\_\_\_\_



## ADDENDUM TO PROPOSAL

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ITB-25-04-PR

Addendum No.: 2

PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT

Date of Issue: May 28, 2025

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The following inquiries were received regarding the above reference ITB:

Q. Request for drawings

A. Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.

Q. Can you clarify whether the installation of the pickleball courts will be done by others or by the awarded contractor.

A. The awarded contractor is responsible.

Q. Site drawing shows sidewalks and milling, are they part of the scope?

A. No, the scope includes irrigation, sod, pickleball courts and a loop trail.

---

Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature: \_\_\_\_\_







## Bay Oaks Redevelopment

### CLARIFICATIONS AND EXCLUSIONS

1. The following costs are specifically excluded:
  - a. Architectural, engineering or design services or fees.
  - b. Expediting or fee costs for civil infrastructure/utilities permitting.
  - c. The design, processing and/or recording of utility easements.
  - d. Permit fees or their expediting costs.
  - e. Governmentally imposed bond premiums, impact or other development fees.
  - f. 3<sup>rd</sup> party testing & inspections, required by the building permit.
  - g. Utility relocation.
  - h. Formal/Off site Dewatering services. (casual dewatering on site is included if needed)
  - i. Underground obstruction removal.
  - j. Pickleball accessories & equipment.
2. The following general clarifications apply:
  - a. Costs to address unforeseen conditions, unique soils, extreme site compaction needs or deleterious materials encountered have not been included.
  - b. Contractor has not included costs associated with demolition or removal of above or below grade structures, piping or removal or relocation of existing monitoring wells.
  - c. Costs to address unforeseen or unidentified utilities, conduits or services encountered below grade have not been included. In general, abandoned utilities or other construction shall remain in place buried within the new work wherever practical.
3. Scope of work included is exclusively limited to the following:
  - a. Hydro seed field area in lieu of sod due to time of year.
  - b. Construct (4) outdoor pickleball courts. Allowance of \$38,000 per court has been included.
  - c. Install walking trail utilizing crushed shell or other most cost effective material.
  - d. Install underground empty conduit for future pickleball area court lighting. (1) 3" conduit up to 100' LF in length included.
  - e. Install and cap underground water line to pickleball court area for future drinking fountain. (1) ½" water line up to 100' LF in length included.

# PERSONS

## SERVICES CORP.



Response to Solicitation

## FORT MYERS BEACH

# Bay Oaks Recreational Campus Redevelopment Project

Due: June 9, 2025 – 12:30 pm

Point of Contact:

Samantha Vincenty

[svincenty@personsservices.com](mailto:svincenty@personsservices.com)

954-290-8075



June 9, 2025

Town of Fort Myers Beach  
2731 Oak Street  
Fort Myers Beach, FL 33931

Re: ITB-25-04-PR

On behalf of Persons Services Corp., I am pleased to submit this Response to the Town of Fort Myers Beach.

Persons Services Corp. (PSC) stands out as a Construction Management and General Contracting firm with over 45 years of experience managing global construction, infrastructure, industrial, and disaster recovery programs. Our team's unique blend of expertise and experience has enabled us to successfully complete demolition and construction projects for Florida's public and private sectors. We take pride in our reputation for delivering safe, high-quality, and performance-driven work.

Upon reviewing PSC's credentials, proven experience, and comprehensive internal capabilities, we are confident that you will appreciate how we have been able to serve some of the most demanding owners continually and have remained in business for over four decades. PSC is the ideal company to serve you as Construction Manager for the Bay Oaks Recreational Campus Redevelopment Project.

I, Samantha Vincenty, certify that the ITB documents have been thoroughly reviewed and acknowledged. I affirm that all information in this submittal is complete and accurate. We have the necessary personnel, equipment, and time to ensure this commitment is unwavering.

Sincerely,

A handwritten signature in black ink, appearing to read "Samantha Vincenty", written in a cursive style.

Samantha Vincenty  
Regional General Manager | 954-616-5106 x339  
[svincenty@personsservices.com](mailto:svincenty@personsservices.com)  
[www.personsservices.com](http://www.personsservices.com)

***Persons Services Corp.***

**FMB:001 - BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we

Persons Services Corp. as Principal, and  
(BIDDER'S Name)United States Fire Insurance Company a Corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto TOWN OF FORT MYERS BEACH TOWN COUNCIL, LEE COUNTY, FLORIDA, a Florida municipal corporation,

in the SUM OF \$ Five percent of total bid amount

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this 9th day of June, 2025

WHEREAS, said Principal is herewith submitting a Bid Proposal for the construction of:

**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT  
ITB-25-04-PR**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the TOWN and provide other Insurance as may be required to the TOWN within such time period as the TOWN may allow, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said TOWN in money the difference between the amount of the Bid of said Principal and the amount for which said TOWN may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said TOWN if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal

By: Witness Signature

Witness as to Surety

By: Witness SignatureO. McCrary Otts, IVPersons Services Corp.

Principal

Samantha VungUnited States Fire Insurance Company

Surety's Name

O. McCrary Otts, IV

By: As-Attorney-in-Fact, Surety

Affix Corporate Seals and attach proper Power of Attorney for Surety.

**POWER OF ATTORNEY  
UNITED STATES FIRE INSURANCE COMPANY  
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

12436

**KNOW ALL MEN BY THESE PRESENTS:** That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

J. William Goodloe, III, O. McCrary Otts, IV, Charlene C. Stout, Katherine H. Gilmore

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties: **Fifty Million Dollars (\$50,000,000)**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

**IN WITNESS WHEREOF**, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 28th day of September, 2021.

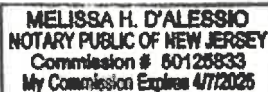
**UNITED STATES FIRE INSURANCE COMPANY**



State of New Jersey }  
County of Morris }

Matthew E. Lubin, President

On this 28th day of September, 2021, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.



Melissa H. D'Alessio (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 9<sup>th</sup> day of June 20 25

**UNITED STATES FIRE INSURANCE COMPANY**



Michael C. Fay, Senior Vice President





**FMB:003 - OFFICIAL BID FORM**

(1 of 5 Pages)

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FOR

BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT

ITB-25-04-PR

Bids are to be submitted by

**Monday, June 9, 2025 @ 12:30 P.M. LOCAL TIME**

to:

**TOWN OF FORT MYERS BEACH  
VIA DEMANDSTAR.COM**

**BID OPENING:**

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

**Monday, June 9, 2025 @ 1:00 P.M. LOCAL TIME**

BIDDER: Persons Services Corp.  
(Individual or Firm Name)





**FMB:003 - OFFICIAL BID FORM**  
(2 of 5 Pages)

**Monday, June 9, 2025**  
(DATE)

**12:30 PM LOCAL TIME**  
(TIME)

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

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

**BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT  
ITB-25-01-PR**

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
  - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
  - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent

**FMB:003 - OFFICIAL BID FORM**

(3 of 5 Pages)

(100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.

- (c) In the event of any conflict between the Invitation to Bid and Ordinance 24-11, the provisions of the ordinance will prevail. A copy of ordinance 24-11 is available on the TOWN'S website.

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: May 15, 2025 Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. 2 Dated: May 28, 2025 Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 75 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 90 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.

**FMB:003 - OFFICIAL BID FORM**

(4 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Vincenty, Samantha

(Name of License Holder)

CGC1537916

(State Certificate No.)

Broward County Local Business Tax Receipt

Business Tax Receipt No. (Specify jurisdiction)

180-312717 General Contractor

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this  
9th day of June, 2025.

Samantha Vincenty

By: Printed

By: Signature

TITLE:

Regional General Manager

Company Name

Persons Services Corp.

Mailing Address

1835 S. Perimeter Rd, suite 175, Fort Lauderdale, FL 33309

City, State, and Zip

Samantha Vincenty

Contact Person

svincenty@personsservices.com

E-mail / Contact Person

957-290-8075

Telephone Number

Fax Number

ATTEST:

  
Secretary

(Seal)





## FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(1 of 7 Pages)

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: Persons Services Corp.

☒ CORPORATION - Date of Incorporation: 04/03/2019 State of Florida  
Incorporation: Alabama  
If Out of State Corporation, currently authorized to do business in Florida,  
give date of such authorization: May 21, 2019

☐ PARTNERSHIP - Date of Organization: \_\_\_\_\_ Nature of Partnership: General ☐  
Limited ☐  
Association ☐

☐ INDIVIDUAL - Name and Address of Owner \_\_\_\_\_

☐ JOINT VENTURE - Between \_\_\_\_\_  
Name Title  
And \_\_\_\_\_  
Name Title  
Date of Agreement \_\_\_\_\_

☐ OTHER - Explain \_\_\_\_\_

Parent Company Office Address (if any): \_\_\_\_\_

Principal Office Address: 4474 Halls Mill Rd, Mobile, AL 36693

Name of Project (if applicable): Bay Oaks Recreational Redevelopment Project

Person to Contact: Samantha Vincenty

Title: Regional General Manager

Telephone  
No.: 954-616-5106

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the BIDDER.

1. How many years has your organization been in business as a \_\_\_\_\_ Contractor under your present name?

45

2. Under what other or former names has your organization operated?

None

3. List below your organizations Officers, Owners or Partners:

| NAME               | TITLE     | ADDRESS                              | DATE<br>ASSUMING POSITION |
|--------------------|-----------|--------------------------------------|---------------------------|
| Paul F Persons, Jr | President | 4474 Halls Mill Rd, Mobile, AL 36693 | 4/3/2012                  |
| Paul Stevens       | Partner   | 10280 NW 52nd Ter, Doral, FL 33178   | 2019                      |
|                    |           |                                      |                           |
|                    |           |                                      |                           |
|                    |           |                                      |                           |

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(3 of 7 Pages)

4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

| JURISDICTION | TRADE | STATE CERT. NO. | TOWN'S COMP NO. | STATE REG. NO. | TOWN'S OCC. LIC. NO. | STATE PERMIT | EXPIRE DATE |
|--------------|-------|-----------------|-----------------|----------------|----------------------|--------------|-------------|
|              |       |                 |                 |                |                      |              |             |
|              |       |                 |                 |                |                      |              |             |
|              |       |                 |                 |                |                      |              |             |
|              |       |                 |                 |                |                      |              |             |

5. List jurisdictions in which your organization's partnership or trade name is filed:

N/A

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it?

YES ☐ NO ☒

See Sheet No. \_\_\_\_\_

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES ☐ NO ☒

See Sheet No. \_\_\_\_\_

6.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?

YES ☐ NO ☒

See Sheet No. \_\_\_\_\_

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another?

YES ☐ NO ☒

If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project?

YES ☐ NO ☒

If so, state the name of the individual, other organization, when, where and the reason therefore:



**FMB:004 - CONTRACTER QUALIFICATION QUESTIONNAIRE**

(4 of 7 Pages)

9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified BIDDER or Qualified BIDDER for construction contracts? YES ☐ NO ☒
- If so, for what type of work? \_\_\_\_\_
- Give details and reason: \_\_\_\_\_
10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:
- Our total number of teammates is 277
- (use extension sheet if necessary and reference sheet number herein: \_\_\_\_\_)
11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
- 11.1 Name and present position or capacity
- 11.2 Years of construction experience, type of work, position or capacity and cost range
- 11.3 Years of related construction experience, type of work, position or capacity and cost range
- 11.4 Brief education and professional registrations (see attached 01)
12. List of type of work normally provided by your own work forces:
- PSC can self-perform the following: Piping Fabrication & Modularization, Plumbing, Mechanical/Process Pipina, HVAC, Plant Maintenance Specialty Tradesmen, Earthwork, Sitework & Underground Utilities.
13. Indicate type of contracting undertaken by your organization and number of years' experience:
- As General Contractor 41 Years Commercial Type
- As Sub-Contractor 49 Years Industrial Plumbing / Civil Type
14. Attach the prime construction contracts your organization has underway on this date 04/30/2025
- The list shall include the following information:* (reference sheet numbers herein: \_\_\_\_\_)
- 14.1 Project Title and Location
- 14.2 Contractor or Sub-Contractor
- 14.3 Contract Amount and Date of Contract
- 14.4 Percent of Project Constructed by Sub-Contractors
- 14.5 Percent Complete
- 14.5 Project Manager or Superintendent
- 14.6 Required Completion Date
- 14.7 Name, Address and Telephone Number of Owner
- 14.8 Designing Architect/Engineer and Address (see attached 02)

**FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE**

(5 of 7 Pages)

15. Attach a list of the no fewer than five (5) prime construction contracts involving construction projects similar to this Project, specifically within the influence of tidal currents, completed in the past seven (7) years by your organization.

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 15.1 Project Title, Location, and Brief Description of Work Performed
- 15.2 Contractor or Sub-Contractor
- 15.3 Contract Amount and Date of Contract
- 15.4 Percent of Project Constructed by Sub-Contractors
- 15.5 Date Complete
- 15.6 Project Manager or Superintendent
- 15.7 Required Completion Date
- 15.8 Name, Address and Telephone Number of Owner
- 15.9 Designing Engineer and Address
- 15.10 Volume, Pump Distance, Monthly Production Rate (see attached 03)

16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed. **None**

*The list shall include the following information: (reference sheet numbers herein:\_\_\_\_\_)*

- 16.1 Project Title and Location
- 16.2 Contractor or Sub-Contractor
- 16.3 Original Contract Amount and Date
- 16.4 Final Contract Amount
- 16.5 Percent of Project Constructed by Sub-Contractors
- 16.6 Project Manager or Superintendent
- 16.7 Required Completion Date
- 16.8 Name, Address and Telephone Number of Owner
- 16.9 Town Sponsoring Department

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

United States Fire Insurance Co - Address: P.O. Box 160927, Mobile, AL 36616  
Contact Name: McCrary Otts - motts@higginbotham.com - (251) 473-4600

19. List no less than three (3) and preferably five (5) financial references:

Regions Bank - Mobile, AL - Scottie Green - VP - scottie.green@regions.com - (251) 391-1486  
Beard Equipment Co - Mobile, AL - Brandon Cruthirds - bcruthirds@beardequipment.com - (251) 456-1993  
Consolidated Pipe - Houston, TX - James Shelton - james.shelton@cspipe.com - (281) 214-7060  
Mike Hoffman's Equipment Service - Buffy Singley - buffy@hoffmanpetroleum.com - (251) 666-8994



## FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(6 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?

USA POB \$17,000,000.00

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?

Largest Project \$30,000,000.00Dated at Fort Lauderdale this 9 day of June 2025Persons Services Corp.

Name of Organization

BY:

Regional General Manager

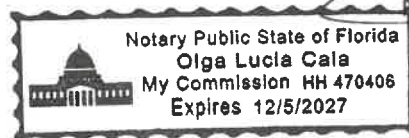
Title of Person Signing

(if Corporation Affix Corporate Seal)

STATE OF FLORIDA )

COUNTY OF LEE )BROWARDSWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE,2025, by means of ☒ physical presence or ( ) online notarization, personally appeared \_\_\_\_\_SAMANTHA VINCENTY as REG GENERAL MGR of PERSONS SERVICES CORP☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

My commission expires:

  
NOTARY PUBLIC - State of Florida



# SAMANTHA VINCENTY

## General Manager

Samantha has more than 20 years of management experience in the construction industry. She is a talented team lead, providing operations, estimating, scheduling, team building, and management support to complex projects with rigorous deadlines. She has numerous years of experience with Higher Education construction and CMAR project delivery.

Based out of PSC's Fort Lauderdale Office, Samantha supports her project management teams with unfettered access to any corporate resources needed to deliver projects at the highest level of customer satisfaction.

### BACKGROUND

#### EDUCATION

Wester Governor's  
University, MBA, Healthcare  
Management

City University of New York,  
BA, Communications

#### YEARS EXPERIENCE

Industry – 20

#### CERTIFICATIONS

LEED Accredited  
OSHPPD & AHCA

### EXPERIENCE – PROJECT MANAGER

#### GFI CAPITAL RESOURCES

The Ritz-Carlton Residences  
The Villa Collection  
Miami Beach, FL

#### HUDSON CAPITAL GROUP

Quay Plaza  
Fort Lauderdale, FL

#### AD1 GLOBAL

Fairfield Inn & Suites  
Tamarac, FL

#### CITY OF POMPANO BEACH

Ali Cultural Center  
Pompano Beach, FL

#### JACKSON MEMORIAL

Labor + Delivery OR Remodel  
Miami, FL

#### MIAMI DADE COLLEGE

MDC West Campus  
Doral, FL

#### RIVERSIDE HOTEL

Spa + Amenities Center  
Miami Beach, FL

#### TOWN OF DAVIE

Boys & Girls Club Reno  
Davie, FL

#### TOWN OF JUPITER

City Hall Phase II  
Jupiter, FL

#### CITY OF TAMARAC

Colony West Clubhouse/  
Cart Barn  
Tamarac, FL



# BILLY MARTIN, JR.

## General Superintendent

Billy has more than 30 years of experience in the construction industry. His diverse portfolio of successful commercial and industrial projects includes New School Facilities, Office Complexes, Medical Facilities, Detention Centers, Mixed-Use Retail Construction, Aviation, Multi-Family, and Hospitality among others.

Solution-oriented, Mr. Martin is highly experienced in site logistics, job site quality, scheduling, labor relations, and customer management.

As General Superintendent, Billy provides day-to-day team leadership, ensuring projects are completed on time and in line with quality and safety standards.

### BACKGROUND EXPERTISE

- Institutional Facility Construction
- Education Facility Construction
- Site Safety
- OSHA Compliance
- Labor Force Coordination
- Planning and Scheduling
- Budget Administration
- Field Management

### CERTIFICATIONS

- AGC Certification
- OSHA 30-Hour
- OSHA 10-Hour
- OSHA 1926 Review Training, Project Accident Investigation
- Construction Education Foundation Inc. 30-Hour Safety Training
- MSHA Safety Training
- Quoin Stormwater Management
- McCarthy Building Management and Leadership
- Certified Lead Testing and Abatement
- Crane and Rigging Safety
- Confined Space Training

### EXPERIENCE

#### CITY OF DAPHNE

Daphne Justice Center  
Daphne, AL

#### DFW INTERNATIONAL AIRPORT

Terminal D Expansion  
Dallas, TX

#### BLUE CROSS BLUE SHIELD

Corporate Headquarters  
Richardson, TX

#### BALDWIN COUNTY SCHOOL BOARD

Robertsdale High School Addition  
Robertsdale, AL

#### CYPRESS-FAIRBANKS INDEPENDENT SCHOOL DISTRICT

Cypress Fairbanks ISD High School  
Cypress, TX

#### AIRPORT AUTHORITY OF THE CITY OF GULF SHORES

Gulf Shores Airport New Terminal  
Gulf Shores, AL

#### DALLAS COUNTY

Detention Center S. Tower  
Dallas, TX

#### DALLAS COUNTY

Southwestern Institute of Forensic Sciences (SWIFS)  
Dallas, TX

**PERSONS**

**SERVICES CORP.**



# JASON OTTILIGE

## Project Manager

Jason Ottilige is a seasoned Construction Project Manager with over 20 years of experience in disaster response and six years in construction management. His responsibilities include overseeing all phases of construction projects, from planning and budgeting to execution and closeout. He coordinates subcontractors, manage schedules and costs, ensure quality and safety standards are met, and serves as the primary liaison between clients, architects, and field teams to ensure timely, successful project delivery.

At Persons Services Corp., Jason oversees multiple residential and commercial reconstruction projects, including resorts, storage facilities, and condominiums. Jason excels at coordinating vendors, managing budgets, creating construction schedules, and ensuring quality execution from planning to completion.

His background in emergency operations equips him with strong leadership, logistical coordination, and problem-solving skills, making him a reliable asset for complex, high-pressure construction environments.

## EXPERIENCE

### PINK SHELL RESORT & MARINA

Hurricane Hospitality Renovation  
Fort Myers Beach, FL

### FLORIDA COMMERCE

Rebuild FL CDBG-DR Hurricane Ian  
South Florida

### METRO STORAGE

Hurricane Commercial Renovation  
Tamiami, FL

### CONGRESS JEWELERS

Hurricane Commercial Build Back  
Sanibel, FL

### BEACHAVEN ASSOC.

Hurricane Residential Renovation  
Siesta Key, FL

### ISLAND BREEZE CONDO

Hurricane Residential Renovation  
Fort Myers Beach, FL

## BACKGROUND YEARS EXPERIENCE

Industry – 20

## CERTIFICATIONS

- ICS – 100 Certified
- ICS – 200; 800.b
- IS-00100.b; 00120.a;  
00130; 00200.b; 00899.b
- NIMS Certified IS-  
00700.a
- Radiological Emergency  
management IS-0003
- TS10 Debris Management
- TS27 Logistics Operations
- OSHA 10, 30, 40  
HAZWOPER
- ATTSA Traffic Control  
Course
- Qualified Stormwater  
Management Inspector  
Certified







# Kenneth Temple

Superintendent

Kenneth Temple is a seasoned Construction Superintendent with over 30 years of experience managing commercial and residential projects from ground-up construction to high-end renovations. His project portfolio includes multi-story condominiums, hotels, restaurants, and extensive remodeling work throughout New York, Mississippi, and Florida. Kenneth's areas of expertise include subcontractor coordination, OSHA compliance, site logistics, and quality control. He is known for delivering multimillion-dollar projects on time, within budget, and to the highest standards of craftsmanship.

## BACKGROUND YEARS EXPERIENCE

Industry – 30

## CERTIFICATIONS

- OSHA 30-Hour
- Forklift Extended Reach Safety Training
- AAMA-Certified Window Installer

At Persons Services Corp., Kenneth consistently excels in the daily responsibilities of a construction superintendent, including site supervision, scheduling, and enforcing safety protocols. He ensures projects align with architectural and structural plans, coordinates subcontractors and inspections, and manages material deliveries and staging with precision. His hands-on leadership, attention to detail, and proactive problem-solving keep projects on track while upholding quality standards and fostering strong relationships with clients, vendors, and inspectors.

## EXPERIENCE

### CITY OF DANIA BEACH

Nyberg-Swanson House Renovation  
City of Dania Beach, FL

### FOUR POINTS SHERATON

10-Sotry Hotel Build Out  
Biloxi, MS

### SCORES GENTLEMEN'S & STEAKHOUSE

Restaurant Build Out  
New York, NY

### INN BY THE SEA

75 Unit 5-Story Condominium  
Pass Christian, MS

### TOWN OF JUPITER

City Hall Phase II  
Jupiter, FL

### UNCLE JACKS STEAKHOUSE

Restaurant Build Out  
New York, NY





# SHARLENE ROCA

## Project Administrator

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As Project Administrator, Sharlene is an integral member of the project team responsible for delivering building development projects of varying size and complexity. She is responsible for all aspects of construction and administration alongside accounting.

Utilizing Procore, Sharlene works closely with project leadership to manage financial controls and reporting for the project budget, assembling contracts and change orders. Sharlene excels as a team player with demonstrated interpersonal and organizational skills.

### BACKGROUND

#### EDUCATION

Miami Dade College  
Computer Operations

#### YEARS EXPERIENCE

Industry – 15

### EXPERIENCE

#### MIAMI DADE COLLEGE

MDC West Campus  
Doral, FL

#### MIAMI DADE COUNTY SCHOOLS

International Studies Preparatory  
Academy “ISPA”  
Coral Gables, FL

#### 1116 LOVE STREET LLC

Love Street Mixed-Use  
Jupiter, FL

#### CITY OF POMPANO BEACH, FL

Ali Cultural Center  
Pompano Beach, FL

#### BROWARD COLLEGE

Broward College  
Fort Lauderdale, FL

#### TOWN OF DAVIE

Davie Boys & Girls Club  
Davie, FL

#### CITY OF TAMARAC

Colony West Clubhouse/  
Cart Barn  
Tamarac, FL

#### TOWN OF JUPITER

City Hall Phase II  
Jupiter, FL

## Jobs in Progress for Construction and SEC -04/30/2025

| Job    | Job Name                               | Owner                                   | Architect                            | Project Manager | Contract Date | Contract Amount          | % Comp        | Balance to Comp.        | Comp Date |
|--------|----------------------------------------|-----------------------------------------|--------------------------------------|-----------------|---------------|--------------------------|---------------|-------------------------|-----------|
| GC0112 | JV- Union Hill School                  | Morgan Co Board of Educa.               | McKee & Associates                   | C. Pelletier    | 12/14/22      | \$ 4,161,600.00          | 91%           | \$468,513.15            | 06/14/25  |
|        | Decatur, AL                            | 235 Hwy 67-S Decatur, AL                | 631 S Hull St., Montgomery           |                 |               |                          |               |                         |           |
| GC0137 | Beard Equipment Expansion              | Beard Equipment                         | PSE Desings, Inc                     | C. Elder        | 01/12/24      | \$ 4,934,531.00          | 93%           | \$358,450.12            | 05/15/25  |
|        | 2480 E-I-65 Mobile, AL                 | 2480 E-I-65 Mobile, AL                  | 1000 Hillcrest, Mobile, AL           |                 |               |                          |               |                         |           |
| GC0140 | Kaleo Residence Building               | Kaleo Home Base LLC                     | Dalrymple/Sallis Architecture        | L. Cooke        | 12/11/23      | \$ 20,579,774.00         | 82%           | \$3,614,199.59          | 06/28/25  |
|        | 15229 Mem. Cir., Panama City, FL       | Po Box 567 Conway, AR                   | 503 E Gov. St, Pensacola, FL         |                 |               |                          |               |                         |           |
| GC0144 | Robertsdale HS Addition                | Baldwin County Schools                  | McKee & Associates                   | C. Pelletier    | 02/09/24      | \$ 5,099,350.00          | 88%           | \$613,194.38            | 05/30/25  |
|        | 21630 HWY 59 ,Robertsdale, AL          | 2600 Hand Ave, Bay Minnette AL          | 631 S Hull St., Montgomery           |                 |               |                          |               |                         |           |
| GC0151 | Enterprise SCC-Workforce               | Alabama Community College               | Goodwyn Mills Caywood, LLC           | L. Cooke        | 05/10/24      | \$ 13,360,139.95         | 59%           | \$5,470,175.23          | 08/11/25  |
|        | 600 Plaza Dr, Enterprise AL            | PO Box 1300 Enterprise AL 36331         | 11 N Water St-15250,Mobile, AL       |                 |               |                          |               |                         |           |
| GC0152 | Daphne Justice Center                  | City of Daphne                          | Walcott Adams Verneuille             | C. Pelletier    | 06/18/24      | \$ 5,702,275.51          | 56%           | \$2,502,912.03          | 09/08/25  |
|        | 1502 US Hwy 98 Daphne36526             | 1705 Main St Daphne AL 36526            | One S School Fairhope, AL 36532      |                 |               |                          |               |                         |           |
| GC0153 | Gulf Shores Airport Terminal           | Airport Auth of Gulf Shores             | Barge Design Solutions               | T. Shields      | 07/17/24      | \$ 6,891,826.87          | 90%           | \$712,580.37            | 05/30/25  |
|        | 31900 Airport Gulf Shores AL           | 1155 Commerce GS 36542                  | 2047 W Main St Dothan, AL 36542      |                 |               |                          |               |                         |           |
| GC0154 | Daphne North Elementary                | Baldwin County Schools                  | Lathan Associates Arch PC            | B. Harris       | 07/23/24      | \$ 11,406,523.00         | 52%           | \$5,505,114.93          | 10/25/25  |
|        | 2307 Main St Daphne AL 36526           | 2600 Hand Ave, Bay Minnette AL          | 300 Chase Park S Hoover, AL 36507    |                 |               |                          |               |                         |           |
| GC0156 | JV-Rainbow City Rec Center             | City of Rainbow City                    |                                      |                 | 09/01/24      | \$ 7,605,287.00          | 37%           | \$4,785,127.58          | 10/25/25  |
|        | 4412 Rainbow Dr RC AL35906             | 3700 Rainbow Drive                      |                                      |                 |               |                          |               |                         |           |
| GC0159 | Discount Tires -Daphne                 | Halle Properties LLC                    | Plump Engineering, Arch.             | B. Corrigan     | 02/01/25      | \$ 3,325,286.63          | 39%           | \$2,023,742.29          | 07/25/25  |
|        | 7050-US-90, Daphne AL 36526            | 20225 N Scottdale AZ 85255              | 914 E. Katella Ave, Anaheim CA       |                 |               |                          |               |                         |           |
| GC0160 | Mobile Aquatics Center                 | Mobile County Commission                | Williamson Blackstock Arch           | B. Harris       | 09/06/24      | \$ 23,151,607.00         | 33%           | \$15,421,987.36         | 04/07/26  |
|        | 3725 Halls Mill Rd Mobile AL           | 205 Gover.St Mobile, AL 36644           | 2204 1st AS Birmingham AL 35233      |                 |               |                          |               |                         |           |
| GC0162 | Discount Tires D'Iberville             | Halle Properties LLC                    | Plump Engineering, Arch.             | B.Corrigan      | 10/05/24      | \$ 3,307,100.95          | 71%           | \$974,580.45            | 05/07/25  |
|        | 4034 Promenade Pkwy MS                 | 20225 N Scottdale AZ 85255              | 914 E. Katella Ave, Anaheim CA       |                 |               |                          |               |                         |           |
| GC0163 | USA Marching Band Building             | University of South Alabama             | Stacy Norman Architects, LLC         | L. Cooke        | 10/10/24      | \$ 87,146,602.66         | 29%           | \$6,201,919.48          | 01/04/26  |
|        | 307 Univer. Mobile AL 36688            | 307 Univer. Mobile AL 36688             | 126 Tichenor Auburn AL 36830         |                 |               |                          |               |                         |           |
| GC0165 | Jason Pilger Chevrolet                 | Apogee Properties LLC                   | Maurin Architecture, PC              | T. Robinson     | 01/15/25      | \$ 1,423,012.53          | 67%           | \$467,315.01            | 05/15/25  |
|        | 406 E. Nashville Ave, Atmore, AL 36502 | 406 E. Nashville Ave, Atmore, AL 36502  | 601 St Anthony St, Mobile, AL 36603  |                 |               |                          |               |                         |           |
| GC0166 | Discount Tires Hattiesburg             | Halle Properties LLC                    | WSP USA, Inc                         | Corrigan        | 02/25/25      | \$ 3,928,536.23          | 18%           | \$3,243,951.43          | 05/15/26  |
|        | 6354 US Hwy 98,Hattiesburg, MS 39401   | 20225 N Scottdale AZ 85255              | 1226 West Washington, Temple AZ      |                 |               |                          |               |                         |           |
| GC0167 | Gulf Shores Justice Center             | City of Gulf Shores Alabama             | Police Facility Design Group         | B. Harris       | 03/01/25      | \$ 20,987,223.00         | 6%            | \$19,703,421.50         | 06/03/26  |
|        |                                        | 1905 West 1st St. Gulf Shores, AL 36547 | 500 Grand Blvd. Kansas City MR 64106 |                 |               |                          |               |                         |           |
| GC0168 | Novelis Hot & Cold Mill                | Novelis                                 |                                      | L.Cooke         | 05/01/25      | \$ 48,207,461.71         | 4%            | \$46,341,913.65         | 04/15/26  |
|        | Bay Minette Plant, Alabama             | 15944 Bay Minette, AL 36507             |                                      |                 |               |                          |               |                         |           |
| GC0169 | Medical Village Storm Pond             | City of Gulf Shores Alabama             | Police Facility Design Group         | B. Harrtis      | 04/01/25      | \$ 334,584.80            | 28%           | \$251,628.82            | 07/26/25  |
|        |                                        | 1905 West 1st St. Gulf Shores, AL 36547 | 500 Grand Blvd. Kansas City MR 64106 |                 |               |                          |               |                         |           |
|        |                                        |                                         |                                      |                 |               |                          |               |                         |           |
|        | <b>TOTALS</b>                          |                                         |                                      |                 |               | <b>\$ 271,218,138.04</b> | <b>56.00%</b> | <b>\$118,409,098.55</b> |           |

## SEC

|        |                             |                             |  |       |          |                 |     |              |          |
|--------|-----------------------------|-----------------------------|--|-------|----------|-----------------|-----|--------------|----------|
| FL2401 | Nyberg-Swanson House        | City of Dania Beach         |  | T.Fay | 08/05/24 | \$ 1,245,053.00 | 95% | \$219,246.20 | 03/15/25 |
|        | 102 W Dania Beach, FL 33004 | 100 W Dania Beach, FL 33004 |  |       |          |                 |     |              |          |

|        |                                           |                                           |                              |          |          |                         |            |                       |          |
|--------|-------------------------------------------|-------------------------------------------|------------------------------|----------|----------|-------------------------|------------|-----------------------|----------|
| FL2402 | Town Hall Phase II                        | Town of Jupiter                           |                              | T. Fay   | 08/19/24 | \$ 3,046,124.00         | 52%        | \$1,441,620.00        | 03/21/25 |
|        | 210 Military Trail, Jupiter FL 33458      | 210 Military Trail, Jupiter FL 33458      |                              |          |          |                         |            |                       |          |
| FL2403 | Ali Cultural Center                       | City of Pompano Beach                     |                              | T.Fay    | 02/25/25 | \$ 1,239,718.00         | 0%         | \$1,239,871.00        | 08/07/25 |
|        | 353 Hammondville, Pompano Beach, FL 33061 | 100 West Atlantic Blvd. Pompano, FL 33060 |                              |          |          |                         |            |                       |          |
| VI2301 | USVI- Corrections Modular                 | Govern. Of Virgin Islands                 | Division of Engineering      | C. Elder | 10/01/23 | \$ 555,288.00           | 90%        | \$54,915.00           | 03/15/25 |
|        | RR 1 Box 9955,Kinghili, VI                | 8201 Dub Base, St. Thomas VI              | 6002 Est Anna, Christian. VI |          |          |                         |            |                       |          |
| VI2302 | USVI- Fire Station Project                | Virgin Island Fire Services               | Jaredina Design Group        | C. Elder | 11/20/23 | \$ 5,838,915.00         | 25%        | \$4,384,606.00        | 03/26/26 |
|        | 331 Con Grove, St Croix, VI               | 3019 Orange Grove,St.Croix VI             | #33 Drongigens St. Thomas VI |          |          |                         |            |                       |          |
|        | <b>TOTALS</b>                             |                                           |                              |          |          | <b>\$ 11,925,098.00</b> | <b>38%</b> | <b>\$7,340,258.20</b> |          |

**Past Project Experience for Construction**

As of 05/14/2025

| Project Name                         | Address                     | City           | ST. | Zipcode | Owner                            | Start Date | End Date   | Total Contract  |
|--------------------------------------|-----------------------------|----------------|-----|---------|----------------------------------|------------|------------|-----------------|
| Alabama Shipyard                     | 600 Dunlap Drive            | Mobile         | AL  | 36602   | Alabama Shipyards                | 10/6/2021  | 1/30/2023  | \$3,916,868.72  |
| Baldwin County Material Recovery     | 14716 County Rd 49          | Summerdale     | AL  | 36580   | Baldwin County Commission        | 7/1/2024   | 3/30/2025  | \$20,185,780.91 |
| Bishop State Landscape and Hardscape | 351 North Broad St          | Mobile         | AL  | 36602   | Bishop State Community Collage   | 7/13/2022  | 1/19/2023  | \$495,948.80    |
| Bishop State-SW Campus               | 351 North Broad St          | Mobile         | AL  | 36610   | Bishop State Community Collage   | 3/1/2023   | 7/31/2024  | \$13,845,990.00 |
| Burnham Vital Care                   | 2724 Old Shell Road         | Mobile         | AL  | 36607   | Burnham Vital Care               | 1/17/2022  | 6/14/2022  | \$365,342.55    |
| Century Car Wash - West Memphis      | 245 W Broadway              | West Memphis   | AR  | 72301   | Century One LLC                  | 6/13/2022  | 5/31/2023  | \$2,203,599.74  |
| Century Car Wash-Hernando            | 2660 Mcingvale              | Hernando       | MS  | 38632   | Century One LLC                  | 1/15/2023  | 11/7/2023  | \$2,640,548.51  |
| Century Car Wash-Senatobia           | 328 E Main St               | Senatobia      | MS  | 38668   | Century One LLC                  | 12/29/2022 | 2/15/2023  | \$50,972.19     |
| Century One - Covington, TN          | HWY 51 & Robins Rd          | Covington      | TN  | 38019   | Century One LLC                  | 12/23/2019 | 6/21/2020  | \$1,442,013.39  |
| Century One Car Wash - Horn Lake, MS | 1700 Goodman Road West      | Horn Lake      | MS  | 38637   | Century One LLC                  | 10/19/2020 | 4/9/2021   | \$1,808,902.48  |
| Century One Car Wash - Southaven, MS | 1101 Church Rd              | Southaven      | MS  | 38671   | Century One LLC                  | 3/2/2020   | 8/17/2020  | \$1,695,486.00  |
| Century One Car Wash - Winchester    | 7050 Winchester Road        | Memphis        | TN  | 38215   | Century One LLC                  | 5/20/2021  | 11/17/2021 | \$1,869,017.68  |
| Century One Car Wash- Shelby         | Shelby/Ross Road            | Memphis        | TN  | 38017   | Century One LLC                  | 6/6/2023   | 6/30/2024  | \$2,165,176.36  |
| Comfort Suites                       | 29450 N. Main St            | Daphne         | AL  | 36526   | Moal Associates                  | 3/9/2022   | 1/23/2023  | \$2,250,873.90  |
| Consolidated Pipe- New Addition      | 4474 Halls Mill Road        | Mobile         | AL  | 36693   | Consolidated Pipe & Supply       | 10/21/2022 | 2/14/2023  | \$225,869.60    |
| Dash Car Wash                        | 2415 E. University Dr       | Auburn         | AL  | 36830   | Dash Express Auburn LLC          | 4/1/2019   | 12/2/2019  | \$1,125,641.00  |
| Dauphin Island Sea Lab               | 101 Bienville Blvd          | Dauphin Island | AL  | 36528   | Marine Envrion Sciences          | 10/15/2021 | 9/21/2022  | \$905,356.74    |
| Dollar Tree Distribution Center      | 15203 Lillja Road           | Houston        | TX  | 77396   | WT Byler CO                      | 6/8/2019   | 6/30/2020  | \$4,050,185.30  |
| Dr. Park Medical Office              | 3700 Dauphin St             | Mobile         | AL  | 36608   | MPRSD Properties                 | 12/14/2020 | 11/3/2021  | \$1,817,743.84  |
| Ed's Seafood Shed                    | 6450 US Hwy 90 Suite J      | Spanish Fort   | AL  | 36527   | PP Hospitality Group LLC         | 1/15/2023  | 3/21/2023  | \$194,207.36    |
| Elberta High School                  | 13366 Illinois Street       | Elberta        | AL  | 36530   | Baldwin County Schools           | 1/5/2024   | 11/8/2024  | \$6,099,440.00  |
| Express Wash                         | Vaughn Street               | Montgomery     | AL  | 36529   | Express Wash On Vaughn           | 5/4/2022   | 10/16/2023 | \$2,654,186.79  |
| Family Dollar - Spencer              | 250 Taft Drive              | Spencer        | TN  | 38585   | Farmer & Associates              | 9/19/2022  | 5/31/2023  | \$862,007.71    |
| Family Dollar - Steinhatchee         | 115 S 15th Ave              | Steinhatchee   | FL  | 32359   | Farmer Ranier Steinhatchee LLC   | 4/12/2021  | 11/1/2021  | \$813,676.69    |
| Family Dollar- Asheboro              | 1004 N Fayetteville St.     | Asheboro       | NC  | 21203   | Farmer & Associates              | 12/30/2022 | 2/25/2024  | \$1,057,793.26  |
| Family Dollar -Dyer                  | 849 S. Main Street          | Dyer           | TN  | 38330   | Farmer Ranier Dyer               | 1/17/2022  | 8/23/2022  | \$881,298.44    |
| Family Dollar- Graham                | 1310 South Main             | Graham         | NC  | 27253   | Farmer -Graham NC LLC            | 1/20/2023  | 11/5/2023  | \$1,412,373.60  |
| Family Dollar- Pembroke              | 440 W Bacon St              | Pembroke       | GA  | 31321   | Farmer & Associates              | 11/16/2022 | 9/18/2023  | \$1,042,681.00  |
| Gulf State Parks Cabins-Lake Shelby  | 1-21 Acorn Lane             | Gulf Shores    | AL  | 36542   | State of AL Dept of Conservation | 9/8/2022   | 1/19/2024  | \$8,727,022.49  |
| HeadStart- Tillmans Corner           | 5837 Three Notch Road       | Theodore       | AL  | 36582   | Mobile Community Action          | 12/5/2022  | 11/30/2023 | \$3,244,751.07  |
| Hollon Dental Office                 | 11 University Blvd          | Mobile         | AL  | 36605   | Hollon Dental                    | 3/14/2022  | 8/31/2022  | \$817,358.55    |
| Hollywood Theater Demo               | McGowin Park                | Mobile         | AL  | 36693   | AL Mobile Satchell, LLC          | 10/3/2022  | 12/21/2022 | \$331,850.00    |
| Holsberry Industrial                 | 9301 Holsberry Rd           | Pensacola      | FL  | 32534   | Shellco                          | 8/26/2024  | 4/30/2025  | \$299,852.00    |
| Kiwi Car Wash                        | 2015 Gateway Plave          | Oplelika       | AL  | 36801   | The Chambliss Group              | 2/13/2023  | 8/20/2024  | \$3,308,396.96  |
| Learning Tree                        | 5451 Able Court             | Mobile         | AL  | 36693   | Learning Tree Inc                | 5/10/2022  | 1/30/2023  | \$1,712,574.12  |
| Mayer Electric                       | 4315 Halls Mill Rd          | Mobile         | AL  | 36693   | Persons Development              | 9/15/2024  | 2/15/2025  | \$1,094,909.00  |
| McGill Toolen High School            | 1501 Old Shell Rd           | Mobile         | AL  | 36607   | McGill Toolen High School        | 3/28/2024  | 7/31/2024  | \$528,304.00    |
| Modular Physicians Office Bldg.      | 2451 Unversity Hospital Dr  | Mobile         | AL  | 36609   | USA Health Univesity Hospital    | 8/20/2021  | 5/12/2022  | \$7,715,675.75  |
| Rich's Car Wash - Bay Minette        | 501 McMeans Ave             | Bay Minette    | AL  | 36507   | Richardson Inc                   | 7/1/2019   | 1/17/2020  | \$1,123,504.29  |
| Rich's Car Wash -Azalea Rd           | Hwy 90 Azalea Rd            | Mobile         | AL  | 36693   | Richardson Inc                   | 6/6/2023   | 6/30/2024  | \$2,165,176.32  |
| Rich's Car Wash - DIP                | 2369 Dauphin Island Parkway | Mobile         | AL  | 36605   | Richardson Inc                   | 2/1/2019   | 7/29/2019  | \$1,187,634.00  |
| Rich's Car Wash - Robertsdale, AL    | 21141 State Highway 59      | Robertsdale    | AL  | 36567   | Richardson Inc                   | 11/15/2019 | 4/29/2020  | \$1,141,114.17  |
| Rich's Car Wash - Semmes, AL         | 3350 Schillinger Road N     | Semmes         | AL  | 36575   | Richardson Inc                   | 9/1/2021   | 5/6/2022   | \$1,566,194.02  |
| Rich's Car Wash - Spanish Fort, AL   | 30390 Highway 181           | Spanish Fort   | AL  | 36527   | Richardson Inc                   | 10/5/2020  | 4/26/2021  | \$1,372,504.51  |
| Rich's Car Wash - Texas City         | 2821 Palmer Ave             | Texas City     | TX  | 77590   | Richardson Inc                   | 9/27/2021  | 5/13/2022  | \$1,911,072.85  |
| Rich's Car Wash - Valley, AL         | 3911 20th Avenue            | Valley         | AL  | 36584   | Richardson Inc                   | 9/7/2020   | 4/19/2021  | \$1,432,284.62  |
| Rich's Car Wash- Pensacola           | 5825 W Nine Mile RD         | Pensacola      | FL  | 32526   | Richardson Inc                   | 7/29/2022  | 12/10/2023 | \$2,202,544.07  |
| Rob Myers Car Wash                   | 2966 St. Stephens Road      | Pritchard      | AL  | 36612   | R.F. Myers Enterprises LLC       | 4/1/2020   | 10/9/2020  | \$1,303,338.60  |
| Robbie D Wood New Offices            | 1051 Old Warrior            | Bessemer       | AL  | 35023   | Robbie D. Wood Inc.              | 2/9/2024   | 10/31/2024 | \$3,770,299.22  |
| Saraland Pad Shops                   | 1402 Industrial Parkway     | Saraland       | AL  | 36571   | Delaney Property Group           | 12/21/2020 | 5/14/2021  | \$1,564,571.86  |
| Southeastern Freight Lines Demo      | 5400 Rangeline Road         | Mobile         | AL  | 36619   | Tom Herndon                      | 2/22/2023  | 5/31/2023  | \$56,011.00     |

|                                        |                               |              |    |       |                               |            |            |                 |
|----------------------------------------|-------------------------------|--------------|----|-------|-------------------------------|------------|------------|-----------------|
| Southern Haulers                       | 4077 Hamilton                 | Theodore     | AL | 36582 | Inland Property               | 6/24/2020  | 1/27/2021  | \$2,533,625.04  |
| Spanish Fort Plaza                     | 6450 US 90                    | Spanish Fort | AL | 36527 | Saad Development Co.          | 2/15/2021  | 12/3/2021  | \$1,920,771.51  |
| St. Paul's Episcopal School - New Labs | 161 Dogwood Lane              | Mobile       | AL | 36608 | St. Paul's Episcopal School   | 6/3/2021   | 3/15/2022  | \$1,304,598.18  |
| St. Paul's Episcopal School - Phase II | 161 Dogwood Lane              | Mobile       | AL | 36608 | St. Paul's Episcopal School   | 11/1/2022  | 7/31/2023  | \$912,440.44    |
| TREC Second Floor Renovations          | 3601 Springhill Business Park | Mobile       | AL | 36608 | TREC, LLC                     | 9/2/2020   | 10/29/2021 | \$1,234,542.49  |
| United Rentals Addition                | 7500 Interchange RD           | Irvington    | AL | 36544 | United Rentals                | 11/13/2019 | 4/21/2020  | \$1,257,877.94  |
| USA Physicians Medical Building        | 307 University Blvd           | Mobile       | AL | 36609 | University of South Alabama   | 7/25/2021  | 10/23/2023 | \$17,794,985.54 |
| VIP Care - Valdosta                    | 353 Northside Drive           | Valdosta     | GA | 31602 | Bay Area Building Solutions   | 3/10/2023  | 7/20/2023  | \$532,972.63    |
| VIP Care- Kirby                        | 2900 Kirby Parkway            | Memphis      | TN | 38119 | Bay Area Building Solutions   | 3/3/2023   | 9/29/2023  | \$470,279.50    |
| VIP Care-Bartlett                      | 7395 US 64                    | Memphis      | TN | 38133 | Bay Area Building Solutions   | 3/8/2023   | 9/29/2023  | \$570,051.17    |
| VIP- Care-Birmingham                   | 2250 Bessemer Road # 200      | Birmingham   | AL | 35208 | Bay Area Building Solutions   | 7/31/2023  | 12/31/2023 | \$758,833.03    |
| VIP-Care-Macon                         | 540 Professional Drive        | Macon        | GA | 31201 | Bay Area Building Solutions   | 4/3/2023   | 9/29/2023  | \$592,007.34    |
| VIP-Care-Poplar                        | 2847 Poplar Ave               | Memphis      | TN | 38111 | Bay Area Building Solutions   | 3/10/2023  | 10/10/2023 | \$475,632.79    |
| VIP-Care-Summer                        | 5107 Summer Ave               | Memphis      | TN | 38122 | Bay Area Building Solutions   | 3/10/2023  | 10/10/2023 | \$538,273.17    |
| WAB- Cullman                           | 2015 Cherokee Ave SW          | Cullman      | AL | 35055 | Mahogany Properties           | 1/28/2023  | 10/26/2023 | \$2,417,938.71  |
| WAB- Southside Jacksonville            | 8325 Southside Blvd           | Jacksonville | FL | 32256 | Silver creek Group            | 10/30/2022 | 12/31/2023 | \$2,394,708.80  |
| Whataburger - Brandon                  | 306 Stribling Lane            | Brandon      | MS | 39208 | Cinco Aguilas Development LLC | 5/24/2021  | 12/14/2021 | \$2,203,895.28  |
| Whataburger- Daphne                    | 7280 Lavendar Lane            | Daphne       | AL | 36526 | Cinco Aguilas Development LLC | 8/16/2024  | 5/30/2025  | \$3,146,859.85  |
| Whataburger - Huntsville               | 11701 Memorial Parkway SW     | Huntsville   | AL | 35803 | Cinco Aguilas Development LLC | 4/19/2021  | 11/12/2021 | \$1,956,514.80  |
| Whataburger - St. Johns                | 2850 County Road 210 W        | St. Johns    | FL | 32259 | Cinco Aguilas Development LLC | 6/1/2021   | 4/22/2022  | \$2,649,937.81  |
| Whataburger Athens GA                  | NEQ- Hwy 29 & Hull RD         | Athens       | GA | 30601 | Cinco Aguilas Development LLC | 6/22/2023  | 4/30/2024  | \$2,984,124.49  |
| Whataburger Atlantic                   | 11559 Atlantic Blvd.          | Jacksonville | FL | 32225 | Cinco Aguilas Development LLC | 2/1/2022   | 1/30/2023  | \$1,328,389.50  |
| Whataburger- Cummings GA               | 503 Lakeland Plaza            | Cummings     | GA | 30040 | Cinco Aguilas Development LLC | 6/29/2022  | 5/31/2023  | \$2,628,994.25  |
| Whataburger- Hazel Green               | 1475 Hwy 231                  | Hazel Green  | AL | 35750 | Manhogany Properties          | 11/21/2022 | 2/26/2024  | \$2,312,490.32  |
| Whataburger - Horn Lake                | 4150 Goodman Rd               | Horn Lake    | MS | 38637 | Cinco Aguilas Development LLC | 5/5/2023   | 4/1/2024   | \$2,589,341.00  |
| Whataburger Millington                 | 8612 Hwy 51 N                 | Millington   | TN | 38053 | Cinco Aguilas Development LLC | 6/23/2023  | 5/30/2024  | \$3,115,428.78  |
| Whataburger- Prattville                | 789 Business Park Dr          | Prattville   | AL | 36066 | Cinco Aguilas Development LLC | 3/31/2023  | 12/15/2023 | \$1,756,373.12  |
| Whataburger- Woodstock                 | 9766 Hwy 92                   | Woodstock    | GA | 30188 | Cinco Aguilas Development LLC | 6/9/2022   | 12/30/2022 | \$2,762,130.98  |
| Whataburger-Athens-Timothy Rd          | 3201 Atlanta Hwy              | Athens       | GA | 30606 | Cinco Aguilas Development LLC | 2/27/2023  | 11/15/2023 | \$2,818,878.79  |
| Whataburger-Austin Peay                | 3576 Austin Peay Highway      | Memphis      | TN | 38128 | Cinco Aguilas Development LLC | 4/1/2024   | 12/30/2024 | \$2,764,095.27  |
| Whataburger-Madison                    | 1863 Main St.                 | Madison      | MS | 39110 | Cinco Aguilas Development LLC | 3/20/2024  | 11/30/2024 | \$1,682,266.61  |
| Whataburger-Prattville                 | 789 Business Park Dr          | Prattville   | AL | 36066 | Cinco Aguilas Development LLC | 4/17/2023  | 9/29/2023  | \$1,644,897.69  |
| Whataburger-Scottsboro                 | 23065 John Reid Pkwy          | Scottsboro   | AL | 35769 | Mahogany Properties           | 8/1/2022   | 7/31/2023  | \$2,499,378.64  |
| Whataburger-Tuscaloosa                 | 1130 University Blvd          | Tuscaloosa   | AL | 35401 | Cinco Aguilas Development LLC | 4/2/2023   | 9/22/2023  | \$742,471.53    |
| Woodies Wash Shack - Poplar            | 3294 Poplar Ave               | Memphis      | TN | 38111 | BWW 18.002 Memphis LLC        | 1/26/2021  | 8/11/2021  | \$1,627,191.04  |
| Woodies Wash Shack - Whitten Roar      | 1998 Whitten Road             | Memphis      | TN | 38133 | BWW 19.005 Kirby LLC          | 2/22/2021  | 1/3/2022   | \$2,242,045.89  |
| Town of Davie Boys & Girls             | 7525 NW 33 Rd                 | Davie        | FL | 33024 | Town of Davie                 | 11/1/2023  | 11/18/2024 | \$1,689,442.00  |
| Congress Jewelers Restoration          | 2075 Periwinkle Way Unit #35  | Sanibel      | FL | 33957 | Congress Jewelers             | 3/11/2024  | 11/26/2024 | \$945,967.91    |
|                                        |                               |              |    |       |                               |            |            |                 |

**\$210,456,579.86**



**FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

NOTE: This form must be signed by the person who will sign or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: \_\_\_\_\_

SUBCONTRACTOR'S NAME: \_\_\_\_\_

EST. DOLLAR VALUE OF PROPOSED WORK: \_\_\_\_\_

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ \_\_\_\_\_

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: \_\_\_\_\_ %

Persons Services Corp.

CONTRACTOR NAME

  
SIGNATURE

June 9, 2025

DATE

**FMB:019 – PUBLIC ENTITIES CRIME FORM**

(1 of 2 Pages)

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES****THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to Town of Fort Myers Beach  
(Print name of public entity)  
by Samantha Vincenty  
(Print individual's name and title)  
for Persons Services Corp.  
(Print name of entity submitting sworn statement)  
whose business address is 1835 S. Perimeter Rd, suite 175  
Fort Lauderdale, FL 33309  
\_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is 63 - 1237523  
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:  
\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
- A. A predecessor or successor of a person convicted of a public entity crime; or

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person.

**FMB:019 – PUBLIC ENTITIES CRIME FORM**

(2 of 2 Pages)

- B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

☒ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

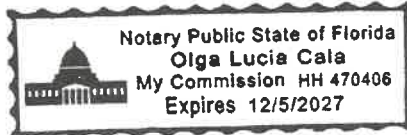


I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

STATE OF FLORIDA )COUNTY OF BROWARDSWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by meansof ☒ physical presence or ( ) online notarization, personally appeared SAMANTHA VINCENT asREG GENERAL MANAGER of PERSONS SERVICES CORP☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.  
Notary Public Signature

My commission expires:



**FMB:021 – NON-COLLUSION AFFIDAVIT**State of Florida )County of Broward )

\_\_\_\_\_ being first duly sworn, deposes and says that:

- 1) He/she is the Representative, (Owner, Partner, Officer, Representative or Agent) of Persons Services Corp., the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By: *Samantha Vincenty*Samantha Vincenty

(Printed Name)

**ACKNOWLEDGEMENT**STATE OF FLORIDA )COUNTY OF BROWARDSWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by meansof ( ☒ ) physical presence or ( ) online notarization, personally appeared SAMANTHA VINCENTY asREG GENERAL MANAGER of PERSONS SERVICES CORP( ☒ ) who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

My commission expires:

*Olga Lucia Cala*  
Notary Public Signature

**FMB:022 – TRENCH SAFETY AFFIDAVIT**

(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

BIDDER acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The BIDDER further identifies the costs as follows:

Trench Safety Item: Trench safety for underground utilities where applicable.

(Description)

One thousand dollars and 00/100.

(Cost written in words)

TOTAL \$ 1,000.00

**FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE**

COMPANY NAME: Persons Services Corp.DATE: June 9, 2025BY: 

(Signature)

Samantha Vincenty

(Print Name)



**FMB:023 – MATERIALS MANUFACTURERS LIST**

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The BIDDER is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, BIDDER shall furnish the manufacturer named in the TOWN'S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

Bay Oaks Recreational Campus Redevelopment Project

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The BIDDER lists the following manufacturers of the major equipment (LIST)

| <u>MATERIAL</u>                     | <u>MANUFACTURER</u>         |
|-------------------------------------|-----------------------------|
| 1. <u>Underground water piping.</u> | <u>Ferguson Waterworks.</u> |
| 2. <u>Concrete supplier.</u>        | <u>Cemex Fort Myers.</u>    |
| 3. _____                            | _____                       |
| 4. _____                            | _____                       |
| 5. _____                            | _____                       |
| 6. _____                            | _____                       |

Signed

Name of BIDDER Persons Services Corp.



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**FMB:024 - LIST OF SUB-CONTRACTORS**

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The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any BIDDER who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the BIDDER/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

Town of Fort Myers Beach

The BIDDER identifies the following firm as the proposed subcontractor of the:  
Bay Oaks Recreational Campus Redevelopment Project

Name of Firm: Persons Services Corp.

Address and Phone: 1835 S. Perimeter Rd, suite 175, Fort Lauderdale, FL 33309, Phone: 954-616-5106

Contact Person: Samantha Vincenty

| <u>Other Subcontractor and Address</u>                                      | <u>Specialty</u>             |
|-----------------------------------------------------------------------------|------------------------------|
| 1. <u>ICS Materials, Inc. 16301 Palm Beach Blvd. Unit 3, Alva, FL 33920</u> | <u>Site/Civil Contractor</u> |
| 2. _____                                                                    | _____                        |
| 3. _____                                                                    | _____                        |

Signed \_\_\_\_\_

*Samantha Vincenty*



### FMB:25 –EQUIPMENT SCHEDULE

\*  
\_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\*  
\_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

\*  
\_\_\_\_\_

| Name/Type | Capacity | Manufacturer | Age & Condition | Location |
|-----------|----------|--------------|-----------------|----------|
|           |          |              |                 |          |
|           |          |              |                 |          |
|           |          |              |                 |          |

NOTE: Provide separate tables for each type of equipment including name and manufacturer. Use separate lines for each major item. Use additional pages if necessary.

## FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT

BID NO: ITB-25-04-PR

PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT  
PROJECTPROJECT

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Persons Services Corp.

Samantha Viny  
(Signature)

Reg. General Manager June 9, 2025  
(Title) (Date)

STATE OF FLORIDA)  
COUNTY OF LEE)

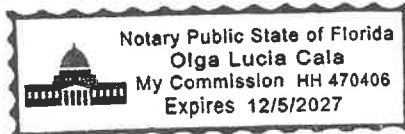
SWORN TO AND SUBSCRIBED BEFORE ME, on this 9 day of JUNE, 2025, by means of ☒ physical presence or ( ) online notarization, personally appeared SAMANTHA VINCENTY as

REG. GENERAL MANAGER of PERSONS SERVICES CORP

☒ who personally known to me of ( ) who has produced \_\_\_\_\_ as identification.

Olga Lucia Cala  
NOTARY PUBLIC – State of Florida

My commission expires:



The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.



## ADDENDUM TO PROPOSAL

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ITB-25-04-PR

Addendum No.: 1

PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT

Date of Issue: May 15, 2025

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The following inquiries were received regarding the above reference RFP:

Q. Requesting Plans and Specifications.

A. Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.

Q. Site Visits

A. Site Visits are available from 8:30am to 4:30pm weekdays, no appointment necessary.

Address: 2731 Oak St, Fort Myers Beach FL 33931

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Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature: \_\_\_\_\_



## ADDENDUM TO PROPOSAL

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ITB-25-04-PR

Addendum No.: 2

**PROJECT NAME: BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT**

**Date of Issue: May 28, 2025**

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**The following inquiries were received regarding the above reference ITB:**

**Q.** Request for drawings

**A.** Document – Bay Oaks Park Master Site Plan is in DemandStar – no other documents provided.

**Q.** Can you clarify whether the installation of the pickleball courts will be done by others or by the awarded contractor.

**A.** The awarded contractor is responsible.

**Q.** Site drawing shows sidewalks and milling, are they part of the scope?

**A.** No, the scope includes irrigation, sod, pickleball courts and a loop trail.

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Town of Fort Myers Beach  
bids@fmbgov.com  
239-765-0202

Signature:  \_\_\_\_\_



## **RESOLUTION NUMBER 25-211**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, MAKING FINDINGS; APPROVING THE PAYMENT OF REASONABLE ATTORNEY FEES FOR THE DEFENSE OF RECALL PETITIONS AGAINST TWO TOWN COUNCIL MEMBERS; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, recall petitions have been started against two Town Council members listing certain alleged grounds for recall; and

**WHEREAS**, the Town Attorney's office has done extensive legal research on the subject of the recall procedures to assist the Town Clerk's office in the handling of the Town Clerk's duties vis a vis the recall; and

**WHEREAS**, in the conduct of such legal research, the Town Attorney's office read and researched relevant statutory and case law regarding recall petitions, including, but not limited to the duties of municipalities in the event of recall petitions, and also did an in depth review of the allegations in the recall petitions to determine whether, under applicable case law, such allegations would create a common law duty, on the part of the Town, to provide a defense against such recall petitions; and

**WHEREAS**, under Florida law as decided by the Florida Supreme Court in *Garvin v. Jerome*, 767 So.2d 1190 (Fla. 2000), if there are multiple grounds stated on a recall petition, if even one of the grounds is legally insufficient, then the entire recall petition is legally insufficient; and

**WHEREAS**, under Florida law as decided by the Florida Supreme Court in *Thornber v. Town of Fort Walton Beach*, 568 So.2d 914 (Fla. 1990), a municipality has a common law duty to pay for the defense of a recall petition if the litigation meets the following criteria: it must "(1) arise out of or in connection with the performance of their official duties; and (2) serve a public purpose"; and

**WHEREAS**, in *Thornber*, the Court held that "[t]he purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently"; and

WHEREAS, the Court in *Thornber* analyzed the allegations in that particular case and found:

“In this case the council members' legal defense against the recall petition meets both of these requirements. **The factual basis for the petition was the council members' alleged malfeasance of meeting in violation of the sunshine law and subsequently voting at a public meeting in favor of resolutions effectively dismissing the town manager and police chief. Unquestionably, the vote taken at the public meeting was within their official duties. There is a sufficient nexus between the firing of these employees and the council members' official duties to satisfy the first prong of this test.**

“The council members' action in defending against the recall petition also served a public purpose and, thus, satisfied the second prong of this test. The town does not have an interest in the outcome of a recall petition because any individual, not any specific individual, can be the officeholder at issue. *Williams*, 42 So.2d at 582. **It does have a decided interest, however, in protecting its officers from untimely and illegal recall petitions.** We reject the town's contention that defending against a recall petition only serves the elected officials' personal interests in maintaining their position and is devoid of public interest. Notwithstanding that the council members have an obvious personal interest in keeping their jobs, under the circumstances of this case **the public has an overriding interest in ensuring the effective and efficient functioning of its governing body.** See *Town of North Miami Beach v. Estes*, 214 So.2d 644 (Fla. 3d DCA 1968), cert. discharged, 227 So.2d 33 (Fla. 1969); *Duplig v. Town of South Daytona*, 195 So.2d 581 (Fla. 1st DCA 1967). **If a recall petition is commenced, the public has an interest -- and the town has a responsibility -- to ensure that the recall committee follows the proper procedures, i.e., that the recall petition is facially correct. Officials should not have to incur personal expenses to ensure that a recall committee follows the proper procedures. While this case presents an unusual twist in that the council members initiated the litigation and were not actually the defendants in an action against them, they were defending against a recall petition, albeit in an offensive posture. We agree with the district court in *Ferrara* that, in the "spirit" of common law principles, the unique circumstances of this case should not preclude the council members from recovering attorney's fees under the common law.**” [Emphasis supplied.]

WHEREAS, the Town Attorney's office has analyzed the recall allegations against the two Fort Myers Beach Town Council members and has determined that under the analysis set forth by the Florida Supreme Court in the cases cited above, the Town of Fort Myers Beach has a legal duty to pay for the defense of such elected officials because such defense arises out of or in connection with the elected officials' official duties and serves the public purpose of protecting the public's interest in the effective and efficient functioning of its governing body; and

**WHEREAS**, it is found that since the Town has a legal duty to pay for the defense of the recall petitions against the two council members and since under Florida law, the elected officials “should not have to incur personal expenses to ensure that a recall committee follows the proper procedures,” it is determined that the Town should pay for the defense of such recall petitions, including, but not limited to offensive actions for injunctive, declaratory or similar relief relating to the recall effort as described in *Thornber*.

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

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

**Section 2.** The Town Council hereby approves the payment of reasonable attorney’s fees for the defense of the recall petitions filed against the two Town Council members to include but not be limited to actions for injunctive or declaratory relief.

**Section 3.** The Town Manager is directed to ensure that the intent of this Resolution is carried out by the payment of reasonable attorney’s fees for the two council members subject to the recall petitions.

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

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

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

\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of \_\_\_\_\_  
2024.