



Fort Myers Beach Town Council

Diamondhead Beach Resort
2000 Estero Boulevard

Fort Myers Beach, FL 33931

Agenda

Monday, August 4, 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 - June 16, 2025
 - B. Joint Town Council Session with Local Planning Agency - June 26, 2025
 - C. Management and Planning Session - June 5, 2025
- IX. CONSENT AGENDA
 - A. Resolutions 25-222 through 25-226; 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.
 - B. Resolutions 25-227 through 25-231; 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.

- C. Resolutions 25-212 through 25-216; 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.

- D. Resolutions 25-217 through 25-221; 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.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Ordinance 25-14; CPD20250008, 7225, 7291 & 7295 Estero Blvd (Fish Tail Marina)

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-14 (Fish Tale Marina). If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for September 11, 2025, at 9:00 AM or at another time identified by Town Council.

ORDINANCE TITLE:

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN AMENDMENT AND RESTATEMENT OF LEE COUNTY RESOLUTION Z-94-013 THAT REZONED PROPERTY TO COMMERCIAL PLANNED DEVELOPMENT TO ALLOW FOR A REVISION TO THE MASTER CONCEPT PLAN AND ONE (1) ADDITIONAL DEVIATION FOR SETBACKS FOR THE REDEVELOPMENT OF A COMMERCIAL MARINA

FOR PROPERTY LOCATED AT 7225, 7291 AND 7295 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBERS 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 AND 03-47-24-W1-00011.003B IN FORT MYERS BEACH; RESTATING PREVIOUSLY APPROVED CONDITIONS AND DEVIATIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Resolution 25-239; SEZ20250046, 6425 Estero Blvd (Former Beach Theater)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20250046 TO ALLOW 1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND 4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6425 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Resolution 25-240; VAR20250047, 6425 Estero Blvd (Former Beach Theater)

A RESOLUTION OF THE FORT MYERS BEACH TOWN COUNCIL APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE APPLICATION VAR20250047 FOR THE PROPERTY AT 6425 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000 IN FORT MYERS BEACH FOR A VARIANCE TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES FROM 115 TO 33 PARKING SPACES AND A BICYCLE RACK FOR A RESTAURANT, COCKTAIL BAR AND ENTERTAINMENT AREA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

- D. Ordinance 25-08; Noticing

This legislative agenda item is a SECOND 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 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 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.

XII. ADMINISTRATIVE AGENDA

A. Resolution 25-210, FY2026 Tentative Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF 1.25500 MILLS FOR FISCAL YEAR 2026 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2026; AND PROVIDING AN EFFECTIVE DATE.

B. Res. 25-234; Approval of amendment to Goldman Wolfe, LLC Financial Consulting Service Contract

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE EXISTING AGREEMENT BETWEEN THE TOWN AND GOLDMAN WOLFE, LLC FOR FINANCIAL CONSULTING SERVICES: 1) TO INCREASE THE NOT TO EXCEED AMOUNT FROM \$50,000 TO THE BUDGETED AMOUNT OF \$197,600; AND 2) TO ADD A \$5,000 STATUTORY CONTRACTUAL PENALTY IN THE EVENT OF BREACH OF THE AGREEMENT DURING AN EMERGENCY RECOVERY PERIOD TO THE TERMS OF SERVICE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

C. Resolution 25-232; Administrative Authority - SB 784

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DESIGNATING AN ADMINISTRATIVE AUTHORITY TO RECEIVE, REVIEW, AND PROCESS PLAT AND REPLAT SUBMITTALS AND AN ADMINISTRATIVE OFFICIAL RESPONSIBLE FOR APPROVING, APPROVING WITH CONDITIONS, OR DENYING PROPOSED PLATS AND REPLATS, AS SPECIFIED IN SECTION 177.071, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

- D. Resolution 25-519, Acceptance of Drainage Easement Agreement for Lot 15, Block D, Island Shores, Unit No. 4 (Lee County PB 9, PG 37)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING AN EASEMENT RELATED TO THE PROVISION OF PUBLIC STORM DRAINAGE PIPES AND APPURTENANT DRAINAGE FACILITIES IN, OVER, UNDER, THROUGH, UPON, AND ACROSS A PORTION OF REAL PROPERTY LOCATED IN THE TOWN OF FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

- E. Resolution 25-236; Fire Hydrant Replacement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN ON APRIL 22, 2025 AND APPROVING A CONTRACT WITH ANDREW SITEWORK FOR THE EMERGENCY PURCHASE AND REPLACEMENT OF 36 NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN IN THE AMOUNT OF NOT-TO-EXCEED \$290,512; APPROVING AN ADDENDUM TO THE RATIFIED CONTRACT TO INCLUDE ADDITIONAL TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Resolution 25-238; BCI Controls

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF EQUIPMENT AND PROGRAMMING SERVICES FROM BCI TECHNOLOGIES AS A SOLE SOURCE PROVIDER IN ACCORDANCE WITH SECTION 2-480(C) OF THE TOWN'S CODE OF ORDINANCES IN THE AMOUNT OF \$63,502.37 TO ALLOW MONITORING OF THE WATER PRESSURE IN THE TOWN'S UTILITY SYSTEM AT THE SOUTH BOOSTER STATION; AUTHORIZING THE TOWN MANAGER TO SIGN THE PURCHASE ORDER; AND PROVIDING FOR AN EFFECTIVE DATE.

- G. Resolution 25-237; RFP-22-25-AD STA #9, Tetra Tech GIS

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #9 WITH TETRA TECH, INC. IN AN AMOUNT NOT TO EXCEED \$74,500 FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 22-25-AD IN THE AMOUNT OF \$727,348, FOR THE CONTINUATION OF MAPPING SERVICES IN THE TOWN'S GEOGRAPHIC INFORMATION SYSTEM (GIS) TO COMPLY WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION RULES REQUIRING A LOCAL GOVERNMENT TO KEEP MAPPING OF ITS UTILITY DISTRIBUTION SYSTEM UPDATED; AUTHORIZING THE TOWN MANAGER TO SIGN STA #9 AND PROVIDING FOR AN EFFECTIVE DATE.

- H. Resolution 25-235; ITB-25-05-PW, Water Meter Replacement
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO AWARD THE WATER METER REPLACEMENT PROJECT BID TO THE NATIONAL METERING SERVICE FOR A PRICE OF \$1,619,790. THIS ACTION ALLOWS FOR THE REPLACEMENT OF ALL 5/8- AND 1-INCH METERS IN THE TOWNS WATER DISTRIBUTION SYSTEM, WITH AN EFFECTIVE DATE.
- I. Six-month review of SEZ20230126
A six-month review of approved Resolution 23-87 for Special Exception SEZ20230126 that allows for temporary outdoor consumption on premises with retail use at 163 Old San Carlos Boulevard.
- J. Edward Byrne JAG Grant
Support the distribution plan for the \$167,473 Edward Byrne Memorial Justice Assistance Grant Program Funds (JAG).

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

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

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



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

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



Fort Myers Beach Town Council

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

Minutes

Monday, June 16, 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

Deputy Clerk Jason Freeman.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Allers noted there would be a break from 11:50 a.m. to 12:50 p.m. Council Member King moved to approve the final agenda, seconded by Council Member Safford.

The motion carried unanimously.

V. PUBLIC COMMENT

Kyle DeCicco, President of the Sanibel Captiva Community Bank, introduced himself and was excited to be there. He thanked the community for welcoming them.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford thanked everyone involved for the fantastic event on Saturday. He noted they had 15,000 flags. He also thanked Beach Talk Radio for their help.

Council Member Woodson agreed and added that the Mound House had a ribbon-cutting for the water foundation afterwards.

Vice Mayor Atterholt was out of town and dittoed the comments.

Council Member King thanked town staff for their involvement and listed others who contributed on Saturday.

Mayor Allers agreed.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

- A. Town Council - May 28, 2025
Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.
- B. Town Council - June 2, 2025
Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.

IX. CONSENT AGENDA

Council Member King moved to approve the consent agenda, seconded by Council Member Woodson.
The motion carried unanimously.

- 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.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.
The motion carried unanimously.

- 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.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.
The motion carried unanimously.

- 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.

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Deputy Clerk Freeman confirmed that all agenda items were properly noticed. He swore in those providing testimony. Mayor Allers revealed a conflict with items A. and B. and has submitted the appropriate forms to Deputy Clerk Freeman.

- 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.

Mayor Allers read the title of the ordinance. Ex parte communications: Council Members Safford and Woodson disclosed site visits. No disclosures from other members.

Megan Strayhorn, legal counsel, noted that Patrick Vanasse and Rachel Hansen from the Neighborhood Company were expert witnesses. The property owner confirmed receipt of the agenda and background materials. Community Development Principal Planner Judith Frankel reviewed the background of the request as stated on the blue sheet. She noted the expanded boundary was consistent with the town's Comprehensive Plan (comp plan) and that the staff recommended approval of the application.

Ms. Strayhorn noted they agreed with the conditions in the staff report. No public comment.

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

The motion carried unanimously by roll call vote, with Mayor Allers recused.

- 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.

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

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet and the deviations. She noted that the staff recommended approval of the CPD amendment and all deviations, except for 11 related to parking. If the council determines that deviation 11 is appropriate, staff recommends approval with conditions. She noted there were slight changes to the conditions of approval and the applicant would review them. She indicated that 75 units were already over the maximum allowed by right, but that was approved under 1817.

Ms. Strayhorn stated there were no changes from the first reading, but there were minor revisions to the conditions of approval. She was comfortable providing 82 onsite parking spaces. She reviewed minor changes to conditions 2, 5, and 10. Principal Planner Frankel explained deviation ten.

Mr. Vanasse confirmed that planners across the country were discussing driverless vehicles.
No public comment.

Council Member King moved to approve the ordinance with 13 conditions of approval, seconded by Council Member Woodson.

Principal Planner Frankel clarified that the advertised zoned height was 40.5 feet, but they had been discussing 40 feet, 5 inches, which was a discrepancy of one inch. She did not have a problem with a 40.5-foot allowance.

The motion carried unanimously by roll call vote, with Mayor Allers recused.

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.

Mayor Allers read the title of the ordinance. Ex parte communications: Council Member Safford had a Zoom meeting with Fred from RVI and received one email, Council Members Woodson and King and Vice Mayor Atterholt received one email, and Mayor Allers had a Zoom meeting with Fred and received an email. The applicant confirmed receipt of the agenda and background materials.

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet and the deviations. She noted the LPA (Local Planning Agency) unanimously recommended approval. The staff found that the request was compliant with the comp plan and recommended approval with conditions.

Fred Drovdlc from RVI Planning presented a solution for deliveries at the town-owned lot at 253 Estero Blvd. He discussed the Wave Dissipation Wall and noted they had every intention of participating, but asked that it not be included in a condition of zoning. He was comfortable adding something that codified their intent to participate.

No public comment.

Mayor Allers moved to approve the ordinance, including the conditions that an alternative delivery solution could be provided, with the town manager authorized to approve a license agreement. The applicant agrees to make a good-faith effort to cooperate and fully explore participation after the result of the study is complete, economic benefits are determined and location and design plans are solidified for a wave mitigation/dissipation wall, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance. Ex parte communications: All council members received an email from a concerned resident. In addition, Council Member Safford had a Teams meeting with Jim, Amy and Fred, Council Member Woodson had a Teams meeting and a conversation with Amy Thibaut and Mayor Allers had a Teams meeting. The applicant confirmed receipt of the agenda and background materials.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the blue sheet and the deviations. He indicated that the information distributed was a broader description of the public benefits and conditions of approval.

Amy Thibaut, attorney from Roetzel & Andress, introduced the team. The presentation began with Discussions from 1st Hearing. Mayor Allers wondered about making the five parking spaces ADA only and adding mobi mats and balloon wheelchairs for a public benefit. Town Attorney Stuparich noted there was flexibility in 6A of the conditions of approval. The presentation continued with Public Benefits and Wave Dissipation Wall.

Public comment:

Julian Roland distributed a handout. He reviewed the history of his mother's house on Miramar Street and described the neighborhood as it once was. He supported the EIBC project, but felt that the parking and turnaround would

create unintended consequences due to constant traffic. He described the photos he took of Miramar, regarding navigation and safety hazards. He proposed transforming Miramar into a green pedestrian corridor. He acknowledged that he had not considered adding ADA-compliant parking only. Council Member Safford asked whether a turnaround would help prevent people from using driveways to back up.

Public comment closed.

Fred Drovdic noted they had concerns about the signage and did not think that EIBC should be responsible for proper wording.

Senior Planner Smalley reviewed the conditions of approval outlined in Exhibit A, which was distributed earlier. Vice Mayor Atterholt asked whether there was a need for additional ADA parking spots. Director Hauge replied that he did not think it was a bad idea because they could utilize the ADA chairs more. He added that most of the accesses do have ADA spots, but none are dedicated to ADA. Senior Planner Smalley continued reviewing the conditions. Council Member King was still mulling the options because he understood both sides. Vice Mayor Atteholt was fine with a pedestrian corridor and was also okay with a special ADA access point, provided the signage is adequate, so people do not turn down there looking for other parking spaces. He will support any compromise that would move the project forward. Council Member Woodson was in favor of the ADA portion, limiting the number of spaces with proper signage and the turnaround was a better option than backing up. Council Member Safford was with Council Member King. He could go either way and thought offering the ADA parking was a significant public benefit. He supported the project and wanted it to go through. Mayor Allers indicated that the lack of ADA parking was an issue. He added that there did not have to be five spots.

Mayor Allers moved to approve the ordinance with the conditions as laid out and the property owner will construct ADA compliant parking spaces with the number to be determined by town staff at the time of the development order, the property owner shall install a mobi mat and ADA wheelchairs at the end of the new sidewalk and item A5A will be changed to 68 feet versus 67.7 feet, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich indicated the underlined text was added to the title for legal and administrative purposes.

No public comment.

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

The motion carried unanimously.

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** Jason Green displayed a snapshot of an Excel spreadsheet titled Proposed and Current Impact Fees. He noted they could make changes. Impact fees are collected when the building permit is picked up. Mr. Green stated that the reality with impact fees is that they do not pay for everything. The town will continue to collect on behalf of the beach school and fire department, but the town is just a pass-through. He felt there were opportunities to fund some transportation for the school and the Mound House through the mobility category. Mr. Green will work with the staff regarding details on the wave mitigation wall. He suggested that the council prioritize a list of capital projects.

- 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.

Mayor Allers read the title of the resolution. Deputy Clerk Freeman reviewed why the request and renewal were needed, as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Manager Chustz reviewed the background of the request as stated on the blue sheet. He described the options provided to property owners and the majority chose low-profile plants. Details were on the town's website.

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

The motion carried unanimously by roll call vote.

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.

Town Attorney Stuparich reviewed the reason for the action.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Director Hauge noted that the pump had to be replaced immediately.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Director Hauge explained why the purchase was needed, as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Director Hauge reviewed the reason for the amendment.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Community Development Director Frankie Kropacek explained why the purchase was needed.

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

The motion carried unanimously by roll call vote.

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 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.

Mayor Allers read the title of the resolution. Director Hauge noted they had until August 31, 2025, to complete the project.

Council Member Woodson moved to approve the resolution, seconded by

Council Member King.
The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

No comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager McKannay noted a budget manager for the finance department had been hired. He had a good meeting with Lee County Manager Dave Harner last week. He met with the Royal Palm Coast Realtor Association regarding support for the Beach Elementary School. He noted that Bay Oaks and the third floor of the new town hall were available for individual meetings.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich indicated she would not be able to attend the joint meeting with the LPA on June 26, 2025, and another attorney will fill in for her or participate virtually. She thanked the council for their patience regarding the change in process to provide more details upfront with development agreements, which would hopefully prevent delays on the back end.

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.

Mayor Allers read the title of the resolution. Town Attorney Stuparich clarified that the Vose Law Firm would not be representing either individual; however, they were working with the Clerk's office. She reviewed the request as stated on the blue sheet and described the possible scenarios. Council Members King and Woodson indicated that they had submitted the appropriate form for conflict of interest.

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

The motion carried unanimously by roll call vote, with Council Members King and Woodson recused.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt asked about the pool. Director Hauge replied that they had to rebid the project because they had not received three bids. He noted that Bay Oaks will soon be open for pickleball and basketball. Vice Mayor Atterholt encouraged everyone to refocus on the veteran's monument. Director Hauge commented that the flags would be installed soon.

Council Member King asked the council to approve the Mulholland nominations so the Marine & Environmental Resources Task Force (MERTF) can move forward. He received support from all members.

Mayor Allers had productive conversations regarding the beach school, although

no resolutions were reached.
No items from other members.

XVII. ADJOURNMENT

Council Member King moved to adjourn the meeting, seconded by Mayor Allers.
The motion carried unanimously.

Meeting adjourned at 2:02 PM.

DRAFT



**Fort Myers Beach Joint Town Council Session
with Local Planning Agency
Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931**

Minutes

Thursday, June 26, 2025

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

Town Council members present: Chair Allers, Vice Chair Atterholt, Council Member King, Council Member Safford and Council Member Woodson.

LPA members present: Chair Cereceda (virtually), LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean, LPA Member Plummer and LPA Member Sudduth (virtually).

Town Manager McKannay and Town Attorney Stuparich (virtually) were also present.

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENT

No public comment.

IV. ITEMS FOR DISCUSSION

**A. Comprehensive Plan Update and Land Development Code Discussion
Comprehensive Plan Update and Land Development Code Discussion**

Jason Green, planner, reviewed the reason for the update. Eddie Ng from the Corradino Group started the presentation with a General Overview, In-Person Results, Interactive Elements, Resident Comments, Survey Results, Visioning, Visioning - Thematic Findings, Thematic Aspects, Comprehensive Plan and Next Steps.

LPA Member Boan asked whether deviations regarding height and public benefits would be addressed in the Comp Plan or the LDC. Mr. Ng replied that it could be addressed in both. He noted that a point system should be avoided in the Comp Plan because flexibility could be created in the LDC. Mr. Green described the difference between the Comp Plan and LDC. LPA Member Plummer asked for directions on following the rules when approving projects. Mr. Green responded that today's goal was to approve or modify the vision statement. He indicated that the town council was ultimately responsible for decisions made. LPA Member Boan asked whether

development agreements would be addressed. Mr. Green replied that it was up to the council to revise and it was not in the Comp Plan. LPA Member Safford asked what they could do to activate growth on small lots. Mayor Allers stated that there was nothing that was preventing small lots from developing. Mr. Ng thought it came down to economic development and whether there were barriers. He provided examples of different approaches to fill the space.

LPA Member Safford brought up approving a business with a FAR (Floor Area Ratio) of 2.0, with parking below. After the wave mitigation wall was built, it dropped from a VE zone to a Coastal A zone; however, he still could not activate the downstairs area because of the FAR. He asked how they would write that so the downstairs could be activated after the mitigation wall was built. Mr. Green replied that they could increase the maximum and establish standards for reaching it. Mr. Ng noted they could approach it by area or add a blanket statement in the Comp Plan, such as the ground floor will not count against the FAR if specific conditions are met.

Mr. Ng summarized that they wanted to have a balanced framework that provides the ability for the land development regulation to tackle specific nuances on a flexible basis, including items like how to deal with the ground floor. Chair Cereceda asked whether there was an opportunity for single-family residences to take advantage of the wave mitigation wall and utilize their ground floor, which could increase their ability to create a rental. Mr.

Green did not think the blanket statement would allow for that because the living space had to be above base flood. Mayor Allers asked whether the statement in the Comp Plan would allow for residential above and commercial below. Mr. Green thought this could be an opportunity if it were in the appropriate place around the nodes. He cautioned they would have to be careful of commercial encroachment in a residential neighborhood.

Chair Cereceda felt that the first paragraph of the vision was static. She suggested changing it to, "where we welcome visitors and where residents, new and old, can grow with our families and friends..." LPA and council members agreed. Mr. Ng will incorporate the change. LPA Member McLean noted that it did not address the island's natural resources. LPA Member Safford thought they needed to add a water component. Mr. Green pointed out that improving water quality could mean higher standards for stormwater, which would be a challenge for the island. LPA Member Safford responded that it was a must. LPA Member McLean thought the Comp Plan was pretty solid, but it did not immediately deal with the realities of no longer being able to work on the bottom floor. He thought the example of activating the bottom floor under certain circumstances was brilliant because they had been struggling with that. He was concerned about becoming too restrictive and creating unintended consequences. Mr. Green did not think the language created a problem. Mayor Allers asked for the definition of scenic views and considered access to be more important. Mr. Green thought the last sentence of the second paragraph was important because it specifically directed them to those uses. Mr. Ng discussed the human scale,

emphasizing eye-level views and walking and bicycling over driving a car. He added that they could tweak the wording. LPA Member Plummer felt that air movement was important as opposed to wall-to-wall concrete buildings.

Chair Cereceda said the view from the bridge was the first thing people noticed and had to be protected.

Council Member Woodson noted that only 3% of the population responded to the online survey. She felt they needed to take a broader view and asked where the economic development was in everything. Mr. Green replied that adding better tools for different types of development would be helpful. LPA Member Dunlap brought up taxes, vacant lots, a cap on taxable value and extended homestead exemptions, which were economically unviable in their current state. He asked how they could add something to ensure accountability for the economic viability of the decisions they were making.

Mayor Allers said that they were not talking enough about residential and residential was sustainability, while commercial was viability. He noted that they needed both, but would not see the developments for 10 years, and if they could not sustain for 10 years, the developments would be building for nothing. Mr. Ng explained that they recommended the nodes to have flexibility to drive the investment back to have the minimum critical mass. He reminded them that they had talked about the population trend not coinciding with their housing trend at the beginning of the process. Mayor Allers said the focus had been on densities and how to make the commercial aspects work on a residential island, despite the diminishing residential population.

He asked how to manipulate the market to entice people to live there as residents while supporting commercial businesses. He added that if they keep going the way they were, it would become a tourist island. Mr. Ng responded that the balance was from having specific areas that did not intrude on residential areas. Mr. Green discussed the challenge of the investor using the build-back provisions just like a property owner would. He said people who sold their lots for a million did not care who bought them.

Mr. Ng indicated they had to specifically delineate commercial uses in residential areas. Mr. Green talked about regulating and enforcing Airbnb. Mr. Ng discussed looking at vacant lot policies. Mr. Green encouraged them to continue enforcing short-term rental regulations. Mr. Ng asked if they wanted to consider limiting the category for which they would grant a variance in the LDC. For example, they would only grant a variance if xyz was met.

Vice Mayor Atterholt asked about the deadline for the LDC. Mr. Green hoped they could adopt an updated LDC by next spring. Vice Mayor Atterholt asked whether SB180 was affecting their Comp Plan discussion. Mr. Green replied affirmatively and added that it also affected the LDC.

Council Member King suggested changing the second paragraph of the vision statement to, "This is our slice of paradise and we share it in balanced ways that contribute positively towards our overall quality of life." Mr. Ng changed it.

LPA Member Plummer noted that when they started the process, there were

no vacant lots on the island. She said they needed to take action to ensure property owners took care of their property. She raised concerns about public safety issues related to the rats and pools without fences. They were becoming parking lots and were loaded with trash. Mr. Ng responded that maintenance standards and enforcement were the way to address those issues and were not included in the Comp Plan. Mayor Allers noted that mechanisms were in place and it came down to resources and finances.

Town Manager McKannay indicated they were working through a list of properties and more resources would be helpful.

LPA Member Eckmann saw a wish list and aspirations and asked whether they were achievable with the economics. He wondered if there was a conflict between the vision statement and the economic reality. For example, they wanted to see one story over flood, but those developments were not coming because they were not financially viable. He asked whether they could steer development to their goals with compromises to develop the property in a nice way. He listed businesses that closed before Ian and a more transient population. He had not heard anything about schools or religious institutions being important to a community. He noticed a lot of superficial stuff with public input. LPA Member Plummer discussed the difficulty of starting and sustaining a small business. LPA Member Dunlap noted that the survey did not represent the 40-and-under crowd. Mr. Ng replied that they worked with what they had. LPA Member Dunlap thought they should remove Ian and add something about having an aspiration to be structurally, culturally and economically resilient, so there was a purposeful commitment to pay attention to sustaining themselves. Mr. Ng will remove Ian and will add economic and social resiliency.

LPA Member Sudduth felt that it was not the Fort Myers Beach of the future, but a Fort Myers Beach that was safe. He noted they wanted to attract investors, residents and visitors. He thought it was a multigenerational community where residents and visitors could grow older. He agreed with building resiliency in the community and brought up incentivizing growth and rebuilding.

Chair Cereceda agreed with all the comments.

Mayor Allers said they could include anything they wanted in the Comp Plan, but if they did not abide by it, it did not mean anything. A discussion was held regarding incentives for people to build. Mr. Green will provide the list of ideas from their discussions three years ago.

V. ADJOURNMENT

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

The meeting was adjourned at 11:17 a.m.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, June 5, 2025

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: Lumen Solution Services

Update of fiber internet installation on the island

David Zegman, Director of Governmental Affairs in Florida for Lumen Technology, indicated that the fiber optic cables were buried underground and the project was completed in 2024. His presentation started with Future Ready, Fast and Easy and what Quantum Fiber can provide for the Municipality, One Company, Three Brands, The Quantum Fiber Story, The Quantum Fiber Edge, Fiber Internet Adds Value to Real Estate Properties, Lumen's Preparation and Response to Hurricanes, How to Tell if Your Home has Quantum Fiber and Quantum Fiber Plans.

He explained how they connect the fiber to the home and noted that the customer was not charged for installation. Jason, Area Manager, described how the system worked. He indicated that they were working on a static IP, but it was not yet an offered service. He explained how glass was superior and encouraged them to contact him if they needed anything.

B. Discussion: Annexation of San Carlos Island

Discussion: Annexation of San Carlos Island

Council Member King indicated that he was not interested in moving forward with a study, but would like to discuss with the county how to make that area more presentable. Council Member Wodson asked about hypothetical boundaries if the topic were to come up again. Mayor Allers stated that if San Carlos wanted to be a part of Fort Myers Beach, it should be up to them

to approach the town. He did not think they should pursue the issue. He added that their jurisdiction ended at the base of the bridge and it was more important to resolve that issue instead of pursuing annexation. He requested consensus for staff to collaborate with the county on a strategy to distinguish between San Carlos Island and Fort Myers Beach, ensuring the correct area is analyzed in the event of another state of emergency.

Town Manager McKannay indicated that he would be meeting with Lee County next week and would bring up the topic. He will also remind FEMA of the boundaries when he meets with them.

C. Parking

A discussion regarding parking on Fort Myers Beach

Mayor Allers asked whether it would make sense to offer a year-round resident pass for parking. He questioned how much revenue a parking spot garners in a year. Emergency Services & Compliance Director Thomas Yozzo replied that one spot generated about \$4,000.00 per year.

Enforcement was from 9:00 a.m. to 9:00 p.m. He noted that it made a lot of sense outside the season, but it would be harder during the season. He asked that the time be limited, since there were other places they could park without restrictions. He noted that Lee County offered park passes for Bowditch, but not for Lynn Hall.

Mayor Allers asked whether they could research a unified app or signage so people can be alerted to which parking spots are under whose jurisdiction. He indicated that the town received complaints about tickets from lots outside the town's jurisdiction. Director Yozzo responded that complaints were limited. He noted that Lee County is testing a new camera parking program. He explained that the only time staff pursued violations to the Special Magistrate level was when people constantly violated the rules. His approach was to prioritize safety over generating revenue through violations. He noted that 40-45% of tickets were voided. Mayor Allers revealed that the number of tickets was down, but the revenue was up.

Community Development Director Frankie Kropacek described a program Sanibel had before Ian, allowing anyone to purchase a pass to park off-season. Council Member Safford was interested in investigating the option because small businesses would benefit.

Director Yozzo suggested approaching Lee County about honoring their county pass in specific areas during the off-season for a certain period of time. Mayor Allers suggested not involving the county and was interested in researching some sort of program. Director Kropacek described the app setup before Ian hit to locate available parking from a phone. Mayor Allers brought up Collier County, where you could see where parking was available. Director Yozzo will research options.

Council Member King will explore funding options through the MPO (Metropolitan Planning Organization).

IV. AGENDA MANAGEMENT

A. June 2025

Director Kropacek discussed a situation in which the town owns land adjacent to some property owners' seawalls. The land in question varied from two inches to twenty-two feet on different properties. He described homeowners being prevented from making needed repairs to their seawalls. He noted that the town had no use for the property and Cape Coral approved quick claims for property owners with verified surveys.

Council Member Safford stated that the LPA has been aware of the issue for 20 years and has discussed vacating the Shell Mound neighborhood, where 90% of the problems were located.

Kathy Turner, resident, explained that before Ian, the town attempted to settle the problem with properties on Donora and Shell Mound, but not her street.

An offer was made to the owners on the canal that for \$2,500.00, they would transfer the property if 100% of the owners accepted. She described the former town manager's attitude. She did not want to spend \$100,000.00 on something that did not belong to her. She stated that her seawall, dock and lift had to be replaced. Council Member Safford added that this affects property values. Town Attorney Stuparich stated that the seawalls were a town asset and she was asked to prepare a quick claim deed for Ms. Turner on one small damaged piece, with the rest owned by the town. That did not make sense to her. She noted that the damaged portion of her seawall may result in additional damage. She needed direction from the council if they wanted to get rid of the entire seawall. Mayor Allers suggested they vacate all the issues that arose from that. Town Attorney Stuparich was not opposed to providing a quick claim deed, but noted that if they did it for one property owner, the town would still own the rest of the seawall. She confirmed they could do that for the entire seawall. Mayor Allers asked about vacating the right-of-way for Ms. Turner's entire street. Town Attorney Stuparich replied that they would do a quick claim deed for each property owner and the town would be out of the picture for liability and maintenance responsibility. She stated that Ms. Turner had an urgent need that required attention. She addressed an easement so she could make the repair and said that the town should pay for some of it because the town should probably be repairing it due to potential liability issues. Ms. Turner revealed that her pool was about one foot from the rear property line and if the seawall goes, so does her pool.

Town Attorney Stuparich recommended that they take action to address Mr. Turner's issue, specifically an easement or giving her a license to make the repair. Ms. Turner said that she would make the repairs if the property were hers. If it's not and the pool goes, the town has a problem. Mayor Allers stated that Ms. Turner's situation was immediate, but he thought they would do the same for the entire length of the seawall. Town Attorney Stuparich indicated they could have a quick claim deed to convey the property to her at the June 16, 2025, meeting. Ms. Turner agreed and noted that it would work for her contractor.

Mayor Allers stated that the direction was to identify all the properties with similar situations.

Mayor Allers received support to add the wave mitigation wall to the M&P Session on August 7, 2025.

A discussion was held about an amendment for Ahtna to dredge canals and it will be added to the M&P Session on August 4, 2025.

V. ADJOURNMENT

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

Meeting adjourned at 10:29 AM.

1. **Request:**

Meeting Date: August 4, 2025

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

Why the action is necessary:

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

What the action accomplishes:

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

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 25-222, Extending Declaration of Local Emergency - Ian 08.05.25 - 08.11.25
2. 25-223, Extending Declaration of Local Emergency - Ian 08.12.25 - 08.18.25
3. 25-224, Extending Declaration of Local Emergency - Ian 08.19.25 - 08.25.25
4. 25-225, Extending Declaration of Local Emergency - Ian 08.26.25 - 09.01.25
5. 25-226, Extending Declaration of Local Emergency - Ian 09.02.25 - 09.08.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/14/2025
Approved - 7/17/2025
Approved - 7/23/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION 25-222

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 5th day of August 2025.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of August 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 the ____ day of August 2025.

RESOLUTION 25-223

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 12th day of August 2025.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of August 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 the ____ day of August 2025.

RESOLUTION 25-224

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 19th day of August 2025.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of August 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 the ____ day of August 2025.

RESOLUTION 25-225

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 26th day of August 2025.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of August 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 the ____ day of August 2025.

RESOLUTION 25-226

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 2nd day of September 2025.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of August 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 the ____ day of August 2025.

1. **Request:**

Meeting Date: August 4, 2025

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

Why the action is necessary:

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

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 25-227, Extension of Local Emergency - Debby 08.05.25 - 08.11.25
2. 25-228, Extension of Local Emergency - Debby 08.12.25 - 08.18.25
3. 25-229, Extension of Local Emergency - Debby 08.19.25 - 08.25.25
4. 25-230, Extension of Local Emergency - Debby 08.06.25 - 09.01.25
5. 25-231, Extension of Local Emergency - Debby 09.02.25 - 09.08.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/14/2025
Approved - 7/17/2025
Approved - 7/23/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-227

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-228

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-229

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-230

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-230

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

1. **Request:**

Meeting Date: August 4, 2025

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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Helene

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-192

Attachments:

1. 25-212, Extension of Local Emergency - Helene 08.05.25 - 08.11.25
2. 25-213, Extension of Local Emergency - Helene 08.12.25 - 08.18.25
3. 25-214, Extension of Local Emergency - Helene 08.19.25 - 08.25.25
4. 25-215, Extension of Local Emergency - Helene 08.26.25 - 09.01.25
5. 25-216, Extension of Local Emergency - Helene 09.02.25 - 09.08.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/14/2025
Approved - 7/17/2025
Approved - 7/22/2025
Approved - 7/23/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-212

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

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-213

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

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-214

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

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-215

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

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-216

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

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

1. **Request:**

Meeting Date: August 4, 2025

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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Milton

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-214

Attachments:

1. 25-217, Extension of Local Emergency - Milton 08.05.25 - 08.11.25
2. 25-218, Extension of Local Emergency - Milton 08.12.25 - 08.18.25
3. 25-219, Extension of Local Emergency - Milton 08.19.25 - 08.25.25
4. 25-220, Extension of Local Emergency - Milton 08.26.25 - 09.01.25
5. 25-221, Extension of Local Emergency - Milton 09.02.25 - 09.08.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/14/2025
Approved - 7/17/2025
Approved - 7/23/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-217

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-218

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-219

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-220

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

RESOLUTION NUMBER 25-221

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of August 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 August 2025.

1. **Request:**

Meeting Date: August 4, 2025

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-14 (Fish Tale Marina). If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for September 11, 2025, at 9:00 AM or at another time identified by Town Council.

ORDINANCE TITLE:

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN AMENDMENT AND RESTATEMENT OF LEE COUNTY RESOLUTION Z-94-013 THAT REZONED PROPERTY TO COMMERCIAL PLANNED DEVELOPMENT TO ALLOW FOR A REVISION TO THE MASTER CONCEPT PLAN AND ONE (1) ADDITIONAL DEVIATION FOR SETBACKS FOR THE REDEVELOPMENT OF A COMMERCIAL MARINA FOR PROPERTY LOCATED AT 7225, 7291 AND 7295 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBERS 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 AND 03-47-24-W1-00011.003B IN FORT MYERS BEACH; RESTATING PREVIOUSLY APPROVED CONDITIONS AND DEVIATIONS; 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 existing CPD and MCP need clarification and the addition of one new deviation. This may only be accomplished through an ordinance.

What the action accomplishes:

Allows the continued use of the marina and associated retail/office/restaurant uses.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is requesting an amendment of Res. Z-94-013 to revise the Master Concept Plan (MCP), locations of previously approved buildings, develop a modern bathroom and boat club office, reduce the setbacks of the existing restaurant and deck to 0-feet adjacent to the leased boat basin area and clarify that all phases mentioned in the previous MCP amendment have been completed.

The LPA voted 7-0 to recommend approval to the Town Council.

Attachments:

1. ORDINANCE 25-14 with EXHIBIT A
2. EXHIBIT B: REVISED MASTER CONCEPT PLAN
3. EXHIBIT C: SCHEDULE OF USES AND TABLES
4. TC Staff Report
5. APPLICANT RESPONSES TO CONDITIONS OF APPROVAL
6. HISTORICAL CPD: Z-88-268 FISH TALE MARINA CPD REZONING
7. HISTORICAL CPD-AMENDMENT: Z-94-013 FISH TALE MARINA CPD AMENDMENT

Financial Impact:

N/A

6. **Alternative Action**

Adopt with Conditions

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

Judith Frankel, Principal Planner
Frankie Kropacek, Community Development Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/18/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/22/2025
Final Approval - 7/25/2025

ORDINANCE 25-14

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN AMENDMENT AND RESTATEMENT OF LEE COUNTY RESOLUTION Z-94-013 THAT REZONED PROPERTY TO COMMERCIAL PLANNED DEVELOPMENT TO ALLOW FOR A REVISION TO THE MASTER CONCEPT PLAN AND ONE (1) ADDITIONAL DEVIATION FOR SETBACKS FOR THE REDEVELOPMENT OF A COMMERCIAL MARINA FOR PROPERTY LOCATED AT 7225, 7291 AND 7295 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBERS 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 AND 03-47-24-W1-00011.003B IN FORT MYERS BEACH; RESTATING PREVIOUSLY APPROVED CONDITIONS AND DEVIATIONS; 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, MHC Fish Tale, LLC., the owner, and Edgewater Group, as agents for the property located at 7225, 7291 Estero Boulevard, Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 and 03-47-24-W1-00011.003B in the Town of Fort Myers Beach, filed an application to amend the Master Concept Plan (MCP) adopted in Resolution Z-94-013, which rezoned the property to Commercial Planned Development with deviations, to allow for the redevelopment of a commercial marina; and

WHEREAS, the property is a combination of three 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 June 10, 2025, at which time 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__ to __ to recommend approval/approval with conditions/denial to the request and found it consistent with the Comprehensive Plan, and

WHEREAS, on _____, 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 _____, 2025; and

WHEREAS, at the _____, 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 a revision to the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

WHEREAS, a deviation is needed from Section 34-638 (f), of the Land Development Code (“LDC”) regarding the minimum building setback to allow a setback of 0 feet for structures adjacent to the submerged land lease basin and a 20-foot setback for the portion of the site adjacent to the state-owned canal; and

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

- a. The rezoning, as amended and restated, 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, as amended and restated, 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, as amended and restated, 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, as amended and restated, would protect, conserve, or preserve environmentally critical areas and natural resources.

- g. The rezoning, as amended and restated, would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning, as amended and restated, 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, as amended and restated, and 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 Section 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.

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 finds that the amendment and restatement of CPD zoning with deviations as provided herein is **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and **APPROVES/APPROVES WITH CONDITIONS/DENIES** the requested application.

Section 3. Ordinance 25-14 is adopted and approved to amend and restate Resolution 94-013 as provided in the Conditions of Approval for the Property's CPD as set forth in Exhibit A, the revised 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 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 ____ 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 Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2025.

Exhibits:

A- Conditions of Approval

B - Master Concept Plan (MCP)

C – Schedule of Uses

Exhibit A: Conditions of Approval

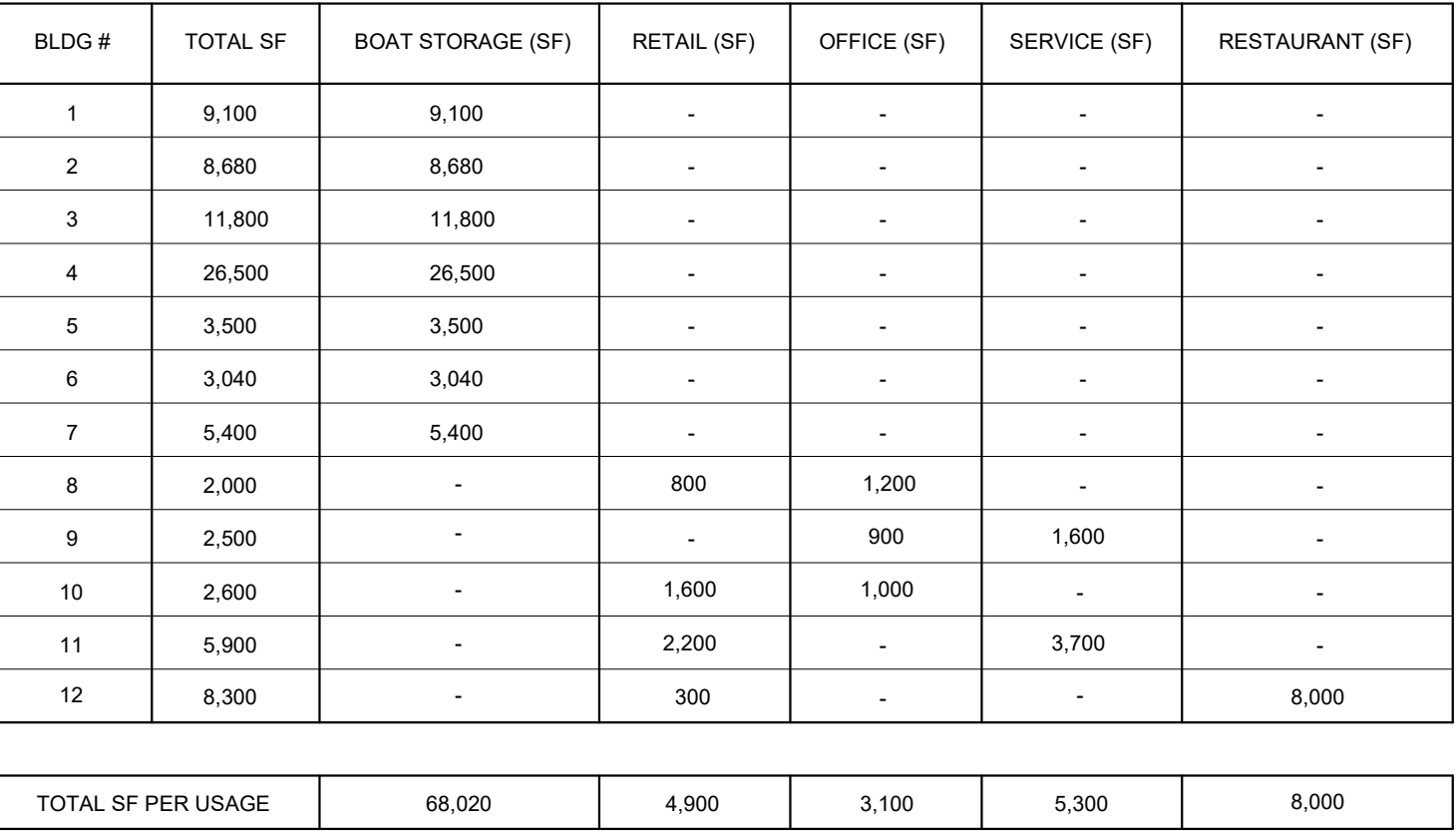
Exhibit A: Conditions of Approval

Continuation of Existing approvals from CPD 1994 MCP (Resolution Z-94-013) as amended from Resolution Z-88-268

- a. Minimum building setback approximately 0-feet for structures adjacent to the submerged land leased basin, and 20-feet for structures adjacent to the state-owned canal.
- b. Minimum setback for parking or interval roads or drives in the southwest corner of the property (as shown on MCP) is the width of Type C buffer with a wall constructed between the property and the Santa Maria Condominiums.
- c. The proposed dry storage building is limited to 55 feet in height and shall be constructed to withstand winds of 140 mph; all other uses are limited to 35 feet in height.
- d. A 5-foot-wide buffer with Type D plantings shall be provided at location along marina accessory use as shown on the Master Concept Plan to match the existing.
- e. A 5-foot-wide buffer with Type D plantings shall be provided at location along marina accessory use as shown on the Master Concept Plan
- f. An intertidal, littoral shelf of minimum 5 foot wide between the existing seawall and the docks shall be created. Please refer to Resolution Z-94-013, conditions #6.
- g. Residential development within Phase II shall comply with the buffers given on MCP with Type B buffer along the local street easement south of Villa Santini Plaza.
- h. Dry storage building is limited to 55 feet in height and all other uses are limited to 35 feet in height above grade level.
- i. No more than 30,000 sq. ft. of retail development on the subject property out of which Phase II is limited to a maximum of 20,000 sq. ft. of commercial building floor area.
- j. The project shall comply with the density requirements of the Lee Plan. If only Phase II (2+ acres) is redeveloped for residential uses (2+ acres x 6 maximum allowable density), the site is limited to twelve dwelling units at six units per acre. Residential uses are permitted only in conjunction with at least 50,000 square feet of commercial or industrial uses.
- k. A 10-foot-wide pedestrian easement between the Santa Maria Condominium and the boat docks owned by Santa Maria.
- l. The owner/developer shall post manatee awareness and idle speed /no wake signs along the canals from the subject property to Ostego Bay.
- m. The owner/ developer shall post "no parking-fire lane" signs along the length of the access road that runs between the subject property and Villa Santini Plaza. The applicant and the owner of Villa Santini Plaza shall construct three-sided barriers around the dumpsters located in the access road for the purpose of keeping the dumpsters flush against the buildings and out of the fire lane.
- n. Open space shall be provided in accordance with the Master Concept Plan with exceptions as given under resolution.
- o. Any change of the marina use would require a public hearing as per Policy 98.2.1.
- p. Parking shall be in accordance with the Lee County regulations, with the exception of marina parking (Deviation (12) of Resolution Z-88-268). The MCP increases the existing number of parking spaces from 145 to 155 with no increase in boat density.
- q. If the property is subdivided for commercial uses, there shall be compliance with the property development regulations of the CC zoning district (Zon Ord Table 450.A, LDC

Section 34-843). The property development regulations of the RM-6 zoning district shall be complied with for multi-family or townhouse development (Zon Ord Table 422.B, LDC Section 34-715). Subdividing shall be in compliance with the Development Standards Regulations.

- r. New commercial development shall not exceed 35 feet above current flood elevation except for the proposed dry boat storage per Development Order 5-21-89). The proposed dry storage building is limited to 55 feet in height.
- s. If residential development occurs, the buildings shall not exceed 35 feet above grade, except as provided for in Zon Ord Section 202.18.A.4 Land Development Code Section 34-2174.
- t. Open space shall be provided in accordance with the Master Concept Plan, with one exception: open space which is located within a road right-of-way or road easement may not be used for credit towards Fish Tale Marina's open space requirement.
- u. This zoning approval does not indicate that the project's traffic impacts have been mitigated. Additional conditions may be required at the time of issuance of a local Development Order per the Development Standards Regulations or other Town of Fort Myers Beach regulations.
- v. The existing development within Phase II (miniature golf course and ancillary restaurant) shall comply with the following conditions:
 - i. All exterior lighting on the property shall be low intensity and directed away from the adjacent residential uses.
 - ii. Structures shall be limited to a maximum of 15 feet above current flood elevation except for one lighthouse-like structure which shall be a maximum of 25 feet above finished grade.
 - iii. The miniature golf course and ancillary restaurant (including outdoor seating) shall be operated only between the hours of 10:00 A.M. and 10:00 P.M. from May 1st through October 31st of each year and between the hours of 10:00 A.M. and 11:00 P.M. from November 1st through April 30th of each year. If the miniature golf course is abandoned, the restaurant shall be allowed as permitted in Condition 22.
 - w. The owner/developer shall ensure twenty percent of total wet slips are useable for sailboats. These slips may be used for other vessels as demand requires.
 - x. The following setbacks shall apply:
 - i. Setback A: from State-owned canal: 20 ft.
 - ii. Setback B: from Submerged Land Leased Basin: 0 ft.
 - y. The owner/developer shall provide and maintain at the cost of \$2,750.00 per year dry, covered storage for one boat and provide one outdoor storage space for the use of the Town of Fort Myers Beach.
 - z. The proposed buildings on the site plan, identified as a marina accessory use building in Development Order 5-21-89, shall be used for marina uses.
 - aa. Square Footage of Uses and Slip #s shall comply with Table provided in Exhibit C of this ordinance



TO BE STORED, TREATED AND RELEASED PER

edgewater.pro

SHEET NUMBER:

Page 132 of 542

Exhibit C: Schedule of Uses as defined in Resolution number Z-94-013

- Administrative Offices
- ATM – Automated Teller Machine
- Retail
 - Bait and Tackle Shop
 - Boat Parts Store
 - Boat Sales
 - Food Store
 - Gift and Souvenir Shop
 - Hobbie, Toy, Game Shop
 - Special retail shops
- Bank and Financial Establishment
- Bar or Cocktail Lounge
- Business Office
- Business Services
- Clubs – including membership organizations
- Consumption on Premises – as associated with a restaurant
 - Including COP for Outdoor Seating in conjunction with a restaurant
- Day Care Center (child or adult)
- Marina and Marina accessory uses
 - Docking and Mooring facilities
 - Dry Boat Storage
 - Sale of Fuel and Lubricants
 - Live Aboards
 - Sanitary Facilities
 - Restrooms and showers for transient persons
 - Pump out facilities for onboard sanitation
 - Wastewater holding pretreatment or treatment
- Drive-Thru Facility – only in conjunction with a bank
- Drug Store or Pharmacy
- Dwelling Units – in compliance with zoned density
 - Townhouse
 - Multi-family Building
- Entrance Gates and Gatehouses
- Essential Services
- Food and Beverage Service
- Hotel/Motel
 - Efficiency Motel permitted
 - Convention of transient Hotel/motel prohibited
- Insurance Company
- Laundromat
- Laundry or Dry-cleaning

- Personal Services
- Pet Services
- Recreation, Commercial
 - Excludes waterslides
- Rental or Leasing Establishments
- Restaurants, standard
- Schools, commercial
- Signs – in accordance with LDC regulations
- Storage
 - Indoor – limited to boats and associated equipment, but not including commercial mini-warehouses or garages
 - Open
- Temporary Uses – limited to construction trailer and construction equipment
- Transportation Services
- Vehicle and Equipment Dealers

The 1992 Master Concept Plan with a 20,000 SF Commercial strip mall is replaced with the following structures:

Bldg #	Total SF	Boat Storage (SF)	Retail (SF)	Office (SF)	Service (SF)	Restaurant (SF)
1	9,100	9,100	-	-	-	-
2	8,680	8,680	-	-	-	-
3	11,800	11,800	-	-	-	-
4	26,500	26,500	-	-	-	-
5	3,500	3,500	-	-	-	-
6	3,040	3,040	-	-	-	-
7	5,400	5,400	-	-	-	-
8	2,000	-	800	1,200	-	-
9	2,500	-	-	900	1,600	-
10	2,600	-	1,600	1,000	-	-
11	5,900	-	2,200	-	3,700	-
12	8,300	-	300	-	-	8,000
Total SF per usage		68,020	4,900	3,100	5,300	8,000

- Building 4 is not to exceed 27,000 SF
- Building 7 is not to exceed 6,000SF

The proposed development is not to exceed the quantity of boats listed below:

EXISTING WETSLIP MIX			
Dock	Slip Style	Slip Length (ft)	Slip Count
Seasonal Slips			
A	Broadside	30	7
	Slip	30	16
	Slip	40	2
	Slip	50	1
	Dock A Total:		26
B	Slip	30	12
	Dock B Total:		12
C	Broadside	30	1
	Broadside	40	16
	Slip	30	8
	Slip	40	12
	Dock C Total:		37
D	Slip	20	8
	Slip	30	8
	Slip	40	1
	Dry Dock	40	3
	Dock D Total:		20
Total Marina Slips			95
Transient Slips			
Dock D Broadside		-	3
Queueing Slips			18
Fuel Dock Slips			4
Total Slips			120

PROPOSED WETSLIP MIX			
Dock	Slip Style	Slip Length (ft)	Slip Count
Seasonal Slips			
A	Slip	30	8
	Slip	40	11
	Dock A Total:		19
B	Slip	40	10
	Dock B Total:		10
C	Broadside	30	1
	Slip	40	9
	Dock C Total:		10
D	Broadside	30	1
	Broadside	40	17
	Slip	40	20
	Dock D Total:		38
Total Marina Slips			77
Transient Slips			
Dock A Broadside		30	4
Queueing Slips			16
Fuel Dock Slips			2
Total Slips			99

EXISTING DRYSTACK SLIP MIX				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1	1	25	22	66
	2	25	22	
	3	30	22	
2	1	25	22	66
	2	25	22	
	3	20	22	
3	1	25	28	84
	2	25	28	
	3	20	28	
4	1	25	36	60
	2	30	24	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
Drystack Subtotal			321	
Existing Wetslip Plan			120	
Total Slips:			441	

Proposed Drystack Slip Mix				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1, 2, 3 footprint	1	35	39	134
	2	35	39	
	3	30	39	
	4	30	17	
4	1	45	24	120
	2	40	24	
	3	30	36	
	4	30	36	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
7	1	45	12	36
	2	40	12	
	3	30	12	
Drystack Subtotal			335	
Proposed Wetslip Plan			99	
Total Slips:			434	



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: CPD AMENDMENT

CASE NUMBER: CPD20250008

CASE NAME: 7225 Estero Blvd., A request to amend an existing Commercial Planned Development to clarify previously approved deviations, conditions of approval, incorporate an existing outparcel, a deviation to reduce building setbacks to the leased portion of the boat basin, develop a new restroom, boat club office and retail space.

LPA

HEARING DATE: August 4th, 2025, at 9 AM

STAFF

RECOMMENDATION: APPROVAL WITH CONDITIONS

**PREPARED/
SUBMITTED BY:** Jason Smalley- Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: MHC Fish Tale LCC c/o Equity Lifestyle Partners

Request: The applicant is requesting an amendment of Res. Z-94-013 to revise the Master Concept Plan (MCP), locations of previously approved buildings, develop a modern bathroom and boat club office, reduce the setbacks of the existing restaurant and deck to 0-feet adjacent to the leased boat basin area and clarify that all phases mentioned in the previous MCP amendment have been completed.

LPA 06/10/25: Discussion was largely about the previously approved conditions and their proposed reorientation of the pre-storm buildings. Short questions about the existing restaurant deck and when they proposed opening back up. Explained that the entire scope of their project was being handled through normal permitting, Limited Development

Orders and the amendment to the existing approved Planned Development.

Subject property: See attached Master Concept Plan

Physical Address: 7225 Estero Blvd. and 7295 Estero Blvd.

STRAP #: 03-47-24-W1-00011.0010; 03-47-24-W1-00011.0020;
03-47-24-W1-00011.003B

FLU: Pedestrian Commercial

Zoning: Commercial Planned Development (CPD)

Adjacent zoning and land uses:

North: COMMERCIAL PLANNED DEVELOPMENT (CPD)
Retail

South: Commercial Resort
Residential/ Condominium

East: Bay Beach
Residential/ Condominium

West: Santini
Commercial

II. BACKGROUND AND ANALYSIS

Background:

Original CPD Approval: October 24th, 1988 (Res. Z-88-268)

- 18 Conditions of Approval
- 12 Deviations of Lee County Standards

Amendment to CPD: May 16th, 1994 (Res. Z-94-013)

- Amendment to allow additional commercial uses, removed 4 conditions of approval and modified another 4 conditions. Added 2 conditions of approval, clarifying previous conditions and updating the title and date of revised Master Concept Plan (MCP).

Analysis:

Existing Conditions and Deviations: The existing conditions of approval and deviations have been in effect since the approval of the 1994 CPD-amendment. The applicant has submitted a list of those conditions and deviations with their accounting of what needs to be remediated. The applicant has stated in their submissions that their intent is to bring the marina back into full functionality, reconfigure building locations, construct ADA-compliant bathrooms and offices to serve boat club functions (building 9), repair and reopen the on-site restaurant and fully utilize the outparcel where boat sales and service is proposed.

The applicant is not requesting additional floor area, height or intensification of uses beyond what had already been approved through the two previous CPDs. In-fact the applicant is proposing to increase the number of available parking spaces to adequately accommodate the expected volume of visitors and customers while reducing the total number of dry-slips to accommodate fewer, but larger vessels. The request largely recognizes that the site is useable, but that some development such as the restaurant and deck were developed closer to the boat basin than would be allowed under current codes, the orientation of some of the previously approved marina buildings is no longer conducive to safe and efficient movement of vessels to and from the water and constructing a new building which will provide offices for staff and ADA restrooms for visitors. All of the proposed additions would be allowable under the existing, approved CPD maximum areas.

Lastly, the applicant has requested to remove references to a phased-build in the CPD language, the areas which were slated for 'Phase-II' activities were already constructed and both staff and the developer agree that this language may be confusing for future reviewers, the site layout proposed in the attached, amended MCP (Exhibit-B) shall become the new record of building location, providing needed context and the actual footprint of buildings, docks and parking spaces.

Deviation #1: The applicant is requesting relief from LDC Sec. 34-638(f) and proposing minimum building setback of 0 feet for structures adjacent to the submerged land lease basin and 20-foot setbacks for the portion of the site adjacent to the state-owned canal.

This request would allow for the existing restaurant and deck adjacent to the marina's leased boat basin area (Building 12 on revised MCP) to be made compliant with the current code. Based on available permitting records it is unclear how or when the existing restaurant deck area was constructed with effectively zero setbacks to the water.

While it is in the best interest of the applicant that they have access to the seawall under the deck, the continued use of the restaurant and deck is an approved use

and there is community interest in having additional dining options on the south of the island. Keeping the structure where it was located prior to the storm does not—in the opinion of staff—present a hazard or nuisance to the wider neighborhood and furthers the community interest in the marina continuing its full use

III. CONDITIONS OF APPROVAL

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. A Development Order will be required to be completed prior to the issuance of Certificates of Completion where turtle protection codes, site-lighting, landscape species and revised stormwater design will be reviewed.

IV. STAFF RECOMMENDATIONS

Staff has reviewed the site plans, Master Concept Plan (MCP) and deviations for the redevelopment of Fish Tale Marina CPD

Staff recommends **APPROVAL WITH CONDITIONS** of Ord. 25-14 with the single (1) deviation contained therein.

IV. EXHIBITS

- A. Exhibit A: Amended Conditions of Approval
- B. Exhibit B: Amended Master Concept Plan
- C. Exhibit C: Schedule of Uses

January 27, 2025

Revised: March 5, 2025

Zoning Department | Town of Fort Myers Beach
2731 Oak St.
Fort Myers Beach, Florida 33931

Via email: Zoningpermits@fmbgov.com
CC: jsmalley@fmbgov.com

Re: MCP Modification Request for Fish Tale Marina – 7225 Estero Blvd. Fort Myers Beach, FL

To whom it may concern,

Fish Tale Marina suffered severe damage during Hurricane Ian on September 28th, 2022. The owner, Equity Lifestyle Properties (ELS) would like to rebuild the marina to modern day standards. The marina includes wet and drystack slips, boat service building, boat rentals, fueling dock, ship store, restaurant and other marina related amenities and infrastructure. The goal is to keep the marina a commercial marina open to the public. In order to complete all the long-term improvements a new master plan was created.

A MCP was approved in 1988 and amended again in 1994 for the property. The 1994 MCP contemplated a large commercial strip mall on the property. We would like to return the site to a Commercial Marina open to the public.

The following items describe the existing 1994 MCP addenda that will NOT be modified, and we have identified proposed deviations for the new attached MCP to return the project to a commercial marina:

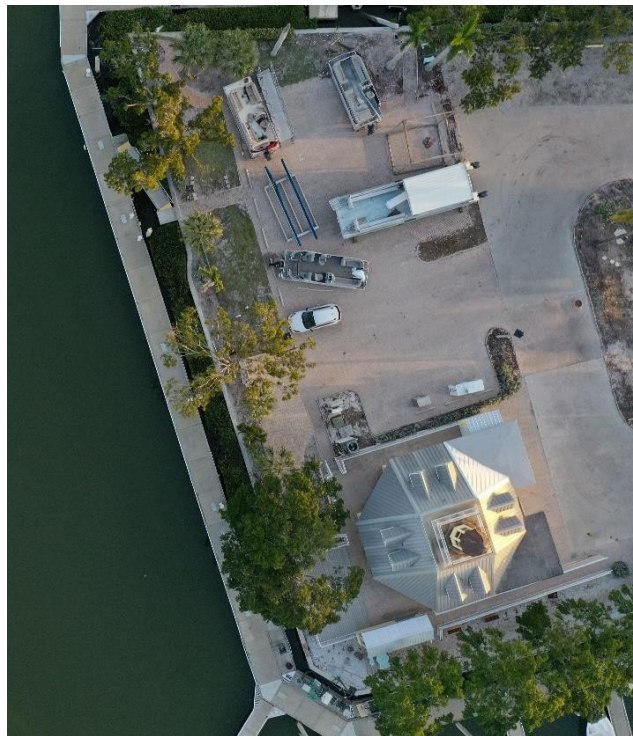
- I. Existing addenda to remain from the 1994 MCP (we are planning to retain the right to these items without necessarily implementing them to the current MCP modification request):
 - A) Minimum building setback approximately 1 foot for existing and dry boat storage buildings provided 20 foot wide access is provided around all the buildings to allow fire department access.
 - B) Minimum setback for parking or interval roads or drives in the southwest corner of the property (as shown on MCP) is width of Type C buffer with a wall constructed between the property and the Santa Maria Condominiums.
 - C) The proposed dry' storage building is limited to 55 feet in height and shall be constructed to withstand winds of 140 mph; all other uses are limited to 35 feet in height.

- D) A Type C buffer with 6 foot high wall along south side of the subject property where it abuts Santa Maria Condominium. (We plan to replace the damaged buffers and meet existing requirements)



(6' High Wall – pre-hurricane)

- E) A 5-foot-wide buffer with Type D plantings shall be provided at location along marina accessory use as shown on the Master Concept Plan (We plan to match the existing)



(Aerial image of 5ft wide buffer)

- F) An intertidal, littoral shelf of minimum 5 foot wide between the existing seawall and the docks shall be created. Please refer to Resolution for details. (We plan to match the existing)



(Existing Mangrove Buffer)

- G) Residential development within Phase II shall comply with the buffers given on MCP with Type B buffer along the local street easement south of Villa Santini Plaza. (We plan to retain this right, however we are not proposing any residential developments at this time)
- H) Dry storage building is limited to 55 feet in height and all other uses are limited to 35 feet in height above grade level. (We plan to meet these limits)

- I) No more than 30,000 sq. ft. of retail development on the subject property out of which Phase II is limited to a maximum of 20,000 sq. ft. of commercial building floor area. (We plan to include 6,400 sq. ft. of retail in Phase I as follows:

Bldg #	Total SF	Boat Storage (SF)	Retail (SF)	Office (SF)	Service (SF)	Restaurant (SF)
1	9,100	9,100	-	-	-	-
2	8,680	8,680	-	-	-	-
3	11,800	11,800	-	-	-	-
4	26,500	26,500	-	-	-	-
5	3,500	3,500	-	-	-	-
6	3,040	3,040	-	-	-	-
7	5,400	5,400	-	-	-	-
8	2,000	-	800	1,200	-	-
9	2,500	-	-	900	1,600	-
10	2,600	-	1,600	1,000	-	-
11	5,900	-	2,200	-	3,700	-
12	8,300	-	300	-	-	8,000
Total SF per usage		68,020	4,900	3,100	5,300	8,000

- J) The project shall comply with the density requirements of the Lee Plan. If only Phase II (2+ acres) is redeveloped for residential uses (2+ acres x 6 maximum allowable density), the site is limited to twelve dwelling units at six units per acre. Residential uses are permitted only in conjunction with at least 50,000 square feet of commercial or industrial uses (Table 480.A).3



- K) A 10-foot-wide pedestrian easement between the Santa Maria Condominium and the boat docks owned by Santa Maria. (We plan to match the existing)
- L) The owner/developer shall post manatee awareness and idle speed /no wake signs along the canals from the subject property to Ostego Bay. (Will be completed).
- M) The owner/ developer shall post “no parking-fire lane” signs along the length of the access road that runs between the subject property and Villa Santini Plaza. The applicant and the owner of Villa Santini Plaza shall construct three-sided barriers around the dumpsters located in the access road for the purpose of keeping the dumpsters flush against the buildings and out of the fire lane. (We plan to match the existing)
- N) Open space shall be provided in accordance with the Master Concept Plan with exceptions as given under resolution.
- O) Any change of the marina use would require a public hearing as per Policy 98.2.1.
(Note: We are not changing the Marina use).
- P) Parking shall be in accordance with the Lee County regulations, with the exception of marina parking (Deviation (12) of Resolution Z-88-268).
(Note: We are increasing the existing number of parking spaces from 145 to 155 with no increase in boat density).
- Q) If the property is subdivided for commercial uses, there shall be compliance with the property development regulations of the CC zoning district (Zon Ord Table 450.A, LDC Section 34-843). The property development regulations of the RM-6 zoning district shall be complied with for multi-family or townhouse development (Zon Ord Table 422.B, LDC Section 34-715). Subdividing shall be in compliance with the Development Standards Regulations.
- R) New commercial development shall not exceed 35 feet above current flood elevation (except for the proposed dry boat storage, Development Order 5-21-89).
- S) If residential development occurs, the buildings shall not exceed 35 feet above grade, except as provided for in Zon Ord Section 202.18.A.4 Land Development Code Section 34- 2174.
- T) Open space shall be provided in accordance with the Master Concept Plan, with one exception: open space which is located within a road right-of-way or road easement may not be used for credit towards Fish Tale Marina's open space requirement.

- U) This zoning approval does not indicate that the project's traffic impacts have been mitigated. Additional conditions may be required at the time of issuance of a local Development Order per the Development Standards Regulations or other Lee County Regulations.
- V) The existing development within Phase II (miniature golf course and ancillary restaurant) shall comply with the following conditions:
- All exterior lighting on the property shall be low intensity and directed away from the adjacent residential uses.
 - Structures shall be limited to a maximum of 15 feet above current flood elevation except for one lighthouse like structure which shall be a maximum of 25 feet above finished grade.
 - The miniature golf course and ancillary restaurant (including outdoor seating) shall be operated only between the hours of 10:00 A.M. and 10:00 P.M. from May 1st through October 31st of each year and between the hours of 10:00 A.M. and 11:00 P.M. from November 1st through April 30th of each year. If the miniature golf course is abandoned, the restaurant shall be allowed as permitted in Condition 22. (We plan to retain this right, however we are not proposing any mini golf developments at this time. Existing restaurant is planned for renovations)



II. Deviations:

- A) The owner/developer shall reserve twenty percent of the total wet slips for sailboats.
(We historically do not have many sailboats. We will make slips available for sailboats but will use slips for power boats until the sailboat demand increases).
- B) The following setbacks shall apply:
- Setback A: from **State-owned canal**: 20 ft.
 - Setback B: from **Submerged Land Leased Basin**: 0 ft.
- C) The owner/developer shall provide and maintain at the cost of \$2,750.00 per year dry, covered storage for one boat and provide one outdoor storage space for the use of either county or state agencies. (The Town of Fort Myers Beach will be the agency to procure these spaces).
- D) The proposed buildings on the site plan, identified as a marina accessory use building, Development Order 5-21-89, shall be used for marina uses. (Has already been built with a different configuration and smaller building footprint).
- E) New building adjacent to existing marina accessory building:
- New, modern ADA accessible restroom building and boat club office. This Building is labeled as number 9 on the proposed site plan and it has a total of 2,400 sf. 840 sf of office space and 1,560 sf for restrooms.
- F) (1994 MCP - 20,000 SF Strip mall / plaza is to be replaced with):

Bldg #	Total SF	Boat Storage (SF)	Retail (SF)	Office (SF)	Service (SF)	Restaurant (SF)
1	9,100	9,100	-	-	-	-
2	8,680	8,680	-	-	-	-
3	11,800	11,800	-	-	-	-
4	26,500	26,500	-	-	-	-
5	3,500	3,500	-	-	-	-
6	3,040	3,040	-	-	-	-
7	5,400	5,400	-	-	-	-
8	2,000	-	800	1,200	-	-
9	2,500	-	-	900	1,600	-
10	2,600	-	1,600	1,000	-	-
11	5,900	-	2,200	-	3,700	-
12	8,300	-	300	-	-	8,000
Total SF per usage		68,020	4,900	3,100	5,300	8,000

- G) Building 4 not to exceed 27,000 SF
- H) Building 7 not to exceed 6,000 SF
- I) Additional stormwater retention underneath the buildings similar to the existing drystack retention areas as building 5 & 6 will be built.

- J) In the future, the plan will be to rebuild buildings 1, 2, 3. As a result of that work, the quantity of boat slips may decrease with a smaller number of larger boats. In either event we will not exceed the quantity of boats in the proposed slip mix chart as shown below;

The number of existing and proposed boat slips are as follows:

EXISTING WETSLIP MIX			
Dock	Slip Style	Slip Length (ft)	Slip Count
Seasonal Slips			
A	Broadside	30	7
	Slip	30	16
	Slip	40	2
	Slip	50	1
	Dock A Total:		26
B	Slip	30	12
	Dock B Total:		12
C	Broadside	30	1
	Broadside	40	16
	Slip	30	8
	Slip	40	12
	Dock C Total:		37
D	Slip	20	8
	Slip	30	8
	Slip	40	1
	Dry Dock	40	3
	Dock D Total:		20
Total Marina Slips			95
Transient Slips			
Dock D Broadside		-	3
Queueing Slips			18
Fuel Dock Slips			4
Total Slips			120

PROPOSED WETSLIP MIX			
Dock	Slip Style	Slip Length (ft)	Slip Count
Seasonal Slips			
A	Slip	30	8
	Slip	40	11
	Dock A Total:		19
B	Slip	40	10
	Dock B Total:		10
C	Broadside	30	1
	Slip	40	9
	Dock C Total:		10
D	Broadside	30	1
	Broadside	40	17
	Slip	40	20
	Dock D Total:		38
Total Marina Slips			77
Transient Slips			
Dock A Broadside		30	4
Queueing Slips			16
Fuel Dock Slips			2
Total Slips			99

EXISTING DRYSTACK SLIP MIX				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1	1	25	22	66
	2	25	22	
	3	30	22	
2	1	25	22	66
	2	25	22	
	3	20	22	
3	1	25	28	84
	2	25	28	
	3	20	28	
4	1	25	36	60
	2	30	24	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
Drystack Subtotal				321
Existing Wetslip Plan				120
Total Slips:				441

Proposed Drystack Slip Mix				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1, 2, 3 footprint	1	35	39	134
	2	35	39	
	3	30	39	
	4	30	17	
4	1	45	24	120
	2	40	24	
	3	30	36	
	4	30	36	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
7	1	45	12	36
	2	40	12	
	3	30	12	
Drystack Subtotal				335
Proposed Wetslip Plan				99
Total Slips:				434



III. Summary

Attached are drawings identifying existing conditions of previous 1994 MCP and proposed 2024 Master Concept Plan (MCP). Additionally, we provided plans for the new structures proposed. We also have identified transient slips including a proposed water taxi boat stop for public benefit at the restaurant.

We look forward to your review of this application as soon as possible.

Ronald E. Schults, P.E. Principal |
CEO

CC: Jim Murray | Sr. Director, Land Development – ELS
Mike Flanigan | Senior Regional Manager – ELS
Andy Flamengo | Senior Project Manager – NV5
Erik Schults, EIT | Vice President – Edgewater
Brock Petrak, EIT | Engineer – Edgewater

Attachments:

1. Existing Survey
2. Existing Site Plan
3. Proposed 2024 MCP
4. 2020 Verification Letter & 1994 MCP
5. Drawings of proposed building #4 & #7
6. Drawings of proposed Restroom/office building (9) & Boat Service building (11)
7. Site Photometry Plan
8. Map of surrounding properties within 500 feet
9. List of surrounding properties within 500 feet

37.57
BILLED.

2552583

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Stardial Investment Company, Bunche Beach Land Trust, & Fish Tale Marina, Inc. has properly filed an application for a rezoning from C-1 and CT to Commercial Planned Development, to permit the expansion of an existing marina not to exceed 55 feet above average grade, on 7.9± total acres of land. The proposed development will also include a maximum of 428 wet and dry slips, as well as accessory uses, and other commercial uses including retail and restaurant use.

NOTE:

If approved, the Master Concept Plan will deviate from the following Lee County standards:

- (1) Zoning: (461.C.2.A.1) to change minimum building setback from 15 feet to approximately one foot for existing and proposed dry boat storage buildings, and to the width of the minimum buffer for pavement.
- (2) Zoning: (461.C.2.A.2) to change minimum setback for parking or internal roads or drives from 25 feet to the width of the minimum buffer.
- (3) Zoning: (461.C.4.c.) to eliminate requirement that artificial bodies of water may not exceed 25% of the minimum required open space.
- (4) Zoning: (202.10.E) to eliminate requirement for eight-foot high visual screen where abutting uses are separated from the proposed development by a navigable waterway.
- (5) Zoning: (202.13.G) to change requirement for paved parking areas to allow alternate surfaces for improved, all weather parking.
- (6) Zoning: (202.13.J.1.) to allow in accordance with 202.B.H. joint use of parking so that up to one half of the spaces required for the marina may be used to offset the required parking spaces for a standard restaurant.
- (7) Zoning: (202.15.A.4) to eliminate the requirement for increased setback for buildings exceeding 35 feet on Estero Island.
- (8) Development Standards Ordinance: (C.3.h.) to reduce minimum intersection separation from 660 feet to approximately 125 feet.
- (9) Development Standards Ordinance: (C.6.c.(3)(e)) to change the provision that existing bodies of water may be used to offset up to a maximum of 25 percent of the required open space area to 50 percent.
- (10) Development Standards Ordinance: (C.5.d. Table C-3, Note 3) to delete the requirement for eight foot high visual screen and six foot high concrete block wall where abutting residential development is separated from subject development by navigable waterway.

OR2030

PG0794

(11) Development Standards Ordinance: (C.5.D. Table C-4) to permit proposed development without minimum required buffers along navigable seawalled waterways.

(12) Zoning: 202.13.J.1.) & 3.) to reduce the amount of marina parking required from two spaces per three boat slips and one space per four dry storage unit stalls to one space per four wet or dry slips.

WHEREAS, the subject property is located at 7105 Estero Boulevard, Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 03, Township 47 South, Range 24 East, Lee County, Florida:

A tract or parcel of land lying in Government Lot 2, Section 03, Township 47 South, Range 24 East, Estero Island, Lee County Florida, which tract or parcel is described as follows:

PARCEL "A"

From the concrete post marking the intersection of the Easterly line, forty feet from the centerline of Estero Boulevard, State Road No. S-865, and the North line of the South sixty feet of Government Lot 1 of said Section 03, run S.18°34'20"E. along said Easterly line for 863.31 feet to a concrete monument; THENCE run N.71°11'00"E. along the Southeasterly line of a roadway easement (60 feet wide) for 287.54 feet to a concrete monument and the POINT OF BEGINNING of the herein described parcel.

From said POINT OF BEGINNING run N.18°34'20"W. along the Northeasterly end of said roadway easement for 60 feet; THENCE run S.71°11'00"W. along the Northwesterly line of said roadway easement for 50.93 feet to a concrete monument; THENCE run N.00°49'00"W. perpendicular to the North line of said Government Lot 2 for 426.92 feet to a concrete monument marking the Northwesterly corner of lands conveyed by deed recorded in Official Record Book 561 at page 777 of the Public Records of Lee County; THENCE run N.89°11'00"E. parallel with said North line for 10 feet to the Southwesterly corner of lands conveyed by deed recorded in Official Record Book 808 at page 357 of said Public Records; THENCE run N.00°49'00"W. along the Westerly boundary of said lands for 65 feet to the Northwesterly corner of said lands; THENCE run S.85°25'40"E. along the Northerly boundary of said lands for 213 feet more or less to the waters of a boat canal and Easterly face of an existing seawall; THENCE run Southwesterly, Southerly, and Southeasterly along the easterly face of said seawall and along the waters of said boat canal to an intersection with a line bearing N.89°11'00"E. parallel with the North line of said Lot 2 passing through the POINT OF BEGINNING; THENCE run S.89°11'00"W. along said line for 200 feet more or less to the POINT OF BEGINNING.

TOGETHER WITH the hereinabove described roadway easement 60 feet wide and the roadway easement 10 feet wide as described in said deed recorded in Official Record Book 808 at page 357.

PARCEL "B"

A tract or parcel of land lying in Government Lot 2 in Section 03, Township 47 South, Range 24 East, Estero Island, Lee County, Florida, more particularly described as follows:

OR2030

PG0795

From the intersection of the South line of said Government Lot 2 and the Easterly right-of-way line of State Road 865, Estero Boulevard; THENCE run N.18°34'20"W. for 210.00 feet to the POINT OF BEGINNING; THENCE run N.89°11'00"E. for 69.12 feet; THENCE run N.00°49'00"W. for 327.22 feet; THENCE run N.89°11'00"E. for 460.00 feet; THENCE run N.20°08'40"W. for 160.00 feet; THENCE run S.72°52'10"W for 123.63 feet; THENCE run S.89°11'00"W. for 197.60 feet; THENCE run S.71°11'00"W. for 287.54 feet to the Easterly line of State Road #S-865; THENCE run S.18°34'20"E. along said Easterly line for 372.36 feet to the POINT OF BEGINNING.

PARCEL "C"

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Government Lot 2, Section 03, Township 47 South, Range 24 East, and further bounded and described as follows:

Starting at the intersection of the South line of said Government Lot 2 and the Easterly right-of-way line of Estero Boulevard (State Road S-865); THENCE N.89°11'00"E. for 730.82 feet; THENCE N.20°08'40"W. for 478.99 feet to the POINT OF BEGINNING of the herein described parcel; THENCE S.87°03'44"W. for 330.72 feet; THENCE S.00°49'00"E. for 239.75 feet; THENCE S.89°11'00"W. for 236.72 feet; THENCE N.00°49'00"W. for 327.22 feet; THENCE N.89°11'00"E. for 460.00 feet; THENCE N.20°08'40"W. for 160.00 feet; THENCE N.72°52'10"E. for 76.38 feet; THENCE S.20°08'40"E. for 262.45 feet to the POINT OF BEGINNING.

Said parcel contains 116,420 square feet, more or less.

Said parcel subject to all easements, rights-of-way and restrictions of record.

Bearings are based on the Easterly right-of-way line of State Road S-865 as bearing S.18°34'20"W.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 03-47-24-00-00011.0010;
03-47-24-00-00011.003B;
03-47-24-00-00011.0030; and

WHEREAS, proper authorization has been given to Spectrum Engineering, Inc., by Michael F. Johnson, Vice President of Stardial Investment Company; Helen Medwid, Trustee for Bunche Beach Land Trust; and Al Durrett of Fish Tale Marina owners of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Planning and Zoning Commission, with full consideration of all the evidence available to the Planning and Zoning Commission; and

WHEREAS, the Lee County Planning and Zoning Commission fully reviewed the matter in a public hearing held on September 6, 1988; and

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE a rezoning from C-1 and CT to Commercial Planned Development, to permit the expansion of an existing marina not to exceed 55 feet above average grade, on 7.9± total acres of land. The proposed development will also include a maximum of 428 wet and dry slips, as well as accessory uses, and other commercial uses including retail and restaurant use with the following conditions:

1. The Master Concept Plan is a one page plan titled "Fish-Tale Marina, Inc., Master Concept Plan" prepared by Spectrum Engineering, Job No. 21-01, dated March, 1988, and stamped received August 25, 1988, except as modified herein. Approval of this request does not exempt the applicant from compliance with all other zoning and development regulations.
2. The schedule of uses is limited to those indicated on the attachment to the Master Concept Plan (see Attachment D) except as noted below and as further modified by the conditions herein:

- a. Consumption on premises/bar or cocktail lounge is limited to use in conjunction with a restaurant, (Group III, Standard)

- b. The following uses are prohibited:

Business Services - Group II
Cultural Facilities
Essential Service Facilities - Group II
Household/Office Furnishings - Group III
Offices, Medical
Package Store
Personal Services - Groups II and III
Recreational facilities, public and private
Restaurants, Standard - Group IV
Specialty Retail Shops - Group IV
Towers, Communication

- c. The following uses are approved as limited below:

Drive-thru facility-limited to a branch bank only
Marina, Class II - the number of live-aboard boats is limited to 20 wet slips; pump out facilities must be provided prior to any live-aboard being allowed.
Recreation, Commercial - limited to miniature golf course only
Schools, commercial - limited to sailing and marine oriented outdoor life style; e.g., a water skiing school or learn-to-sail school
Signs - in compliance with the Lee County Sign Ordinance
Storage, indoor, enclosed - limited to boats and associated equipment, but not including commercial mini-warehouses or garages
Storage, outdoor - limited to boats
Temporary uses; limited to construction trailer and construction equipment

OR2030

PG0798

3. The maximum square feet of total floor area for retail and/or restaurant use is limited to 15,000 square feet in addition to the existing (approximately 8,700 square feet) commercial uses.
4. The new dry storage building shall be constructed to allow 20-foot-wide access on at least three sides, and the boat storage building shall be sprinklered.
5. Per Lee County DOT&E, the proposed access point onto Estero Boulevard (southwest corner of the subject property) shall not be allowed. The Master Concept Plan shall be revised, prior to final plan approval, deleting the proposed access.
6. The owner/developer shall create an intertidal, littoral shelf between the existing seawall and the proposed docks. The shelf shall be a minimum of five feet wide, and red mangroves (Rhizophora mangle) and white mangroves (Laguncularia racemosa) shall be planted on three foot staggered centers (3'0.C.). The applicant shall apply for permission in advance to prune the littoral shelf mangroves once a year in accordance with applicable DER and Lee County ordinances. Smooth cord grass (Spartina Alternafolia) shall also be planted throughout the shelf. The applicant shall submit a three year, 80% survivability maintenance plan. The plan for the littoral shelf shall be submitted on an amended plan prior to final development order issuance and shall be subject to review and approval by the Department of Community Development. The shelf shall be constructed concurrent with the docks.
7. Prior to the issuance of a final development order, the applicants shall submit a spill containment plan and flushing study to the Lee County, Department of Community Development, Department of Public Safety, Department of Environmental Regulation and Department of Natural Resources. Construction shall not begin until the plan has been reviewed and approved. The applicant shall obtain a letter from the review agencies as proof of review and approval.
8. Major maintenance (anti-fouling painting, engine overhauling, fiberglass repair, etc.) is limited to the type of maintenance currently in use. Touch up painting, varnishing, soap and water cleaning, and other minor maintenance is allowed. The applicant shall sign a contract with a hazardous waste hauler prior to final development order approval.
9. The owner/developer shall provide a type C buffer with a six foot high wall along the south side of the subject property where it abutts Santa Maria Condominium. The remainder of the property, where it abuts residential uses shall provide an eight foot, visually opaque screen.
10. The normal hours of operation for the marina shall be limited to dawn through dusk.
11. Prior to leasing any new slips, the owner/developer shall provide, (subject to review and approval by the Lee County Department of Public Safety) a hurricane preparedness plan, including wet slip evacuation procedures. All boat owners shall be made aware of the requirements of the plan.
12. The owner/developer shall provide a 10-foot-wide pedestrian easement between the Santa Maria Condominium and the boat docks owned by Santa Maria.
13. The owner/developer shall reserve twenty percent of the total wet slips for sailboats.

OR2030

PG0799

14. The owner/developer shall post manatee awareness and idle speed/no wake signs along the canals from the subject property to Ostego Bay.
15. The proposed dry storage building is limited to 55 feet in height and shall be constructed to withstand winds of 140 mph; all other uses are limited to 35 feet in height.
16. The owner/developer shall provide and maintain at the cost of \$2,750.00 per year dry, covered storage for one boat and provide one outdoor storage space for the use of either county or state agencies.
17. The owner/developer shall post "no parking-fire lane" signs along the length of the access road that runs between the subject property and Villa Santini Plaza. The applicant and the owner of Villa Santini Plaza shall construct three-sided barriers around the dumpsters located in the access road for the purpose of keeping the dumpsters flush against the buildings and out of the fire lane.
19. Deviations (1), (2), (3), (4), (5), (7), (9), (10), (11) and (12) are hereby APPROVED as conditioned below; Deviations (6) and (8) have been deleted by the applicant from its request and, therefore, are neither approved nor denied.

Deviation (1) approval is for the existing dry boat storage buildings, provided 20-foot-wide access is provided around all the buildings (to allow fire department access); and

Deviation (2) approval applies only to the southwest corner of the property as shown on the site plan and a type C buffer with a wall is constructed between the property and the Santa Maria Condominiums; and

Deviations (3) and (9) approval is subject to the mitigation provided in condition 6; the open space requirement shall then be considered to have been met; and

Deviations (4), (10), and (11) approval is subject to the condition that plantings (per DSO) are provided; minimum buffer width (per DSO) shall not be required except in areas abutting residential uses where a minimum 5 foot buffer shall be required; and

Deviation (5) approval is subject to review and approval of the alternative materials by Lee County Department of Transportation and Engineering. Also, prior to issuance of a final development order, the applicant shall execute hold harmless and maintenance agreements; and

Deviation (7) is for the new dry storage building which would be 55 feet high, the same as the other dry storage buildings.

Site Plan 88-268 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of Commercial Planned Development zoning:

- a. All recommended conditions are reasonably related to the impacts on the public's interest created by, or expected from, the proposed development;
- b. Sufficient safeguards to the public interest are provided by the recommended conditions to the Master Concept Plan and by other applicable regulations;
- c. The general intent of these regulations, to protect the public health, safety, and welfare, is preserved and promoted;

d. The deviations recommended for approval as conditioned, will enhance the development and will not negatively affect the public health, safety, and welfare; and

e. The proposed uses are, as limited by the conditions herein, appropriate at the subject location.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Mary Ann Wallace, and seconded by Commissioner Donald D. Slisher and, upon being put to a vote, the result was as follows:

John E. Manning	ABSENT
Charles L. Bigelow, Jr.	AYE
Mary Ann Wallace	AYE
Bill Fussell	AYE
Donald D. Slisher	AYE

DULY PASSED AND ADOPTED this 24th day of October, A.D., 1988.

ATTEST:
CHARDIE GREEN, CLERK

BY: Clare J. U. Tarnack
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Bill Fussell
Chairman

Approved as to form by:

[Signature]
County Attorney's Office

FILED
NOV 1 0. 88
CLERK CIRCUIT COURT
BY C. Tarnack D.C.

OR2030

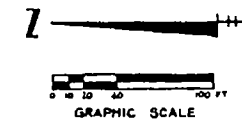
PG0800

OR2030 PG0801

SCHEDULE OF DEVIATIONS

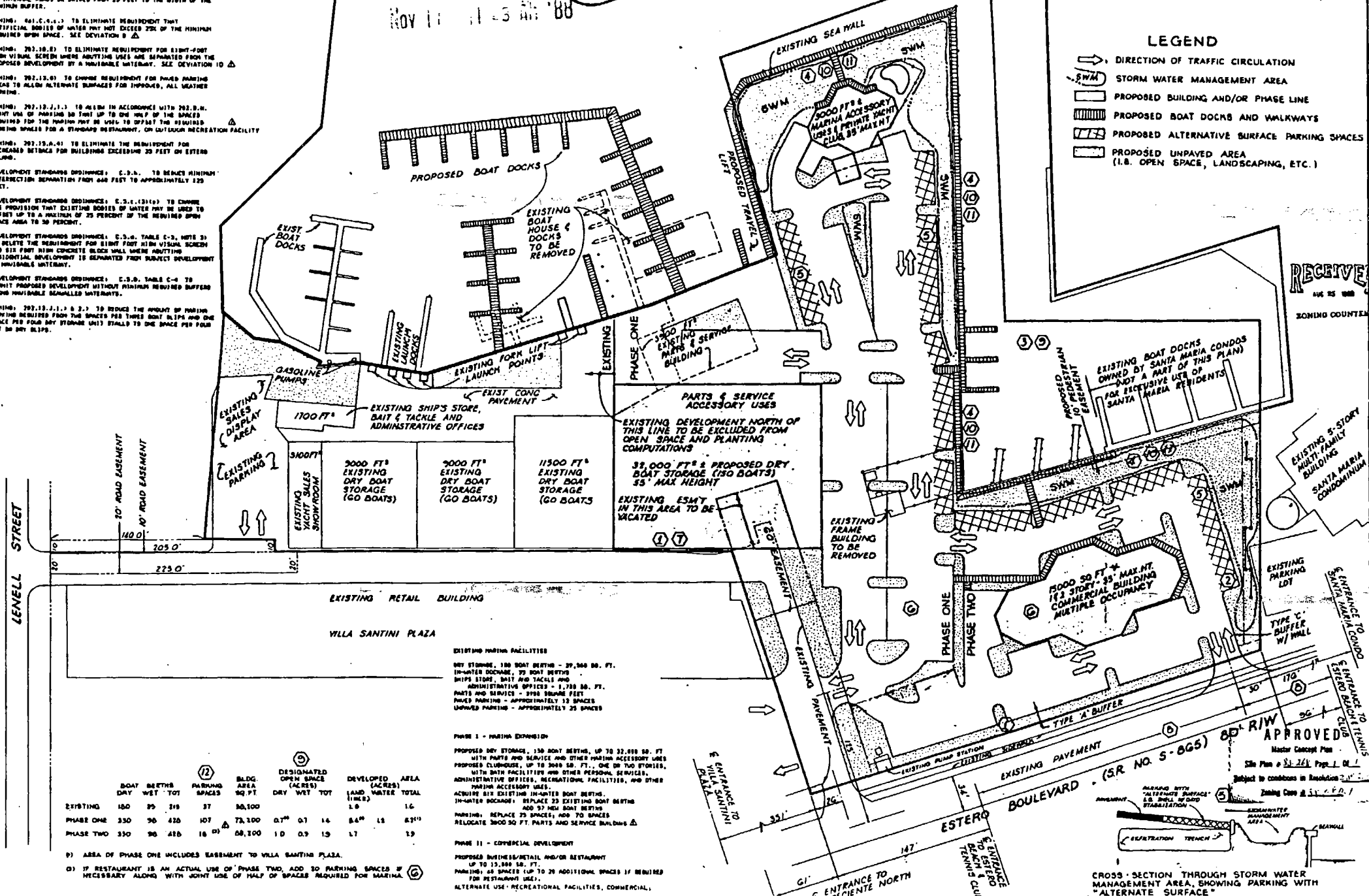
- 1 ZONING: 461.C.3.A.13 TO CHANGE MINIMUM BUILDING SETBACK FROM 15 FEET TO APPROXIMATELY ONE FOOT FOR EXISTING AND PROPOSED DRY BOAT STORAGE BUILDINGS, AND TO THE WIDTH OF THE MINIMUM BUFFER FOR PAVEMENT.
- 2 ZONING: 461.C.3.A.21 TO CHANGE MINIMUM SETBACK FOR PARKING OR INTERNAL ROADS OR DRIVES FROM 25 FEET TO THE WIDTH OF THE MINIMUM BUFFER.
- 3 ZONING: 461.C.4.6.3 TO ELIMINATE REQUIREMENT THAT ARTIFICIAL BODIES OF WATER MAY NOT EXCEED 25% OF THE MINIMUM REQUIRED OPEN SPACE. SEE DEVIATION 9.
- 4 ZONING: 202.10.8.3 TO ELIMINATE REQUIREMENT FOR EIGHT-FOOT HIGH VISUAL SCREEN WHERE ADJUTING USES ARE SEPARATED FROM THE PROPOSED DEVELOPMENT BY A NONVARIABLE WATERWAY. SEE DEVIATION 10.
- 5 ZONING: 202.15.9.1 TO CHANGE REQUIREMENT FOR PAVED PARKING AREAS TO ALLOW ALTERNATE SURFACES FOR IMPROVED, ALL WEATHER PARKING.
- 6 ZONING: 202.15.2.1.3 TO ALLOW IN ACCORDANCE WITH 202.2.4.4. JOINT USE OF PARKING SO THAT UP TO ONE HALF OF THE SPACES REQUIRED FOR THE PARKING MAY BE USED TO OFFSET THE REQUIRED PARKING SPACES FOR A STAND-ALONE RESTAURANT, OR OUTDOOR RECREATION FACILITY.
- 7 ZONING: 202.15.4.4.1 TO ELIMINATE THE REQUIREMENT FOR INCREASED SETBACK FOR BUILDINGS EXCEEDING 25 FEET ON EXTERIOR ISLANDS.
- 8 DEVELOPMENT STANDARDS ORDINANCE: C.3.6. TO MEET MINIMUM INTERSECTION SEPARATION FROM 60 FEET TO APPROXIMATELY 125 FEET.
- 9 DEVELOPMENT STANDARDS ORDINANCE: C.3.6.(13)(c) TO CHANGE THE PROVISION THAT EXISTING BODIES OF WATER MAY BE USED TO OFFSET UP TO A MAXIMUM OF 25 PERCENT OF THE REQUIRED OPEN SPACE AREA TO 50 PERCENT.
- 10 DEVELOPMENT STANDARDS ORDINANCE: C.3.6. TABLE C-3, NOTE 31 TO ELUATE THE REQUIREMENT FOR EIGHT FOOT HIGH VISUAL SCREEN AND SIX FOOT HIGH CONCRETE BLOCK WALL WHERE ADJUTING RESIDENTIAL DEVELOPMENT IS SEPARATED FROM SUBJECT DEVELOPMENT BY NONVARIABLE WATERWAYS.
- 11 DEVELOPMENT STANDARDS ORDINANCE: C.3.6. TABLE C-4 TO PERMIT PROPOSED DEVELOPMENT WITHOUT MINIMUM REQUIRED BUFFERS ALONG NONVARIABLE SEMI-PAVED WATERWAYS.
- 12 ZONING: 202.15.2.1.3 & 2.2 TO REDUCE THE AMOUNT OF PARKING REQUIRED FROM THE SPACES FOR THREE BOAT SLIPS AND ONE SPACE PER FOUR DRY STORAGE UNITS STALLS TO ONE SPACE PER FOUR SLIP OR DRY SLIPS.

RECORDED & RECORD VERIFIED
Charlie Green
CLERK DEPARTMENT
NOV 11 11 45 AM '88



LEGEND

- DIRECTION OF TRAFFIC CIRCULATION
- STORM WATER MANAGEMENT AREA
- PROPOSED BUILDING AND/OR PHASE LINE
- PROPOSED BOAT DOCKS AND WALKWAYS
- PROPOSED ALTERNATE SURFACE PARKING SPACES
- PROPOSED UNPAVED AREA (I.E. OPEN SPACE, LANDSCAPING, ETC.)



	BOAT	DOCKS	WET	TOT	PARKING	BLDG.	DESIGNATED	DEVELOPED	AREA
	DAY	WET	WET		SPACES	AREA	OPEN	AREA	
						sq. ft.	SPACE	(ACRES)	TOTAL
EXISTING	150	25	218	37	30,100		0.7	1.4	8.4
PHASE ONE	330	90	420	107	73,100		0.7	1.4	8.4
PHASE TWO	330	90	420	107	73,100		0.7	1.4	8.4

1) AREA OF PHASE ONE INCLUDES EASEMENT TO VILLA SANTINI PLAZA.
2) IF RESTAURANT IS AN ACTUAL USE OF PHASE TWO, ADD 30 PARKING SPACES IF NECESSARY ALONG WITH JOINT USE OF HALF OF SPACES REQUIRED FOR MARINA.

EXISTING MARINA FACILITIES
DRY STORAGE, 150 BOAT BERTHS - 37,500 SQ. FT.
IN-WATER DOCKAGE, 25 BOAT BERTHS
SHIPS STORE, BAIT AND TACKLE AND
ADMINISTRATIVE OFFICES - 1,700 SQ. FT.
PARTS AND SERVICE - 1,000 SQUARE FEET
PAVED PARKING - APPROXIMATELY 12 SPACES
UNPAVED PARKING - APPROXIMATELY 25 SPACES

PHASE I - PARKING EXTENSION
PROPOSED DRY STORAGE, 150 BOAT BERTHS, UP TO 37,500 SQ. FT.
WITH PARTS AND SERVICE AND OTHER MARINA ACCESSORY USES
PROPOSED CLIMBER, UP TO 200 SQ. FT., ONE OR TWO STORIES,
WITH BATH FACILITIES AND OTHER PERSONAL SERVICES,
ADMINISTRATIVE OFFICES, RECREATIONAL FACILITIES, AND OTHER
MARINA ACCESSORY USES.
ACQUIRE SIX EXISTING IN-WATER BOAT BERTHS.
IN-WATER DOCKAGE: REPLACE 25 EXISTING BOAT BERTHS
ADD 27 NEW BOAT BERTHS
PARKING: REPLACE 25 SPACES; ADD 70 SPACES
RELOCATE 3000 SQ. FT. PARTS AND SERVICE BUILDING

PHASE II - COMMERCIAL DEVELOPMENT
PROPOSED BUSINESS/RETAIL AND/OR RESTAURANT
UP TO 15,000 SQ. FT.
PARKING: 40 SPACES UP TO 20 ADDITIONAL SPACES IF REQUIRED
FOR RESTAURANT USE.
ALTERNATE USE: RECREATIONAL FACILITIES, COMMERCIAL.

FISH TALE MARINA, INC.
MASTER CONCEPT PLAN
FISH TALE MARINA, INC.
715 ATLANTIC BOULEVARD
FT. MYERS BEACH, FL. 33931-4709

JOB NO. 21-01
DATE: MARCH 1988
SCALE: 1"=40'
SHEET 1 OF 1

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Alva E. Durrett, Jr. in reference to Fish Tale Marina, has properly filed an application for an amendment to the Commercial Planned Development to allow additional commercial uses to be developed on site; and

WHEREAS, the subject property is located at 7105 Estero Boulevard, Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 03, Township 47 South, Range 24 East, Lee County, Florida:

Parcel "A"

A tract or parcel of land lying in Government Lot 2, Section 03, Township 47 South, Range 24 East, Estero Island, Lee County, Florida, which tract or parcel is described as follows:

From the concrete post marking the intersection of the Easterly line, forty feet from the centerline of Estero Boulevard, State Road No. S-865, and the North line of the South sixty feet of Government Lot 1 of said Section 03, run S18°34'20"E along said Easterly line for 863.31 feet to a concrete monument;
THENCE run N71°11'00"E along the Southeasterly line of a roadway easement (60 feet wide) for 287.54 feet to a concrete monument and the POINT OF BEGINNING of the herein described parcel.

From said POINT OF BEGINNING run N18°34'20"W along the Northeasterly end of said roadway easement for 60 feet;
THENCE run S71°11'00"W along the Northwesterly line of said roadway easement for 50.93 feet to a concrete monument;
THENCE run N00°49'00"W perpendicular to the North line of said Government Lot 2 for 426.92 feet to a concrete monument marking the Northwesterly corner of lands conveyed by deed recorded in Official Record Book 561 at Page 777 of the Public Records of Lee County;
THENCE run N89°11'00"E parallel with said North line for 10 feet to the Southwesterly corner of lands conveyed by deed recorded in Official Record Book 808 at Page 357 of said Public Records;
THENCE N00°49'00"W along the Westerly boundary of said lands for 65 feet to the Northwesterly corner of said lands;
THENCE run S85°25'40"E along the Northerly boundary of said lands for 213 feet more or less to the waters of a boat canal and Easterly face of an existing seawall;
THENCE run Southwesterly, Southerly and Southeasterly along the Easterly face of said seawall and along the waters of said boat canal to an intersection with a line bearing N89°11'00"E parallel with the North line of said Lot 2 passing through the POINT OF BEGINNING;
THENCE run S89°11'00"W along said line for 200 feet more or less to the POINT OF BEGINNING.

Together with the hereinabove described roadway easement 60 feet wide and the roadway easement 10 feet wide as described in said deed recorded in Official Record Book 808 at Page 357.

Parcel "B"

A tract or parcel of land lying in Government Lot 2, in Section 03, Township 47 South, Range 24 East, Estero Island, Lee County, Florida, more particularly described as follows:

From the intersection of the South line of said Government Lot 2 and the Easterly right-of-way line of State Road No. S-865, Estero Boulevard;
THENCE run N18°34'20"W for 210.00 feet to the POINT OF BEGINNING;
THENCE run N89°11'00"E for 69.12 feet;

continued...

THENCE run N00°49'00"W for 327.22 feet;
THENCE run N89°11'00"E for 460.00 feet;
THENCE run N20°08'40"W for 160.00 feet;
THENCE run S72°52'10"W for 123.63 feet;
THENCE run S89°11'00"W for 197.60 feet;
THENCE run S71°11'00"W for 287.54 feet to the Easterly line of
State Road No. S-865;
THENCE run S18°34'20"E along said Easterly line for 372.36 feet to
the POINT OF BEGINNING.

Parcel "C"

A tract or parcel of land situated in the State of Florida, County
of Lee, being a part of Government Lot 2, Section 03, Township 47
South, Range 24 East, and further bounded and described as follows:

Starting at the intersection of the South line of said Government
Lot 2 and the Easterly right-of-way line of Estero Boulevard
(State Road No. S-865);
THENCE N89°11'00"E for 730.82 feet;
THENCE N20°08'40"W for 478.99 feet to the POINT OF BEGINNING of the
herein described parcel;
THENCE S87°03'44"W for 330.72 feet;
THENCE S00°49'00"E for 239.75 feet;
THENCE S89°11'00"W for 236.72 feet;
THENCE N00°49'00"W for 327.22 feet;
THENCE N89°11'00"E for 460.00 feet;
THENCE N20°08'40"W for 160.00 feet;
THENCE N72°52'10"E for 76.38 feet;
THENCE S20°08'40"E for 262.45 feet to the POINT OF BEGINNING.

Said parcel contains 116,420 square feet, more or less.
Said parcel subject to all easements, rights-of-way and restrictions
of record.

WHEREAS, the applicant has indicated the property's current STRAP numbers
are 03-47-24-00-00011.003B and 03-47-24-00-00011.0010; and

WHEREAS, proper authorization has been given to Spectrum Engineering,
Inc., by Alva E. Durrett, Jr., the fee simple owner of the subject parcel, to
act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held
before the Lee County Hearing Examiner, with full consideration of all the
evidence available; and the Lee County Hearing Examiner fully reviewed the
matter in a public hearing held on April 5, 1994; and

WHEREAS, a public hearing was legally and properly advertised and held
before the Lee County Board of County Commissioners; and the Lee County Board
of County Commissioners gave full and complete consideration to the recommen-
dations of the staff, the Hearing Examiner, the documents on file with the
county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that
the Board of County Commissioners does hereby APPROVE the request for an
amendment to the Commercial Planned Development to allow additional
commercial uses to be developed on site. A maximum of 20,000 square feet of
commercial uses could be developed within Phase II of the development.

The rezoning and Master Concept Plan, which deviate from certain
Lee County Standards, are subject to the following conditions and deviations:

CONDITIONS:

The following conditions of Resolution Z-88-268 are in full force and effect,
except as deleted or modified hereinbelow:

1. DELETED
2. DELETED

3. DELETED
4. MODIFIED: The new dry storage building shall be constructed to allow 20-foot-wide access on at least three sides, and the boat storage building shall be sprinklered, if necessary.
5. DELETED
6. MODIFIED: The developer shall create an intertidal, littoral shelf between the existing seawall and the proposed docks. The shelf shall be a minimum of five feet wide, and must be planted with suitable native indigenous aquatic plants with three-foot staggered centers (3' O.C.). The developer must submit a three year, 80 percent survivability maintenance plan. This planting plan and maintenance plan shall be subject to the review and approval of the Division of Natural Resources Management and must be shown on a development order plan. The shelf must be constructed and the plants must be installed concurrent with the docks.
7. REMAINS THE SAME
8. REMAINS THE SAME
9. MODIFIED: The developer shall provide a type C buffer with a six foot high wall along the south side of the subject property where it abuts Santa Maria Condominium (see Conditions 18 and 23 for other buffer requirements).
10. REMAINS THE SAME
11. REMAINS THE SAME
12. REMAINS THE SAME
13. REMAINS THE SAME
14. REMAINS THE SAME
15. REMAINS THE SAME
16. MODIFIED: The developer shall provide as volunteered, a tie-up space for one boat for use of either county or state agencies for marine law enforcement use (as amended in Resolution Z-88-268A).
17. REMAINS THE SAME
18. Deviations (1), (2), (3), (4), (5), (7), (9), (10), (11) and (12) were previously APPROVED in Resolution Z-88-268 and remain the same, except as modified or conditioned hereinbelow. Deviations (6) and (8) have been deleted by the developer from the request and, therefore, are neither approved nor denied.

Additional or New Conditions:

19. The following are no longer in effect:
 - a) Resolution Number Z-89-043, in reference to Seabreeze Putting Club, an amendment to CPD to allow joint parking agreement with Fish Tale Marina;
 - b) Administrative Amendment PD-90-011, an amendment changing the course layout, retention area location and building layout; and
 - c) The Special Permit for outdoor seating (93-12-09-SP-05) Sandra L. Chettle, in reference to The Tommy O Tourist Trap; however, the use granted by Special Permit 93-12-09-SP-05 is incorporated herein and is in no way diminished.
20. Development of the property shall be in accordance with the one-page Master Concept Plan entitled "Updated Master Concept Plan, Fish Tale Marina, Inc.," dated May 1993, revised January 26, 1994, and received

January 28, 1994, prepared by Spectrum Engineering, Inc., except as may be modified by the conditions herein. This approval does not relieve the developer from compliance with the zoning regulations and all other state, regional and county development regulations except for those specifically modified as part of the development.

21. The project shall comply with the density requirements of the Lee Plan. If only Phase II (2+ acres) is redeveloped for residential uses (2+ acres x 6 maximum allowable density), the site is limited to twelve dwelling units at six units per acre. Residential uses are permitted only in conjunction with at least 50,000 square feet or more of commercial or industrial uses (Table 480.A).
22. The following uses are permitted, as conditioned below:

- Administrative Office (df)
- ATM - Automatic Teller Machine (df)
- Bait and Tackle Shop
- Banks and Financial Establishments - Groups I and II
(Zon Ord Section 1001.03) LDC Section 34-622(c)(3)
- Bar or Cocktail Lounge (df) - only in conjunction with a
Restaurant - Group III or IV
- Boat Parts Store (df)
- Boat Repair and Service (df) - limited to within Phase I area only
(Zon Ord Sections 507 and 527) LDC Sections 34-1352 and 34-3001
- Boat Rental
- Boat Sales
- Business Office (df)
- Business Services - Groups I and II
(Zon Ord Section 1001.05) LDC Section 34-622(c)(5)
- Clubs
 - Country (df)
 - Fraternal (df)
 - Private (df)
- Consumption on Premises - only in conjunction with a Restaurant -
Group III or IV
(Zon Ord Section 202.03) LDC Section 34-1262
- Consumption on Premises for Outdoor Seating - only in conjunction
with a Restaurant - Group III or IV
- Day Care Center, Child (df), Adult (df)
(Zon Ord Section 506) LDC Section 34-1412
- Marina and Accessory Uses (df)
 - Docking and Mooring Facilities
(Zon Ord Section 202.10) LDC Section 34-1863
 - Dry Boat Storage -- exceeding two tiers or ten
(10) feet above natural grade
 - Sale of Fuel and Lubricants
 - Live Aboards - (Zon Ord Section 202.05) LDC Section 34-1861
 - Sanitary Facilities -
 - restrooms and showers for transient persons;
 - pump out facilities for onboard sanitation;
 - wastewater holding pretreatment or treatment.
- Drive-Thru Facility (df) - (only in conjunction with a bank)
- Drug Store (df), Pharmacy (df)
- Dwelling Units -
 - Townhouse (df)
 - Multiple Family Building (df)
- Entrance Gates and Gatehouses (df)
- Essential Service Facilities - Group I
(Zon Ord Section 1001.13) LDC Section 34-622(c)(13)
- Food and Beverage Service, Limited (df)
- Food Store - Group I
(Zon Ord Section 1001.16) LDC Section 34-622(c)(16)
- Gift, and Souvenir Shops (df)
- Hobby, Toy, Game Shops
(Zon Ord Section 1001.21) LDC Section 34-622(c)(21)
- Hotels/Motels (Zon Ord Section 514) LDC Section 34-1801
 - Efficiency Motel (df)
 - No Convention (df) or Transient Hotel/Motel
- Household/Office Furnishings - Groups I and II

(Zon Ord Section 1001.22) LDC Section 34-622(c)(22)
Insurance Companies
(Zon Ord Section 1001.23) LDC Section 34-622(c)(23)
Laundromat (df)
Laundry or Dry Cleaning - Group I
(Zon Ord Section 1001.24) LDC Section 34-622(c)(24)
Personal Services - Groups I, II and III
(Zon Ord Section 1001.33) LDC Section 34-622(c)(34)
Pet Services (df)
Recreation, Commercial - Groups I, II, III and IV,
excluding waterslides
(Zon Ord Section 1001.38) LDC Section 34-622(c)(38)
Rental or Leasing Establishments
(Zon Ord Section 1001.39) LDC Section 34-622(c)(39)
Restaurants, Standard - Groups I, II, III and IV
(Zon Ord Section 1001.44) LDC Section 34-622(c)(44)
Schools, Commercial
(Zon Ord Section 1001.45) LDC Section 34-622(c)(45)
Signs - in accordance with sign regulations LDC
Special Retail Shops - all Groups
(Zon Ord Section 1001.47) LDC Section 34-622(c)(47)
Storage, Indoor (df) - limited to boats and associated equipment,
but not including commercial mini-warehouses or garages
Storage, Open (df)
Temporary Uses - limited to construction trailer and
construction equipment
(Zon Ord Section 529) LDC Section 34-3041
Transportation Services - Groups I and II
(Zon Ord Section 1001.53) LDC Section 34-622(c)(53)
Vehicle and Equipment Dealers - Groups I, II and III
(Zon Ord Section 1001.55) LDC Section 34-622(c)(55)

23. Buffers

a) Commercial

If commercial is developed within Phase II, buffers on the north and west property lines shall be in accordance with the Development Standards Regulations (see Conditions 9 and 18 for other buffer requirements).

b) Residential

If residences are developed within Phase I, buffers shall be in accordance with the Development Standards Regulations. Buffers within Phase II shall be in compliance with the buffer table shown on the master concept plan, with the following exception: a Type "B" buffer shall be provided along the local street easement south of Villa Santini Plaza (incorrectly shown as Type "A" on the Concept Plan).

24. No more than 30,000 square feet of retail shall be developed on the subject property (Phase I and II, Standard 13.1.2, Minor Commercial site location standards of the Lee Plan). Phase II is limited to a maximum of 20,000 square feet of commercial building floor area. Marina Development shall not exceed the values for the parameters listed as existing or permitted in the MARINA FACILITIES table on the Updated Master Concept Plan without first modifying all appropriate local, district, regional, state and federal permits or obtaining new permits as applicable.
25. The project is limited to an efficiency hotel/motel (no transient or convention hotel) and shall comply with the requirements of Zoning Ordinance Section 514, LDC Section 34-1801. The Development Order plan shall show the appropriate number of rental units to meet the density standards of the Zoning Regulations.
26. Approval of this amendment does nothing more than amend the zoning district wherein the subject property lies and does not grant or vest in the developer any present or future development right that may exceed any Lee Plan restrictions as set forth in the 2010 (Roberts) Overlay or any other Lee Plan provision.

27. The proposed building on the site plan, identified as a marina accessory use building, Development Order 5-21-89, shall be used for marina uses. Any change of the marina use would require a public hearing as per Policy 98.2.1.
28. Parking shall be in accordance with the Lee County regulations, with the exception of marina parking (Deviation (12) of Resolution Z-88-268).
29. If the property is subdivided for commercial uses, there shall be compliance with the property development regulations of the CC zoning district (Zon Ord Table 450.A, LDC Section 34-843). The property development regulations of the RM-6 zoning district shall be complied with for multi-family or townhouse development (Zon Ord Table 422.B, LDC Section 34-715). Subdividing shall be in compliance with the Development Standards Regulations.
30. New commercial development shall not exceed 35 feet above average grade (except for the proposed dry boat storage, Development Order 5-21-89). If residential development occurs, the buildings shall not exceed 35 feet above grade, except as provided for in Zon Ord Section 202.18.A.4 Land Development Code Section 34-2174.
31. Open space shall be provided in accordance with the Master Concept Plan, with one exception: open space which is located within a road right-of-way or road easement may not be used for credit towards Fish Tale Marina's open space requirement.
32. This zoning approval does not indicate that the project's traffic impacts have been mitigated. Additional conditions may be required at the time of issuance of a local Development Order per the Development Standards Regulations or other Lee County Regulations.
33. Deviation (13) is hereby approved.
34. The existing development within Phase II (miniature golf course and ancillary restaurant) shall comply with the following conditions:
 - a) All exterior lighting on the property shall be low intensity and directed away from the adjacent residential uses.
 - b) Structures shall be limited to a maximum of 15 feet above finished grade except for one lighthouse like structure which shall be a maximum of 25 feet above finished grade.
 - c) The miniature golf course and ancillary restaurant (including outdoor seating) shall be operated only between the hours of 10:00 A.M. and 10:00 P.M. from May 1st through October 31st of each year and between the hours of 10:00 A.M. and 11:00 P.M. from November 1st through April 30th of each year. If the miniature golf course is abandoned, the restaurant shall be allowed as permitted in Condition 22.

B. DEVIATIONS:

Twelve deviations were previously approved by the Board of County Commissioners, per Resolution Z-88-268:

REMAIN THE SAME: Deviations (1), (2), (3), (5), (7), (9), and (12) were previously APPROVED in Resolution Z-88-268.

MODIFIED: Deviations (4), (10) and (11) are approved subject to the requirement of Condition 9 and additionally, a minimum 5-foot-wide buffer with Type "D" plantings shall be provided at the location shown on the Master Concept Plan (stamped Received January 28, 1994) and in accordance with the plans approved by existing Development Order 5-21-89.

DELETED: Deviations (6) and (8).

As part of the amendment, an additional deviation is being requested, which is as follows:

Deviation (13) is a request to deviate from the requirement of a 25-foot minimum setback of a building or structure from a canal (Zon Ord Section 202.18.B.4.b, LDC Section 34-2192(b)(4)b), to allow 20 feet. Deviation (13) is hereby APPROVED.

Site Plan 94-013 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings and conclusions were made in conjunction with this approval:

- A. That the predominant uses of the surrounding property makes approval of the amended CPD, as conditioned, appropriate.
- B. That the amended CPD, as conditioned, will not have an adverse impact on the intent of the Zoning Regulations.
- C. That the CPD, as conditioned, is consistent with the goals, objectives, policies, and intent of the Lee Plan, and with the densities, intensities, and general uses set forth for the proposed use.
- D. That the CPD, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.
- E. That the CPD, as conditioned, will protect, conserve, preserve all protected and endangered species, natural habitat and vegetation, in accordance with the Lee Plan and other Lee County development regulations.
- F. That the CPD, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- G. That the CPD, as conditioned, will 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.
- H. That the commercial uses, as conditioned in this recommendation, will be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth elsewhere in the Zoning Regulations.
- I. That the proposed use is appropriate on the subject property and in the vicinity of the subject property.
- J. That the conditions are reasonably related to the impacts expected from or created by the proposed development.
- K. That the conditions and other Lee County development regulations provide sufficient safeguards to the public health, safety and welfare.
- L. That the deviation, as conditioned, enhances the achievement of the objectives of the CPD and preserves and promotes the protection of the public health, safety and welfare.

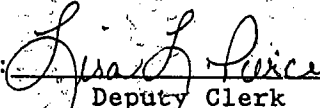
The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner John E. Manning, and seconded by Commissioner Douglas R. St. Cerny and, upon being put to a vote, the result was as follows:

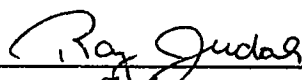
John E. Manning	<u>AYE</u>
Douglas R. St. Cerny	<u>AYE</u>
Ray Judah	<u>AYE</u>
Franklin B. Mann	<u>AYE</u>
John E. Albion	<u>ABSENT</u>

DULY PASSED AND ADOPTED this 16th day of May, A.D., 1994.

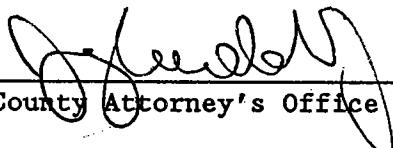
ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Deputy Clerk

BY: 
Chairman

Approved as to form by:


County Attorney's Office

FILED

MAY 23 1994

CLERK CIRCUIT COURT
BY  D.C.

PLAN AS APPROVED WITH CONDITIONS OF RESOLUTION 2-83-268

THIS PLAN IS A REVISION TO THE PREVIOUS PLAN. THE BUILDING SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE ZONING ORDINANCE AND THE CONDITIONS OF RESOLUTION 2-83-268.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

THE DEVELOPER SHALL MAINTAIN THE EXISTING OPEN SPACE AND SHALL PROVIDE FOR THE REQUIRED OPEN SPACE IN THE PHASE 1 AREA.

OPEN SPACE CALCULATIONS
TOTAL AREA: 7.8 ACRES
PROPOSED EXISTING AREA: 1.4 ACRES
TOTAL AREA SUBJECT TO OPEN SPACE CALCULATIONS: 6.4 ACRES

FOR MARINA USE, OPEN SPACE IS REQUIRED:
1.1 ACRES (1.1 ACRES TOTAL OPEN SPACE REQUIRED)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)

PHASE 2 (1.9 ACRES) SHALL BE DEVELOPED AS MULTIFAMILY LOW DENSITY HOUSING.
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)
1.1 ACRES OF REQUIRED OPEN SPACE MAY BE SITED: 1.1 ACRES (1.1 ACRES)

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.
THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.
THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

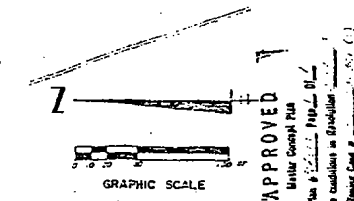
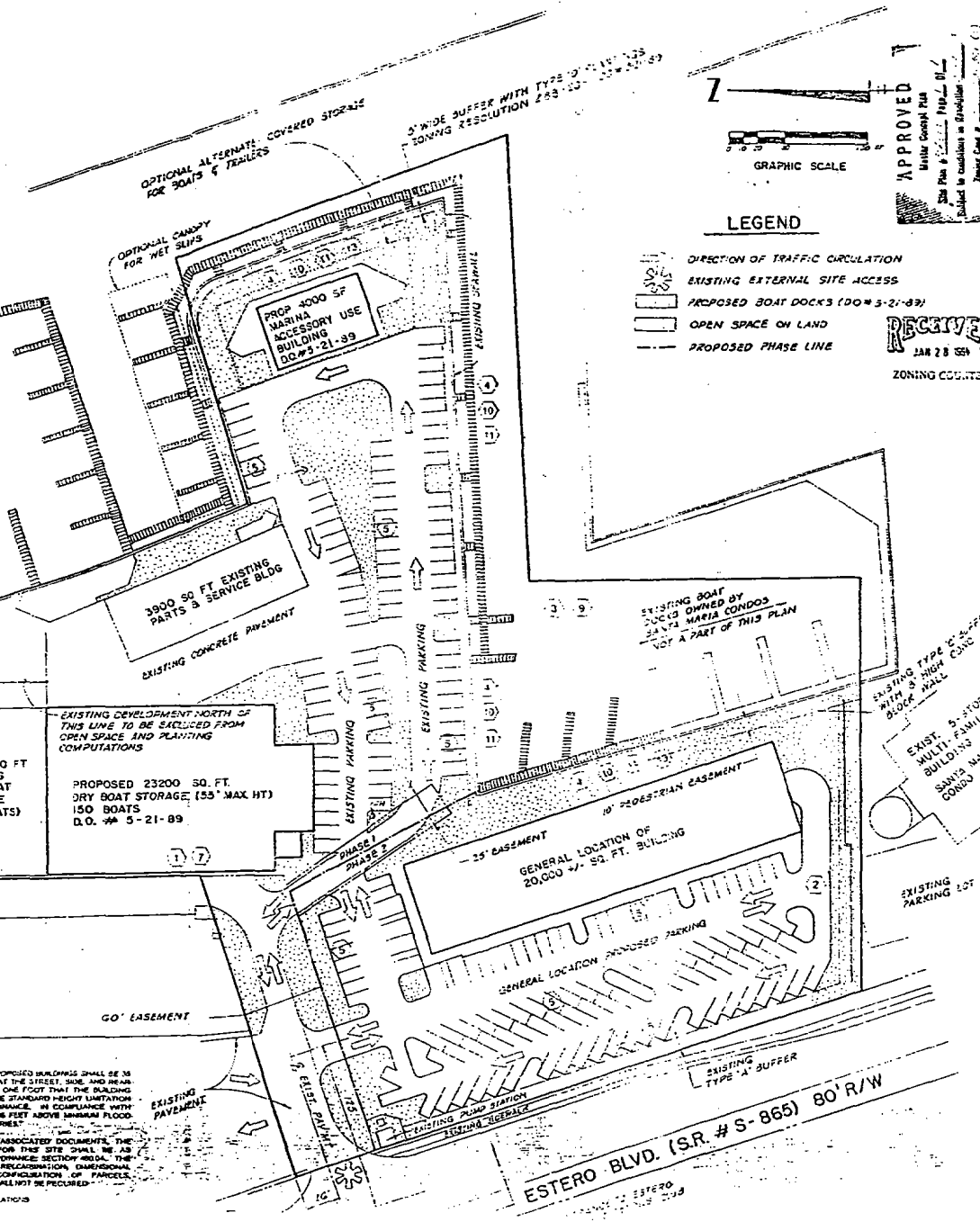
THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.

THE EXISTING LOCATION AND CONFIGURATION OF OPEN SPACE SHALL BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEVELOPMENT OF THE PHASE 1 AREA.



- LEGEND**
- DIRECTION OF TRAFFIC CIRCULATION
 - EXISTING EXTERNAL SITE ACCESS
 - PROPOSED BOAT DOCKS (D.O.# 5-21-89)
 - OPEN SPACE ON LAND
 - PROPOSED PHASE LINE

RECEIVED
JAN 28 1989
ZONING COUNTER

MARINA FACILITIES			
EXISTING	PROPOSED	TOTAL	
DRY STORAGE BUILDINGS	19 BOAT BERTHS	19 BOAT BERTHS	38,700 SQ. FT.
WATER DOCKAGE	19 BOAT BERTHS	19 BOAT BERTHS	38,700 SQ. FT.
SALES SERVICE BLDG. ETC.	19 BOAT BERTHS	19 BOAT BERTHS	38,700 SQ. FT.
PARKING	NO SPACES	NO SPACES	NO SPACES
DEVELOPMENT LIMITATIONS APPLICABLE TO THE VARIOUS USE OPTIONS:			
COMMERCIAL USES, PHASE 1	UP TO 20,000 SQ. FT.		
HOTEL/MOTEL USES, PHASE 2	UP TO 20,000 SQ. FT.		
RETAIL USES, PHASE 3	UP TO 20,000 SQ. FT.		
INDUSTRIAL USES, PHASE 4	UP TO 20,000 SQ. FT.		
RECREATION USES, PHASE 5	UP TO 20,000 SQ. FT.		
GOVERNMENT USES, PHASE 6	UP TO 20,000 SQ. FT.		
EDUCATIONAL USES, PHASE 7	UP TO 20,000 SQ. FT.		
RELIGIOUS USES, PHASE 8	UP TO 20,000 SQ. FT.		
OTHER USES, PHASE 9	UP TO 20,000 SQ. FT.		

UNLESS OTHERWISE NOTED, THE MAXIMUM HEIGHT OF PROPOSED BUILDINGS SHALL BE 35 FEET. THIS LIMITATION MAY BE EXCEEDED PROVIDED THAT THE STREET, SIDE, AND REAR SETBACKS ARE MAINTAINED ONE FOOT FOR EVERY ONE FOOT THAT THE BUILDING EXCEEDS 35 FEET ABOVE GRADE. THE FLOORING IS THE STANDARD HEIGHT LIMITATION REQUIRED BY THE USE COUNTY OFFICIAL ZONING ORDINANCE. IN COMPLIANCE WITH SECTION 10-1.1, BUILDINGS MAY BE AS TALL AS 35 FEET ABOVE MINIMUM FLOOD ELEVATION WITH NO MORE THAN EIGHT (8) HABITABLE STORIES.

EXCEPT AS OTHERWISE NOTED ON THIS PLAN AND ASSOCIATED DOCUMENTS, THE STANDARD HEIGHTY DEVELOPMENT REGULATIONS FOR THIS SITE SHALL BE AS ESTABLISHED BY THE USE COUNTY OFFICIAL ZONING ORDINANCE SECTION 10-1.1. THE FLOORING IS THE STANDARD HEIGHT LIMITATION REQUIRED BY THE USE COUNTY OFFICIAL ZONING ORDINANCE. IN COMPLIANCE WITH SECTION 10-1.1, BUILDINGS MAY BE AS TALL AS 35 FEET ABOVE MINIMUM FLOOD ELEVATION WITH NO MORE THAN EIGHT (8) HABITABLE STORIES.

FISH TALE MARINA, INC.
UP-DATED MASTER CONCEPT PLAN

PROJECT
DATE: MAY 1989
SCALE: 1" = 40'

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20250046 TO ALLOW 1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND 4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6425 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

LPA made a recommendation for approval with conditions of special exceptions for the Town Council's consideration.

What the action accomplishes:

Approval of the special exceptions will allow 1) consumption on premises (cop) outdoors within 500 feet of dwelling units, with 2) new outdoor entertainment in the commercial boulevard (CB) zoning district, and 3) new live entertainment in the CB zoning district, and 4) new outdoor seating that is open after sunset in the CB zoning district.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The property at 6425 Estero Blvd was previously a movie theater with food service. The applicant is proposing the redevelopment of the property as a restaurant and bar on the second floor, first level above the required flood elevation, and a bar with games and entertainment area on the open ground floor, that previously provided under-building parking. The second story above flood will be used for storage and office space. No substantive changes are proposed to the parking lot adjacent to the building, which previously contained 34 spaces and will be slightly modified to provide 2 ADA parking spaces and a total of 33 spaces.

The application is proposing several changes to the building exterior. Exterior improvements include: a deck with shade structure for restaurant seating on the first level above flood, that extends towards Estero Blvd by approximately 15 feet, a wall along the rear of the building on the first floor to block sounds and light from the bar and entertainment area to the adjacent single-family residential property, a type C buffer with a fence along the property line adjacent to the single family residential property, and landscaping.

This special exception application is accompanied by a Variance application for a reduction in the number of required parking spaces.

The LPA voted 6-0 to recommend approval with conditions for:

1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND

4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT,

Attachments:

1. 25-239, SEZ20250046, 6425 Estero Blvd._revised
2. Resolution Exhibit A: Special Exception Review Criteria and Findings
3. Staff Report
4. Staff Report Exhibit A Site Plan
5. Staff Report EXHIBIT B Schedule of uses
6. Staff Report Exhibit C Findings
7. Staff Report Exhibit D 500-ft property map
8. CONDITIONS OF APPROVAL _revised
9. Project Narrative_Request - Special Exception - 05-01-2025
10. Restaurant Schematic Design Plan

Financial Impact:

Unknown

6. **Alternative Action**

Deny/ approve with conditions Special Exception for COP

Deny/ approve with conditions Special Exception for new Outdoor Entertainment

Deny/ approve with conditions Special Exception for new Live Entertainment

Deny/ approve with conditions Special Exception for Outdoor Seating after dark

7. **Management Recommendations:**

Approve Special Exception for COP

Deny Special Exception for new Outdoor Entertainment

Approve Special Exception for new Live Entertainment

Approve Special Exception for Outdoor Seating after dark

8. **Recommended Approval:**

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 - 7/21/2025

Approved - 7/21/2025

Approved - 7/22/2025

Approved - 7/23/2025

Approved - 7/24/2025

Final Approval - 7/25/2025

RESOLUTION NUMBER 25-239

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20250046 TO ALLOW 1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND 4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6425 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000; 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, Applicant The Neighborhood Company, on behalf of the property owner, 6425 Estero LLC, is requesting four uses that require approval of a special exception:

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-00046.0000; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Commercial Boulevard" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 10, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 6-0 to recommend approval with condition of the special exception request:

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district; and

WHEREAS, on August 4, 2025 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the Land Development Code (“LDC”); and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested special exceptions do/ do not meet the requirements of the Town Comprehensive Plan and LDC, and approving/ approving with conditions/ denying the special exceptions is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the special exceptions as described herein.

Section 3. In approving/ approving with conditions/ denying the Special Exception, the Town Council has considered the following criteria set forth in Section 34-88 of the LDC for each of the requested approvals as stated in more detail in Exhibit A:

- A. Whether there exist changed or changing conditions which make approval of the request appropriate.
- B. The testimony of any applicant.
- C. The recommendation of staff and of the local planning agency.
- D. The testimony of the public.
- E. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- H. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- I. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

Section 4. The following conditions of approval shall apply to all requested special exceptions:

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on Weekends.
3. No consumption of alcohol shall be permitted outside the entertainment and seating area, as depicted on the plan attached.
4. Games in the entertainment area cannot include loud electronic beeping, ringing, or buzzing.
5. The development must comply with the LDC sea turtle conservation requirements.
6. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department.
7. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided six days a week (excluding Sundays).
8. Any violation of the conditions of approval shall render the special exception null and void.

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

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

ADOPTED this ___th day of August 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:**

Nancy Stuparich, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of August 2025.

ATTACHMENTS

Exhibit A –

1. Findings for Consumption on Premises (COP) outdoors within 500 feet of dwelling units
2. Findings for outdoor entertainment in the Commercial Boulevard (CB) zoning district
3. Findings for new live entertainment in the CB zoning district
4. Findings for new outdoor seating that is open after sunset in the CB zoning district

Exhibit A: Findings of Specific Special Exception requests

Resolution 25-xx

SEZ20250046

Evaluation of each special exception request per LDC criteria.

#1 Special Exception for COP: The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

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

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed COP requires a special exception in the CB zoning district.

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

#2 Special Exception for outdoor entertainment: The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor entertainment may not be appropriate in this location. If music or amplified entertainment is too loud or at inappropriate times, could cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

#3 Special Exception for live entertainment: The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

#4 Special Exception for outdoor seating: The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor seating should not cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exceptions & Variance

CASE NUMBER: SEZ20250046 & VAR20250047

CASE NAME: 6425 Estero Blvd

SEZ: 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units, and 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district, and 3) New live entertainment in the CB zoning district, and 4) New outdoor seating that is open after sunset in the CB zoning district.

VAR: 1) Sec. 34-2020(b)(2) from the requirement to provide additional parking spaces that are necessary for a change of use, and 2) Sec. 34-2020(d)(2)(h) from the minimum required parking spaces for a restaurant, and 3) Sec. 34-2020(d)(2)(h)2. from the minimum required parking spaces for a bar.

LPA

HEARING DATE: June 10, 2025 at 9:00 AM

STAFF

RECOMMENDATION: **Approve** Special Exception for COP
Deny Special Exception for new Outdoor Entertainment
Approve Special Exception for new Live Entertainment
Approve Special Exception for Outdoor Seating after dark
Deny Variance for Parking Reduction

**PREPARED/
SUBMITTED BY:** Jason Utley

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/Estero 4148 LLC

Request: A special exception to allow a bar within 500 feet of residences, and new outdoor entertainment, new live entertainment, and new outdoor seating past sunset in

the CB zoning district, AND a variance from the parking requirements to provide 33 parking spaces for the new use.

Subject property: See attached site plan

Physical Address: 6425 Estero Blvd.

STRAP #: 34-46-24-W4-00046.0000

FLU: Mixed Residential

Zoning: Commercial Boulevard (CB)

Adjacent zoning and land uses:

North(northwest): Commercial Boulevard (CB)/Boulevard
(previously Charley's Boathouse)

South (southeast): Commercial Resort (CR)/Mixed Residential

East (northeast): Residential Single family (RS)/ Low Density

West (southwest): Residential Multi-family (RM)/ Mixed Residential

II BACKGROUND AND ANALYSIS

Background:

The property at 6425 Estero Blvd was previously a movie theater with food service. The applicant is proposing the redevelopment of the property as a restaurant and bar on the first level above flood and a bar with games and entertainment area on the open ground floor, that previously provided under building parking. The second story above flood will be used for storage and office space. No substantive changes are proposed to the parking lot adjacent to the building, which previously contained 34 spaces and will be slightly modified to provide 2 ADA parking spaces and a total of 33 spaces.

The application is proposing several changes to the building exterior. Exterior improvements include: a deck with shade structure for restaurant seating on the first level above flood, that extends toward Estero Blvd approximately 15 feet, a wall along the rear of the building on the first floor to block sounds and light from the bar and entertainment area to the adjacent single-family residential property, a type C buffer with a fence along the property line adjacent to the single family residential property, and landscaping.

Analysis:

The applicant is requesting a total of four special exceptions for new uses on the property and three variances to allow the proposed uses without meeting the parking requirements found in 34-2020. The building modifications do not require variances or

special exceptions. The building is currently nonconforming for CB zoning district setbacks which require a build-to line of 5-10 feet from Estero Blvd, and a setback from Egret of 10 feet. The proposed deck will decrease the nonconforming Estero Blvd build-to requirement.

Special Exception for COP: The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

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

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed COP requires a special exception in the CB zoning district.

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

Special Exception for outdoor entertainment: The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor entertainment may not be appropriate in this location. If music or amplified entertainment is too loud or at inappropriate times, could cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

Special Exception for live entertainment: The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

Special Exception for outdoor seating: The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

Whether the request meets or exceeds all performance and locational standards set forth

for the proposed use.

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor seating should not cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.

Variances for Parking: Section 34-2020(b)(2) requires that new uses in a building must provide code required parking, Section 34-2020(d)(2)(h) requires restaurants to provide eight spaces per 1,000 square feet of total floor area plus outdoor seating area, Section 34-2020(d)(2)(h) 2. Requires bars to provide eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar, plus outdoor seating area. The Applicant proposes a single variance from Section 34-2020 to provide 33 automobile parking spaces, 2 bicycle racks, and 4 golf cart parking spaces where the code would require 115 parking spaces.

The applicant suggests that due to the previous use of movie theater, the space does not readily calculate to restaurant space and that the large square footage is not commensurate with the code required number of parking spaces. While this seems to be a legitimate argument, staff feels that the proposed number of parking spaces may not be adequate for the number of proposed dining room seats, bar seats, and bar seating and entertainment area on the ground floor. The number of proposed parking spaces equates to a single parking space for each table currently shown on the 2nd floor dining room plan.

Section 34-87 required variance findings:

*(1) That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to*

protect public policy;

The parking lot adjacent to the building is existing and it would not be possible to add parking spaces to that parking lot without a substantial cost. However, parking places existed under the building previously and that area will be utilized for a bar, seating and entertainment.

*(2) That the conditions justifying the variance **are**/ are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The building previously had parking spaces on the ground floor. The proposed new use of outdoor entertainment and bar will utilize a portion of the previous parking area.

*(3) That the variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The request is the minimum variance necessary to allow the proposed layout of the property.

*(4) That the granting of the variance **will (may)** /will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The lack of parking on site may result in people parking where they are not allowed. They may park along Curlew St or Egret St or in the condominium parking lots across Estero Blvd from the proposed use.

*(5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are**/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Staff recognizes that the parking code is in need of updating. However, the reduction being requested may be more than is appropriate without some mitigation such as valet parking.

The Variance from Section 34-2020 for a reduction in the number of required parking spaces **does not meet** the criteria found in Section 34-87.

II. RECOMMENDATION

Based on the code requirements for Special Exceptions found in Section 34-88, staff recommends:

- Approval of the Special Exception for COP,
- Denial of the Special Exception for Outdoor Entertainment,
- Approval of the Special Exception for Live Entertainment, and
- Approval of Special Exception for Outdoor Seating after dark

Based on the code requirements for Variances found in Section 34-87, staff recommends:

- Denial of Variance for Parking Reduction

III. CONDITIONS OF APPROVAL

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on Weekends.
3. No consumption of alcohol shall be permitted outside the entertainment and seating area, as depicted on the plan attached.
4. Games in the entertainment area cannot include loud electronic beeping, ringing, or buzzing.
5. The development must comply with the LDC sea turtle conservation requirements.
6. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department.
7. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided six days a week (excluding Sundays).
8. Any violation of the conditions of approval shall render the special exception null and void.

EXHIBIT B: Schedule of Uses

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units,
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district,
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district

Exhibit C Code Required Findings

Special Exception for COP: The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

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

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed COP requires a special exception in the CB zoning district.

Exhibit C Code Required Findings

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

Special Exception for outdoor entertainment: The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor entertainment may not be appropriate in this location. If music or

Exhibit C Code Required Findings

amplified entertainment is too loud or at inappropriate times, could cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

Special Exception for live entertainment: The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

Exhibit C Code Required Findings

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

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

Special Exception for outdoor seating: The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

Exhibit C Code Required Findings

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor seating should not cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.

Variances for Parking: Section 34-2020(b)(2) requires that new uses in a building must provide code required parking, Section 34-2020(d)(2)(h) requires restaurants to provide eight spaces per 1,000 square feet of total floor area plus outdoor seating area, Section 34-2020(d)(2)(h) 2. Requires bars to provide eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar, plus outdoor seating area. Staff proposes a single variance from Section 34-2020 to provide 33 automobile parking spaces, 2 bicycle racks, and 4 golf cart parking spaces where the code would require 115 parking spaces.

Section 34-87 required variance findings:

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

The parking lot adjacent to the building is existing and it would not be possible to add parking spaces to that parking lot without a substantial cost. However, parking places existed under the building previously and that area will be utilized for a bar, seating and entertainment.

*(2) That the conditions justifying the variance **are/** are not the result of actions of the applicant taken after the adoption of the regulation in question;*

Exhibit C Code Required Findings

The building previously had parking spaces on the ground floor. The proposed new use of outdoor entertainment and bar will utilize a portion of the previous parking area.

*(3) That the variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The request is the minimum variance necessary to allow the proposed layout of the property.

*(4) That the granting of the variance **will (may)** /will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The lack of parking on site may result in people parking where they are not allowed. They may park along Curlew St or Egret St or in the condominium parking lots across Estero Blvd from the proposed use.

*(5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are**/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Staff recognizes that the parking code is in need of updating. However, the reduction being requested may be more than is appropriate without some mitigation such as valet parking.

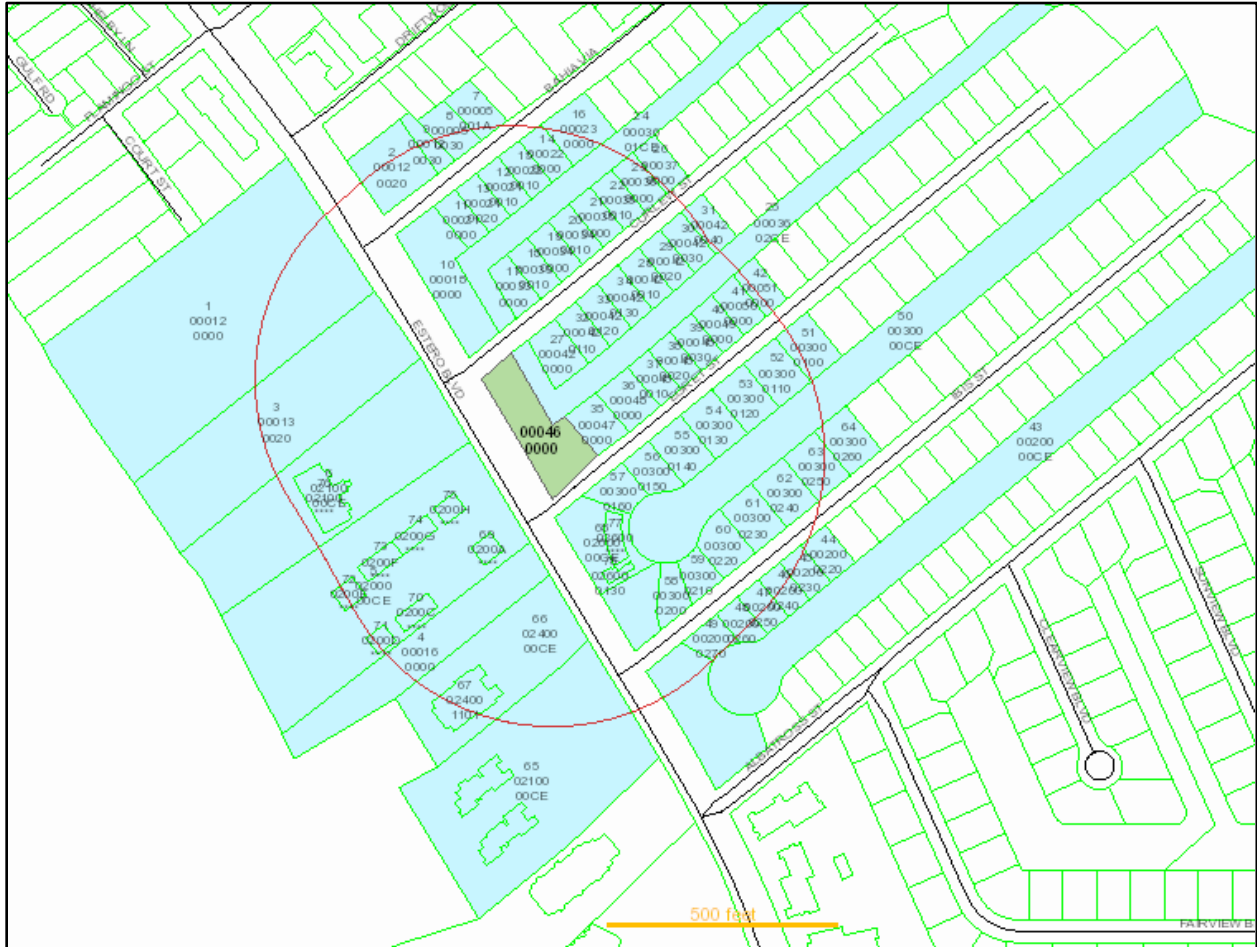
The Variance from Section 34-2020 for a reduction in the number of required parking spaces **does not meet** the criteria found in Section 34-87.



THE NEIGHBORHOOD COMPANY

6425 ESTERO BLVD SPECIAL EXCEPTION

500' PROPERTY OWNER MAP



6200 ESTERO BLVD INVESTMENTS L
2210 VANDERBILT BEACH RD #1300
NAPLES FL 34109

TOWN OF FORT MYERS BEACH
2731 OAK ST
FORT MYERS BEACH FL 33931

CAROUSEL BEACH REDEVELOPMENT L
815 N EAST AVE
OAK PARK IL 60302

ESTERO 4148 LLC
4517 BRYNWOOD DR
NAPLES FL 34119

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH FL 33931

SUNSET CONDO
6400 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHOMEL JEFFREY & CATHY
2201 LINCOLN AVE
CONNERSVILLE IN 47331

HAINBUCHNER ERONIM PATRIK
200 NEW COURT
NOVI MI 48377

BROWN GEORGE KEITH
PO BOX 4
LA CROSSE WI 54602

6200 ESTERO BLVD INVESTMENTS L
2210 VANDERBILT BEACH RD #1300
NAPLES FL 34109

MURPHY TERRANCE P &
110 BAHIA VIA
FORT MYERS BEACH FL 33931

BARTOW MARTIN J &
130 BAHIA VIA
FORT MYERS BEACH FL 33931

BAHIA VIA LLC
4180 BRIGADOON DR
SHOREVIEW MN 55126

DIMURRO JOHN
150 BAHIA VIA
FORT MYERS BEACH FL 33931

MCGRATH PETER J & NICOLE
300 GRAND ST UNIT 412
HOBOKEN NJ 07030

DIMURRO JOHN
160 BAHIA VIA
FORT MYERS BEACH FL 33931

CAMPBELL ROBERT E & PHYLLIS
3627 HUBBARD MIDDLESEX
WEST MIDDLESEX PA 16159

SPRADLING TYLER J &
127 CURLEW ST
FORT MYERS BEACH FL 33931

KOPPING REBECCA +
12310 115TH ST
LEMONT IL 60439

CUMMINGS JOHN L
4 PETERS BROOK DR
HOOKSETT NH 03106

SCHWIRTZ MARK J & SHEILA L
507 ABBEY WAY
MENDOTA HEIGHTS MN 55120

FINLEY TIMOTHY J & BRENDA J TR
553 WYATT DR
SAINT PETERS MO 63376

KOCISKO MAUREEN J TR
4483 WESTERN GAILS CT #405
FORT MYERS FL 33916

SANTINI CROSS CANAL
CURLEW ST
FORT MYERS BEACH FL 33931

SANTINI CROSS CANAL
CURLEW ST
FORT MYERS BEACH FL 33931

BUSDEKER THOMAS R & SHERI M
WESTFIELD GROUPS
PO BOX 93
GIBSONBURG OH 43431

BECHTEL JOSEPH +
E 19885 COUNTY RD ND
AUGUSTA WI 54722

STOUDT BUILDERS INC
1746 SAINT PETERS RD
POTTSTOWN PA 19465

NACCARATO CARMELO & FRANCA
3220 PINE CONE CT
MILFORD MI 48381

JMB REALTY LLC
25335 PINSON DR
BONITA SPRINGS FL 34135

PORCELLI MARK & GINA
8 KALMAN CT
WARREN NJ 07059

PHILLIPS TIMOTHY SCOTT &
120 CURLEW ST
FORT MYERS BEACH FL 33931

HAINBUCHNER ERONIM PATRIK &
200 NEW CT
NOVI MI 48377

YANAKEFF DAVID & ROSEMARY TR
9560 WALDRON RD
JEROME MI 49249

CAVANAUGH JOHN F
415 S WELLS ST UNIT 304
LAKE GENEVA WI 53147

DUNLAP JAMES E & MICHELE L
10087 IDLE PINE LN
ESTERO FL 34135

GAERTNER MARK A +
8276 SOUTHWIND BAY CIR
FORT MYERS FL 33908

HOLLYWOOD LISA G & SHAWN L
18929 CRESCENT RD
ODESSA FL 33556

VANFLEET JOHN L JR
155 EGRET ST
FORT MYERS BEACH FL 33931

KEHOE DONALD B & SHERRI S
8405 EAGLE CREST LN
INDIANAPOLIS IN 46234

PACCHINO CARMINE E &
6733 HARTLAND ST
FORT MYERS FL 33966

JAMES E & CHARLENE M KRATZKE T
180 BROADWAY ST
PRAIRIE DU SAC WI 53578

SANDPIPER UNIT 1 CANAL
IBIS ST
FORT MYERS BEACH FL 33931

AMOS CONSTANCE JANE
150 IBIS ST
FORT MYERS BEACH FL 33931

SCOTT DONALD E & KAREN L
130 IBIS ST
FORT MYERS BEACH FL 33931

ZUBER JOHN J & DANA R
6 WHISPERING WAY
WARREN NJ 07059

PREPHAN RICHARD S
118 W SOUTH BOUNDARY #1
PERRYSBURG OH 43551

BATISTA JOHN & MICHELE
100 IBIS ST
FORT MYERS BEACH FL 33931

ERBECK ANNETTE E TR
5197 OVERLOOK DR
MASON OH 45040

SANDPIPER UNIT 2 CANAL
IBIS ST
FORT MYERS BEACH FL 33931

SMITH CHERYL L
180 EGRET ST
FORT MYERS BEACH FL 33931

KLOSTERMAN TIMOTHY & KAREN
172 EGRET ST
FORT MYERS BEACH FL 33931

SELK ANDREW R & MELISSA R
1006 RIVERVIEW DR
PLYMOUTH WI 53073

GUANCHE MIGUEL & MAYRA
6995 GLENEAGLE DR
MIAMI LAKES FL 33014

ONSAGER FLORIDA LLC +
1096 TAYLOR LN
STOUGHTON WI 53589

BASS THOMAS L & TIFFANY E TR
4091 STALEY RD
FORT MYERS FL 33905

HENDRICKSON SHARON LEE
915 S 28TH ST
SOUTH BEND IN 46615

SEVOYAN STEPAN & YELENA
8976 EDGEWOOD LN
HIGHLANDS RANCH CO 80130

PREPHAN KATHLEEN
118 W SOUTH BOUNDARY ST STE 1
PERRYSBURG OH 43551

YURCIK JOHN JR
139 IBIS ST
FORT MYERS BEACH FL 33931

MANNELLA FRANK
149 IBIS ST
FORT MYERS BEACH FL 33931

BEASLEY R RAY & LANE
159 IBIS ST
FORT MYERS BEACH FL 33931

FERNANDEZ GUILLERMO &
8727 NW 139 TER
MIAMI LAKES FL 33018

181 IBIS LLC
267 BAREFOOT BEACH BLVD #304
BONITA SPRINGS FL 34134

ISLAND WINDS CONDO
6612 ESTERO BLVD
FORT MYERS BEACH FL 33931

SEAWATCH ON THE BEACH
6550 ESTERO BLVD
FORT MYERS BEACH FL 33931

SEAWATCH ON THE BEACH
HILTON GRAND VACATIONS CO
HOA AR DEPT
6355 METRO WEST BLVD #180
ORLANDO FL 32835

RTJP INVESTMENTS INC
17 DORAL CT
MATTOON IL 61938

FELDMANN GARY
2082 CHARLESTON LN
BARTOW FL 33830

LUCAS MORRIS D & MISTY
4124 RAINTREE BLVD
GREENWOOD IN 46143

WIMBERLY & WIMBERLY
PO BOX 694
RICHMOND KY 40476

ALLEN KARLA F TR
1626 BELFIELD ST
INDIANAPOLIS IN 46217

HAWLEY BRUCE &
6500 ESTERO BLVD #A301
FORT MYERS BEACH FL 33931

ROWE DONN A TR
220 LOOP AVE
MANSON WA 98831

BELFORD JAMES R TR
526 PINEHURST LN
SCHERERVILLE IN 46375

LEFRANCE JANICE S TR
PO BOX 23
SOUTHWICK MA 01077

KIENHOLZ ANDREW EDWARD +
2626 PACIFIC DR S #301
FARGO ND 58103

O'CONNELL JOHN & JEAN
27 GREEN BRIAR DRIVE
SUFFIELD CT 06078

RASH BRENDA L TR
5726 E 800 N
SYRACUSE IN 46567

BREDBERG DOUGLAS J &
7785 CLYDESDALE SE
ADA MI 49301

M&D FLORIDA LLC
1687 SUGARMAPLE DR
COLUMBUS OH 43229

WALTMAN MICHAEL & JEAN
6500 ESTERO BLVD #C219
FORT MYERS BEACH FL 33931

TRIPLE CROWN VACATION RENTALS
19377 AQUA SHORE DR
FORT MYERS FL 33913

RUDY MARLENE Y & JOEL
19 ROXBURY DR
ATHENS OH 45701

HOOBLER NEIL E & SHERRY T
231 STECKLER RD
STONEBORO PA 16153

SMITH RICHARD R TR
3420 CTH NN
WEST BEND WI 53095

WILKERSON ALAN R & RHONDA M
4310 N RIVERSIDE DR
COLUMBUS IN 47203

MARTIN JOHN D & MARY A TR
6877 HARDWOOD DR
GALLOWAY OH 43119

JEWETT HAROLD D TR
2530 BRAEMAR DR
FORT WAYNE IN 46814

KIRSCH DIANE S TR
1228 DRAGONFLY WAY
WATKINSVILLE GA 30677

WYSKIEL JEAN & STEPHANIE L/E
608 STANLEY BLVD
BIRMINGHAM MI 48009

KRUSE STACY & NORMAN TR
9351 KIOWA TRAIL
CHANHASSEN MN 55317

OSUCHOWSKI WILLIAM & SHARON
300 EUCLID AVE STE 12
SYRACUSE NY 13210

BARACUTEY LLC
3958 ASHENTREE CT
FORT MYERS FL 33916

CROWE KYLE R & SUZANNE L
16356 VIANSA WAY #101
NAPLES FL 34110

GALLE THOMAS & SARA
1092 HICKORY HILL PKWY W
HUBERTUS WI 53033

SNEDDON JOY B TR
4790 GOEBLE RD
FORT MYERS FL 33905

WIEN DAVID P & JANICE K
708 GREENBANK RD
WILMINGTON DE 19808

HOSKINS BRIAN K & SUSAN B
801 W COLISEUM BLVD
FORT WAYNE IN 46808

HENRY KATHRYN & TED
16176 LAKESIDE AVE SE
PRIOR LAKE MN 55372

3RC BUTTERCUP LLC
404 EAST COLUMBUS ST
CRAWFORDSVILLE IA 52621

GENZINK RETHA
2085 112TH AVE
HOLLAND MI 49424

PELLETIER SCOTT & JUDY TR
11802 FAR EDGE PATH
COLUMBIA MD 21044

BARTLETT ROBERT M & LILA F
5354 26TH ST S #201
FARGO ND 58104

FLORY SUSAN E TR
3751 PATTY CT
BONITA SPRINGS FL 34134

WALLIS LISA S TR
28270 INSULAR WAY
BONITA SPRINGS FL 34135

RICHARDSON JACK D & DONNA L
8303 MERLOT LN
LAUREL MD 20723

SCHMIDT MARTIN S
1307 SHORELINE DRIVE
WAYZATA MN 55391

DELANEY GARY L & KATHRYN TR
112 PRAIRIE DR
MINOOKA IL 60447

ALVES A DACOSTA & SANDRA J
4543 CATALINA LANE
BONITA SPRINGS FL 34134

KNIBBE DAVID J & GAYLE E
2530 W G AVE
KALAMAZOO MI 49009

RUSSELL WILLIAM G IV &
119 COMMERCE ST
CLINTON CT 06413

BROUGHER DOUGLAS E &
1220 HALF MOON LN
CICERO IN 46034

GIERSZEWSKI STEPHEN T TR
6500 ESTERO BLVD #H202
FORT MYERS BEACH FL 33931

ZDEB DIANE D TR
1697 WHITCOMB AVE
DES PLAINES IL 60018

GREIG LUCIA
10737 FIRST LINE NASSEGEWAYA
MILTON ON L0P 1J0
CANADA

SUNSET 100 LLC
PO BOX 30
DECATUR IN 46733

MCCARTY RONALD ANDREW TR
15840 COUNTRY CT
FORT MYERS FL 33912

RUSSELL ROBERT M &
3 WYCLIFFE RD
EAST WALPOLE MA 02032

FANCHER SHANE R &
825 BUCCANEER PT
DECATUR IL 62521

STONER JONATHAN & LEESA
3631 SILVER BROOK LN
GAINESVILLE GA 30506

PARRISH GREGG S & KAREN
11809 EAGLE VIEW CT
FORT WAYNE IN 46814

BAKER CARL & NELDA
43440 MARIETTA RD
CALDWELL OH 43724

JOHNSON JAMES N
6754 GRAND OAKS CT
MASON OH 45040

DOWNEN JERRY L & MARY ANNE TR
402 N ALTON ST
FREEBURG IL 62243

CARRICO EMIDIO G &
78 S LAKE SHORE DR
BROOKFIELD CT 06804

SPAKE KAREN J
220 LANE 440 LAKE JAMES
ANGOLA IN 46703

DOUGLAS R DANIEL TRUST +
406 POLK ST
IOWA FALLS IA 50126

BAKER TERRY L & NANCY L
2848 E 550TH N
DECATUR IN 46733

SCHRIER LARRY E &
742 HOMESTEAD WY
BROWNSBURG IN 46112

KLUESNER REAL ESTATE LLC
501 TAHOE CT
FARLEY IA 52046

ROSE TERRY L/E
3631 PUTTER POINT LN
FORT MYERS FL 33919

DAWSON TODD A & JAN
205 EMS T34C LN
LEESBURG IN 46538

RUBLE NICOLAS & NICOLE
11225 NORTH 600 EAST 1
MONROEVILLE IN 46773

WALZ STEPHEN N + CHERYL S
6400 ESTERO BLVD #400
FORT MYERS BEACH FL 33931

REIS THOMAS N & KIMBERLY D
981 BAYLESS AVE #2
SAINT PAUL MN 55114

KOORNNEEF EVELYN A
202 MAIN STREET W
GRIMSBY ON L3M 1S3
CANADA

LORIS RENTAL LLC
LORETTA FREY
77E 550N
CRAWFORDSVILLE IN 47933

CARDWELL DOUGLAS F TR
1015 HIGH VISTA TRAIL W
WEBSTER NY 14580

VIECELI DAVID A & DONNA L
6400 ESTERO BLVD #405
FORT MYERS BEACH FL 33931

RAWAS MAHMOUD & FADIA
4149 OLD MANCHESTER CT
MASON OH 45040

JENNER CAROLINE J
1251 LAKEVUE DR
BUTLER PA 16002

CLAWSON MICHAEL R &
3308 GLENVIEW AVE
AUSTIN TX 78703

HOWARD STACY & RHONDA
1600 SOUTH LEE AVENUE
MORTON IL 61550

HARVEY JANICE L
PO BOX 700
EAST AMHERST NY 14051

DANGELO CRAIG M &
3333 CRAIG DR
NORTH TONAWANDA NY 14120

NIEDOSIK DENNIS L/E
6400 ESTERO BLVD #600
FORT MYERS BEACH FL 33931

FRIEDMAN ABIGAIL TR
4919 S DORCHESTER AVE
CHICAGO IL 60615

HOFMAN KYE P & SHERI L
11497 S 450 E
HAUBSTADT IN 47639

GRAHEK KATHLEEN A TR
2500 SUMMERVILLE DR
VALLEY CITY OH 44280

KIMBERLY A TORTORA TRUST +
39700 FIVE MILE RD
PLYMOUTH MI 48170

GRAFF JOHN F TR
118 SADDLE CLUB RD
KITANNING PA 16201

LARRY J HINTZ TRUST +
43W219 TALL PINES RD
ELGIN IL 60124

MUNTEAN ANTOINETTE A TR
7604 SCENICVIEW DR
INDEPENDENCE OH 44131

MONTGOMERY RICKY G &
3 FIRESIDE CT
FRANKFORT IN 46041

FALK DONALD E & NANCY J
1725 W 4TH ST
RED WING MN 55066

ALI MEDIAN & JNEIDI MUNA
9621 TAI TRCE
DAYTON OH 45458

MUSTO RICHARD W & JOANN G
2050 JAMIESON AVENUE APT 1003
ALEXANDRIA VA 22314

VIECELI DAVID A + DONNA L
6400 ESTERO BLVD # 405
FORT MYERS BEACH FL 33931

JONES DEBRA L TR
P O BOX 2476
FORT MYERS BEACH FL 33932

SUNSET 802 LLC
9200 10TH ST N
LAKE ELMO MN 55042

HICKLING NANCY WHITE
24 LOCHAN LANE BOX 1239
BOBCAYGEON ON K0M 1A0
CANADA

TENNESSEA LLC
655 N EAST END
STRAWBERRY PLAINS TN 37871

MARY ANN MOCKLER FAMILY TRUST
2703 JUNONIA CT
FORT MYERS FL 33908

FANCHER MICHELLE L
825 BUCCANEER PT
DECATUR IL 62521

BUCCELLI PHILIP J &
47 WOOD ST
WOBURN MA 01801

SHORT TINA
16555 N MCCAULEY LN
MOUNT VERNON IL 62864

ISLE PROPERTY INVESTMENTS LLC
1842 TOSSING MANE CT
DAYTON OH 45458

HILTON MARK E & DIANA L
23 AGNELL CT
SACRAMENTO CA 95835

BELLINA SUSAN A TR
1248 MILANO DRIVE
NAPLES FL 34103

FORT MYERS BEACHSIDE LLC
10900 N DANA DR
PEORIA IL 61615

GOLDENBERG ALAN L/E
17167 PLANTATION DR
FORT MYERS FL 33967

POPPALARDO PHYLLIS A +
909 RANDOLPH RD
MIDDLETOWN CT 06457

CHIPS AND QUESO TRUST
9951 WOODLANDS DR
FISHERS IN 46037

LINTON DIANE E & DAVID H TR
110 WHITE TAIL LN
LANCASTER MA 01523

DEME MARIE
111 SOUTHSORE DR UNIT 236
EAST HAVEN CT 06512

TAYLOR LYNNE C
6966 OVERLOOK DR
FORT MYERS FL 33919

SUNSET 1101 LLC
731 NE 7TH AVE
FORT LAUDERDALE FL 33304

BRADY STEVEN A & JULIE A TR
1128 PLUM TREE LN
PALATINE IL 60067

BP SUNSET PROPERTIES LLC
ROSALIE PAUCK
1105 TURFRUNNER CT
FLORISSANT MO 63034

ENGDAHL DIANA M +
50595 WAGONWHEEL W
GRANGER IN 46530

PAYETTE MARY MULCAHY TR
579 HOLLY LN N
OAKDALE MN 55128

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

CONDITIONS OF APPROVAL – SEZ20250046 & VAR20250047

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. General hours of operation will be from 7 AM to Midnight. No food and beverage service prior to 10 AM at the ground-level restaurant.
3. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on weekends. All amplified music will be distributed through a unified speaker system controlled by Management. A centralized sound system with distributed speakers, not individual speakers/amps for performers; live entertainment limited to single or duo acts; no cornhole. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process.
4. Sound mitigation will be provided by concrete block walls and bi-fold glass doors (or other retractable door) as depicted on the attached Schematic Plan sheet D1.
5. No consumption of alcohol shall be permitted outside the restaurant, bar, and accessory game area delineated by the 36' Railing and depicted on the attached Schematic Plan sheet D1.
6. Games in the accessory game area cannot include loud electronic beeping, ringing, or buzzing.
7. The development must comply with the LDC's sea turtle conservation requirements.
- ~~8. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department. (LDO and construction of dock already occurred)~~
9. At time of site development, signage will be installed on the dock stating that the dock is not open to the public and that it is for private use only.
10. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided at a minimum twice per week excluding Sundays.
11. The property owner will submit a shared parking agreement with the Dolphin Inn or other nearby properties per LDC 34-2183C prior to DO approval. Should the Dolphin Inn property be sold or redeveloped into any use other than parking, a shared parking agreement with another nearby property will be needed prior to the Dolphin Inn parking operations ceasing.
12. All employees are required to park off-site. Off-site employee parking; must have valet parking available for opening; no parking signage on ROW; and shared parking agreement with Dolphin Inn per sec. 34-2018(c)3.
13. Valet parking service will be established when restaurant operations begin and will be

available as needed to meet peak parking needs.

14. The property owner will coordinate with Town staff to install “No Parking” signs along the right-of-way where the subject property abuts Egret and Curlew Streets.
15. At time of site development, the property must provide perimeter buffers as depicted on the approved site plan.
16. Any unremedied violation of the conditions of approval shall render the special exception null and void.



6425 ESTERO BOULEVARD
Special Exception
NARRATIVE STATEMENTS

REQUEST

The Neighborhood Company, on behalf of Estero 4148 LLC, is submitting this request for special exceptions for a new restaurant venue to be located within the former Beach Theater property, to include outdoor entertainment, live entertainment, outdoor seating that is open past sunset, and consumption on premises. The property has a Future Land Use (FLUM) Map Designation of Mixed Residential and is within the Commercial Boulevard Zoning District.

The subject property located at 6425 Estero Boulevard, Fort Myers Beach, FL is comprised of one parcel which is 0.70 +/- acres (30,405 SF) (See Figure 1) and identified as STRAP #34-46-24-W4-00046.0000.

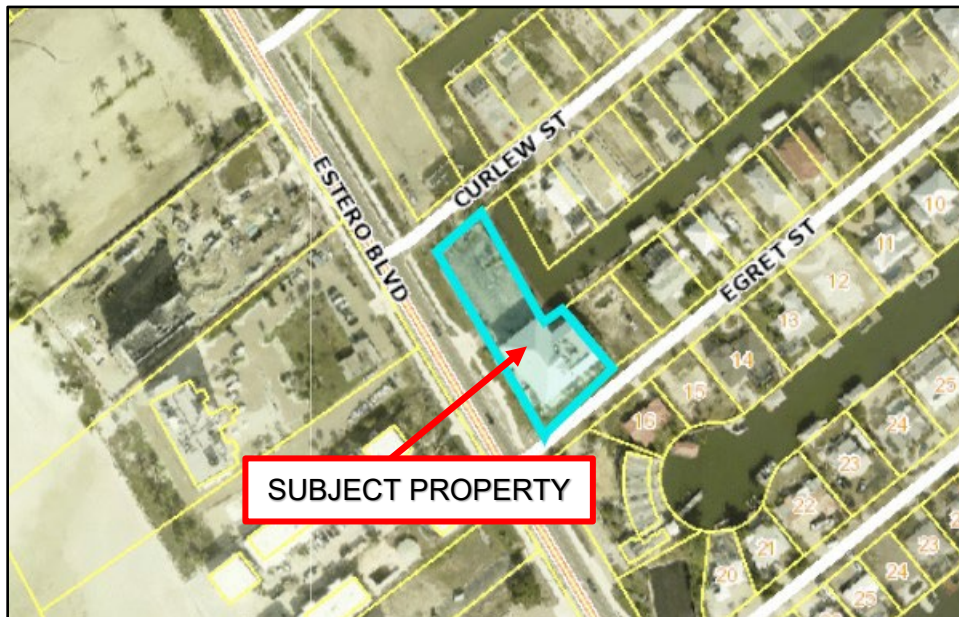


Figure 1. Location Map



Figure 2. Vicinity Map

BACKGROUND & PROPOSED REDEVELOPMENT

The applicant is requesting these special exceptions for the redevelopment of the former Fort Myers Beach Movie Theater to include outdoor entertainment, live entertainment, outdoor seating that is open past sunset, and consumption on premises. A companion variance application is also being submitted seeking relief from LDC Section 34-2020: Required Parking.

The subject property was developed in 1999 and constructed to house the Fort Myers Beach Movie Theater. The Fort Myers Beach Movie Theater was originally a four-screen theater which provided food service and was granted a special permit (Resolution #99-46) for Consumption on Premises (a 2COP license) by the Fort Myers Beach Town Council on December 13, 1999, allowing beer and wine service for theater patrons. The current owners acquired the vacant building and property in May of 2022. Prior to Hurricane Ian, the movie theater was an integral part of the island life, providing an alternative to outdoor activities for residents and visitors.



The owners are proposing to re-purpose the property through the renovation of the existing theater building. This renovation will create an upscale steakhouse restaurant with a bar on the 2nd floor, and a more casual outdoor dining area with bar, and game/entertainment area on the ground floor. Limited office space will also be provided on the 2nd floor, and the 3rd floor will be converted into an ancillary storage area and office for the restaurant. The outdoor seating, bar and game/entertainment areas beneath the existing structure will provide a place where patrons can enjoy food, beverages, games and entertainment while being protected from both the sun and rain.

The applicant is requesting special exceptions for outdoor entertainment, live entertainment, and outdoor seating that is open past sunset as well as Consumption on Premises for both interior and outdoor seating areas. The special exception for COP is being requested prior to applying to the State to obtain a 4COP license.

The existing structure was constructed in 1999 in an AE flood zone under permit COM199904122. The redevelopment of the site is intended to be in compliance with the Fort Myers Beach Post-Disaster Buildback policy. The scope of the project will be valued at less than 50% of the building's value. Compliance with FEMA regulations as well as state and local development requirements will be demonstrated at the time of Development Order and Building Permit.

LOCATION, SITE DESIGN & COMPATIBILITY

Location

The subject property is located approximately 2 miles north of the Big Carlos Pass Bridge (See Figure 2) on the south end of the island. The properties in this area, between the beach and Estero Boulevard are developed with mostly condominiums and hotels, while the bay side of Estero Boulevard contains more commercial and single-family residential uses. Prior to Hurricane Ian, there were commercial uses in this area which peacefully coexisted with surrounding uses and were deemed compatible with the condominiums, hotels, and residential uses. These included Charley's Boat House Grill, professional office space, personal services, and the movie theater. Many of the properties along this portion of Estero Boulevard are within the Commercial Boulevard (CB) Zoning District. The Town of Fort Myers Beach has recently updated their CB regulations to allow a variety of commercial uses, such as restaurants, "by right". They have also updated the regulations to allow outdoor entertainment and operating hours past sunset through the special exception process.

Site Design

It is anticipated that the customer base for this project will be mostly from the surrounding area since the surrounding condominiums and residential neighborhoods provide a significant population and the site will



be easily accessible for motorists, pedestrians and cyclists. Additionally, the site is located next to a transit stop and will be providing bicycle and golf cart parking, and limited boat access. The site will have a pedestrian connection from Estero Boulevard. Bicycle racks will be located near the pedestrian connection. Vehicular access to the site will be from the existing driveway on Estero Boulevard. Other than the elimination of parking spaces under the building, the parking lot will remain as-is with the addition of 2 ADA parking spaces to be located near the building entrance. The parking lot is bound by Estero Boulevard, Curlew Street, the canal and the existing building, leaving no room for expansion. The dumpster's location will remain within the parking lot, in the same enclosure as it previously was for the theater.

The ground floor outdoor seating, bar and game/entertainment area lends itself to a more casual atmosphere where customers can enjoy their food and beverages while participating in games such as cornhole and billiards. The ground floor bar will be centrally located. There will be an outdoor stage area at the front of the building and a wall will be added at the rear of the building as well as enhanced vegetation to buffer the adjoining properties. Amplified music or entertainment will only be permitted until 10 pm and will be oriented away from residential uses. Food service for the ground floor will be provided through a dumb waiter located at the northeast corner of the structure. The 2nd floor restaurant and bar will provide a more upscale steakhouse dining experience. Ancillary kitchen, restrooms and office space will also be located on that floor. The projection room located on the 3rd floor will be renovated to provide storage and office space for the restaurant use.

Outdoor Seating

The proposed outdoor seating encompasses the entire area under the building as well as the existing concrete pads adjacent to Egret Street and Estero Boulevard (previously used for parking) which extend beyond the building footprint. The majority of the outdoor seating and game/entertainment area will be covered by the building to protect patrons from the elements, while providing an open-air recreational atmosphere. The back portion of that area (abutting residential uses) will contain a solid concrete block wall as well as restrooms and a kitchen service area to provide buffering and shielding. This solid wall will provide sound and light attenuation for abutting residential properties to the northeast. The game area located to the rear of the building will contain games such as billiards, cornhole, and oversized Jenga. The outdoor bar area will be in the center of the building. Food service for the ground level will be provided through the use of the service area and dumbwaiter at the rear of the building. The entertainment/stage area will be located near the front of the building, oriented towards the parking lot and Estero Boulevard as shown on the enclosed site plan. Additional outdoor seating is proposed on the second floor through the construction of an exterior deck fronting Estero Boulevard. Shading for this deck area will be provided through overhead louvers. The second-floor outdoor seating will be accessible through the interior dining area and will have a secondary egress via an exterior stairway.



A pedestrian connection will extend from the building to the sidewalk along Estero Boulevard and provide ease of access to the venue. The addition of the outdoor seating area will create activity and visual interest along the roadway and will enhance the pedestrian experience along Estero Boulevard.

Hours of Operation and Live Entertainment

The proposed hours of operation will be from 7 am to 12 midnight, seven days a week for the steakhouse restaurant and 7am to 10 pm for the ground floor casual restaurant and bar. Live music for the ground floor restaurant/outdoor dining area will be limited to the stage near the front of the building as shown on the enclosed site plan. Amplified sound will be oriented away from the residential properties and will be limited to the hours of 10 am – 10 pm. All sound will abide by the Town's noise ordinance.

Buffers and Screening

The recent hurricanes have destroyed much of the previously planted landscaping and buffers. Following Hurricane Ian, existing mangroves along the canal were inadvertently removed. This issue was quickly addressed with state agencies and rectified through an Environmental Resource Permit (ERP) from Florida DEP. Additionally, the property owner has received a Limited Development Order (LDO 20240209) to construct a docking facility along the canal which includes dredging, RCP mangrove planters and a new seawall.

The proposed redevelopment will exceed today's buffering and screening regulations in all areas of the site except for the buffers adjacent to the parking lot along Estero Boulevard and Curlew Street rights-of-way. The existing parking lot is configured in such a way that does not allow for the required 15' Type D buffer. However, the applicant will exceed the required buffer plantings, albeit within the existing buffer strip which is approximately 10' in width.

In order to enhance the public realm and compatibility with adjacent uses, the applicant is proposing to include landscaping along Egret Street and Estero Boulevard where the existing building abuts right-of-way as shown on the site plan. Although buffers are not required when a commercial use abuts a right-of-way, a 5' buffer with enhanced plantings will be provided.

A Type C buffer is proposed along the northeast property line adjacent to the residential property. This buffer will be a minimum of 15 feet in width and will include a 6' opaque fence with enhanced plantings on the residential side of the fence. The Type C buffer will terminate at the canal seawall and dock.



Surrounding Uses

The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	BOULEVARD	RESIDENTIAL SINGLE-FAMILY & COMMERCIAL BOULEVARD	VACANT COMMERCIAL, RESIDENTIAL AND CANAL
SOUTH	MIXED RESIDENTIAL	RESIDENTIAL MULTI-FAMILY & COMMERCIAL RESORT	EGRET STREET ROW & RESIDENTIAL CONDO
EAST	BOULEVARD	RESIDENTIAL SINGLE-FAMILY	SINGLE FAMILY RESIDENTIAL AND EGRET STREET ROW
WEST	MIXED RESIDENTIAL	RESIDENTIAL MULTI-FAMILY & COMMERCIAL RESORT	ESTERO BLVD. ROW, CONDOMINIUMS

Compatibility

The existing Fort Myers Beach Theater building has been vacant for over two years. The proposed redevelopment of the site to a restaurant venue with bar, outdoor seating and game/entertainment area will provide a much-needed dining and entertainment amenity to this area of the island. Prior to Hurricane Ian, this area contained commercial uses and intensities similar to what is being proposed for the subject property. These uses, including the Beach Theater, Charlie's Boathouse and the Munch Box restaurant, were long-standing restaurants and entertainment venues that were considered compatible with the surrounding area.

The proposed buffers and landscaping will enhance the public realm along Estero Boulevard. In addition to the 15-foot buffer along the northeastern portion of the property, the single-family residential properties additional shielding will be provided by incorporating dry-flood proofed restrooms and "service area" room at the ground floor rear of the building. The proposed consumption-on premise area will be to the interior of the back wall and carefully delineated and cordoned off on all other sides by ropes or fencing in accordance with LDC requirements. The updated seawall and dock with mangrove plantings will improve the appearance and natural aesthetic of the canal while providing additional mobility options for nearby Fort Myers Beach residents.

The proposed redevelopment of the subject property into an upscale steakhouse restaurant with a casual outdoor restaurant with a game/entertainment area gives residents and visitors the opportunity to stay on the south end of the island and enjoy dining and entertainment options.



Considerations

1. The property qualifies for a Special Exception:

The subject property qualifies for a Special Exception for a new restaurant venue to be located within the former Beach Theater property, to include outdoor entertainment, live entertainment, outdoor seating that is open past sunset, and for consumption on premises as the conditions on Fort Myers Beach have changed since the building was first constructed. The impact of COVID 19 and Hurricanes such as Ian, Milton and Helene have shown the need for redevelopment with resilient construction and uses, such as outdoor venues, which will be attractive to residents and tourists alike. This redevelopment will provide an opportunity for both upscale and casual dining experiences. The ground floor restaurant inclusive of the outdoor seating, bar, and auxiliary game/entertainment area will be constructed in compliance with Fort Myers Beach and FEMA codes.

2. Granting the requested Special Exception could impact surrounding properties as follows:

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

Fort Myers Beach was severely impacted by Hurricane Ian in September 2022, as such the conditions of the island and the subject property are not the same as they were in May of 2022 when the current owners purchased the property. The current owners feel that the site would better serve the residents and visitors of the island as a restaurant venue, with bar, outdoor seating, auxiliary game and entertainment areas and office space.

(2) The testimony of any applicant.

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

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

The petition will be reviewed by the Town Staff and expert testimony will be provided during the public hearing process before the Local Planning Agency (LPA). The LPA will provide a recommendation to the Town Council.

(4) The testimony of the public.

The public will be afforded an opportunity to testify before the LPA and Town Council during public input portion of the public hearings. Testimony given will be evaluated as applicable and appropriate for the LPA's recommendation and the Town Council's decision.

(5) Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.



Policy 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The redevelopment of the subject property will create an attractive, human-scale development which will engage the public realm along Estero Boulevard. The building with outdoor seating will help “frame” the Boulevard, will create visual interest and will promote walkability in the surrounding area. The proposed landscaping will enhance aesthetics along Estero Boulevard. These improvements are consistent with the goals, objectives, policies and intent of Policy 1-A-1 as they will create more of a Boulevard feel to this section of Estero Boulevard.

Policy 4-B-4 Commercial uses within the “Mixed Residential” FLU category are limited to lower-impact uses and must be sensitive to nearby residential uses, contributed to the public realm as described in this comprehensive plan.

The site is located within the “Mixed Residential” FLU category and was previously an established movie theater which provided food and beverage service to its patrons. The proposed redevelopment will contribute to the public realm through attractive landscaping and design features. This redevelopment will be sensitive to nearby residential uses by limiting hours of operation and outdoor entertainment, adding a fully opaque concrete block wall along the northeaster façade of the building, providing enhanced buffering and improving current site conditions. These improvements and measures will provide shielding, sound and light attenuation and improved aesthetics which will ensure compatibility with surrounding properties.

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

The restaurant use is allowed within the Commercial Boulevard district, and the proposed design and voluntary restrictions meet or exceed performance and locational standards. The building placement, size and height are not being changed through this redevelopment. The addition of the deck on the second floor fronting Estero Boulevard will provide a building which is closer to the boulevard thus creating a more compliant site pursuant to the goal of having buildings closer to the boulevard to activate the area. The building previously met or exceeded performance and locational standards for a restaurant use constructed in 1999.

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

The site was previously developed as the Fort Myers Beach Theater and has been subsequently cleared of all existing natural vegetation. A LDO has been approved by the Town of Fort Myers Beach for the construction of a docking facility which will include dredging, planting of mangroves



and a seawall. This construction is to replace the existing damaged sea wall and dock, and to increase the natural mangrove vegetation.

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

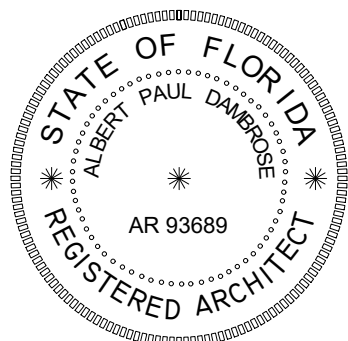
Based on the layout and design elements the request will be compatible with existing and proposed uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. Historically the site was developed as a popular movie theater which served food, beer and wine. The previous use was compatible with the neighborhood and the use of the property as a restaurant, bar with outdoor seating will be as well. Appropriate shielding, buffering and operational restrictions are proposed to ensure compatibility.

(9) Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

This requested restaurant use is to include outdoor entertainment, live entertainment, outdoor seating that is open past sunset, outdoor dining and consumption on premises is allowed within the Commercial Boulevard zoning district. This special exception request complies with the applicable general zoning provisions and supplement regulations pertaining to the use as set forth within the CB Zoning District as demonstrated in the narrative above and as evidenced in the concurrent application to request a variance from LDC Section 34-2020 Required Parking Spaces.

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

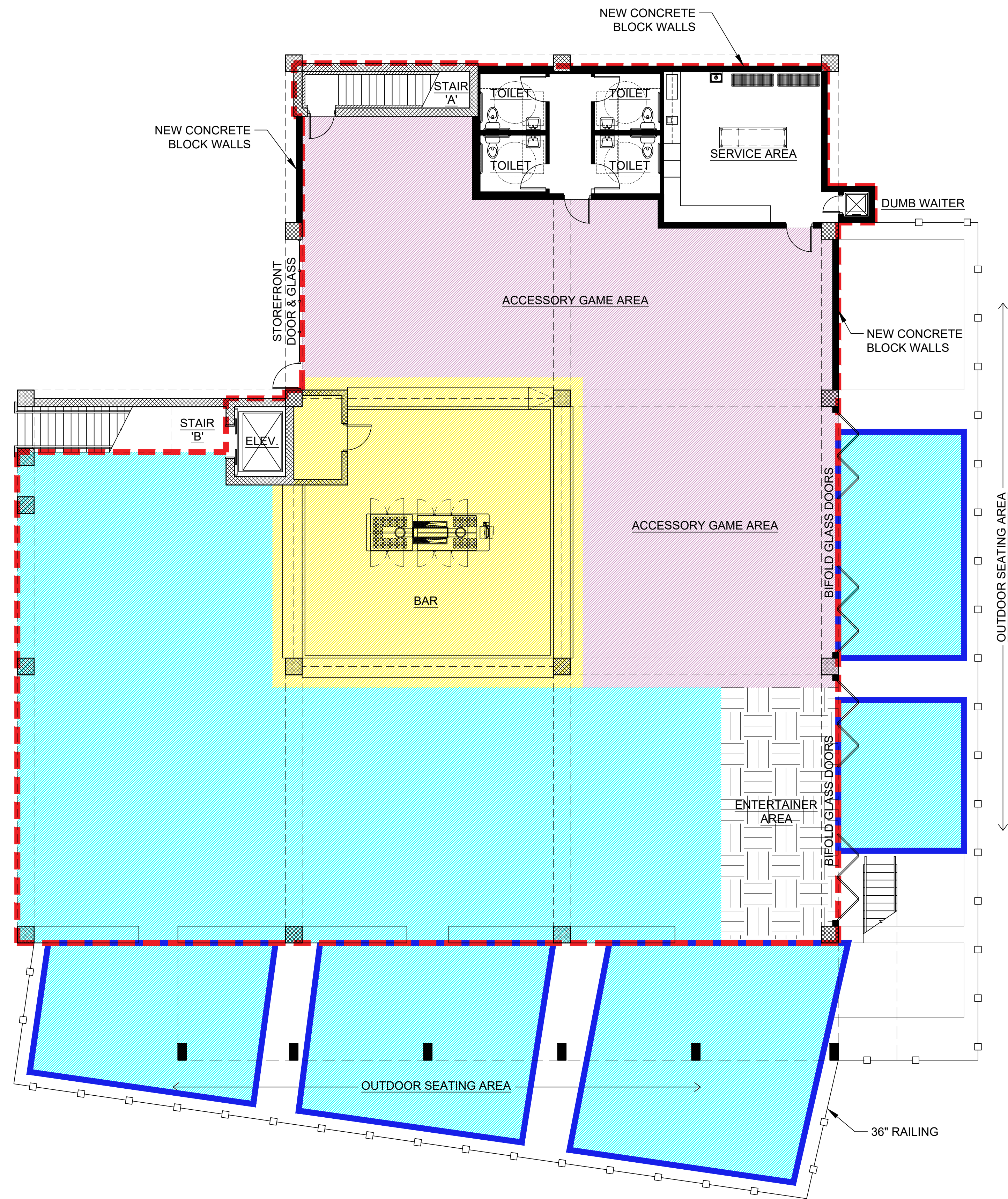
DATE ISSUED: 8 JUL 2025

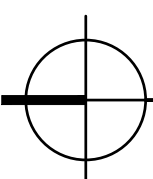
REVISIONS:

SHEET

D1

OF 4

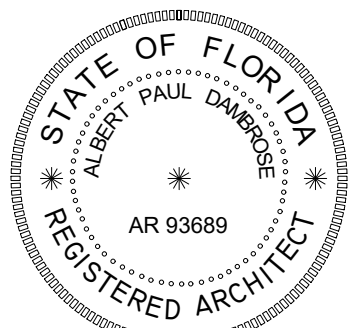


NORTH  SCHEMATIC FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

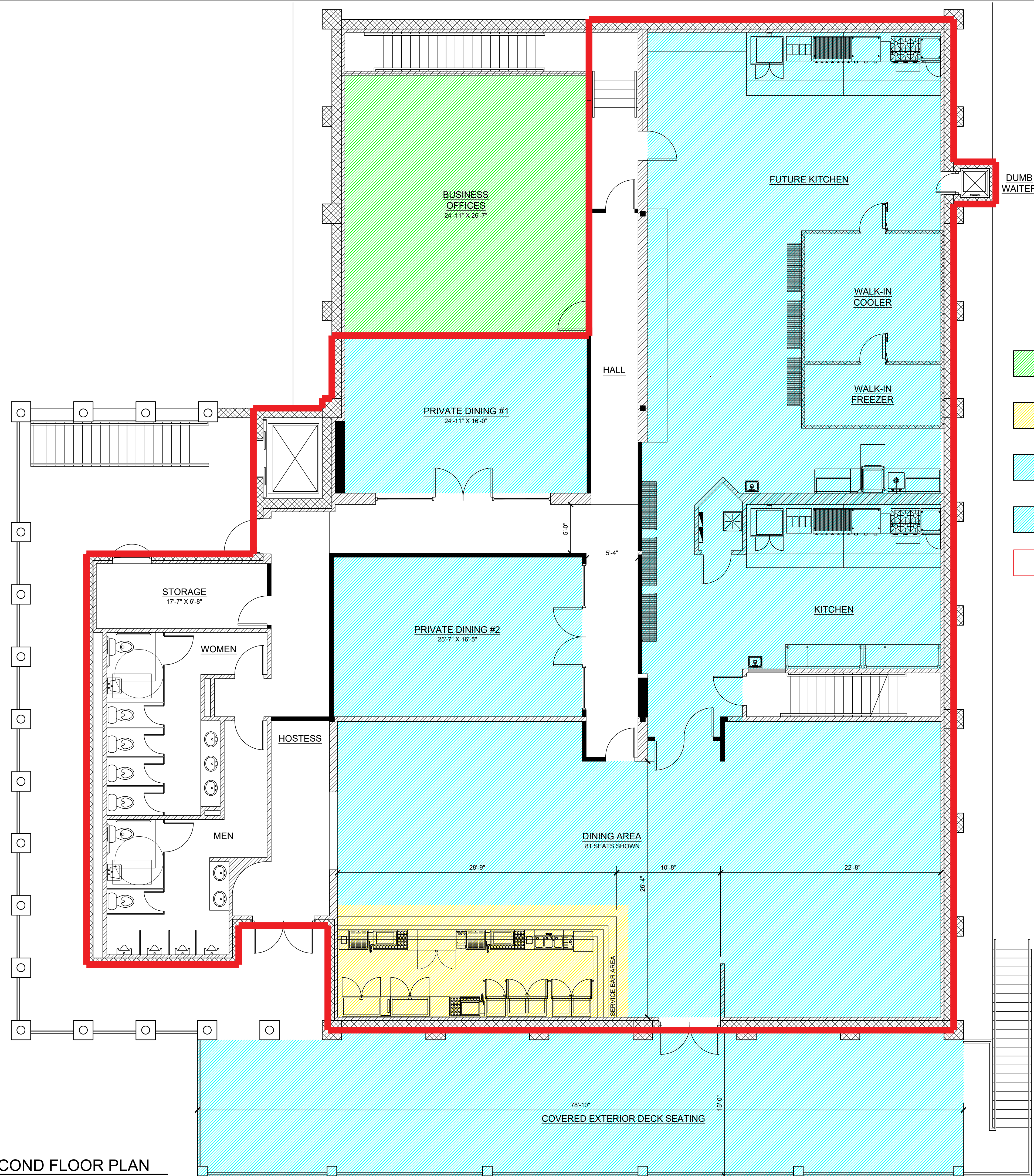
DATE ISSUED: 8 JUL 2025

REVISIONS:

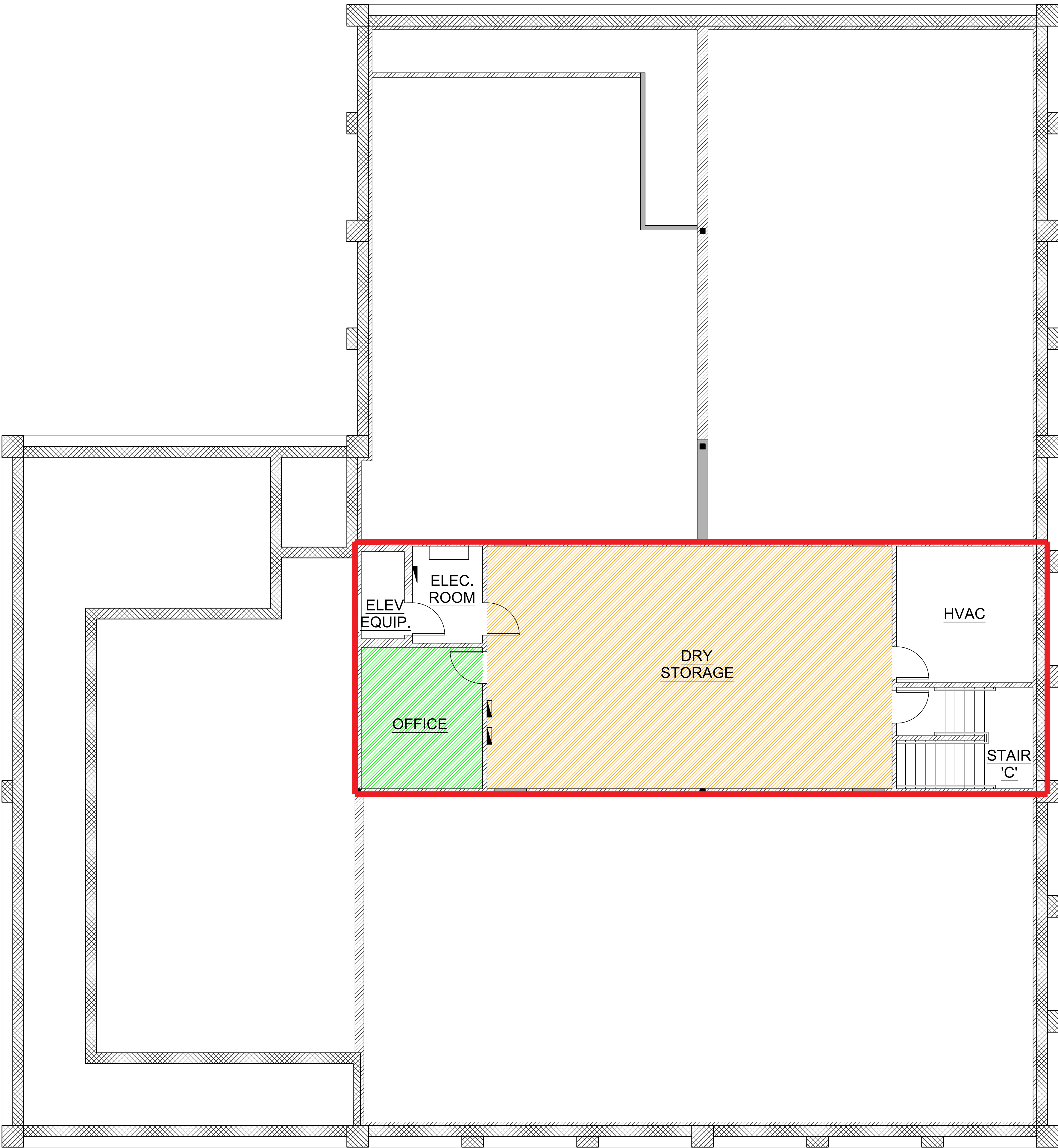
SHEET

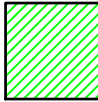
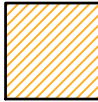
D2

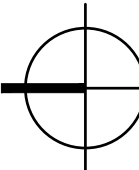
OF 4



NORTH
SCHEMATIC SECOND FLOOR PLAN
SCALE: 3/16" = 1'-0"



-  OFFICE = 147 SQ. FT.
-  STORAGE = 846 SQ. FT.
-  INDICATES GROSS FLOOR AREA = 1,505 SQ. FT.

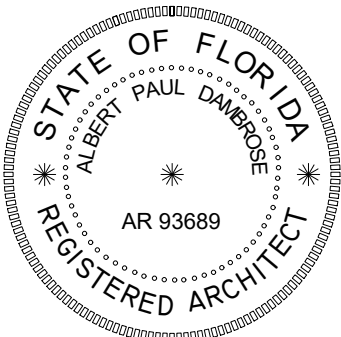
NORTH  EXISTING MEZZANINE PLAN

SCALE: 3/16" = 1'-0"

Studio A.D. hereby reserves its common law copyright & other property rights in these plans, ideas & designs. These ideas, designs & plans are not to be reproduced, changed or copied in any form or manner whatsoever, nor are they to be assigned to any third party, without first obtaining the express written permission from Studio A.D.

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 8 JUL 2025

REVISIONS:

SHEET

D3

OF

4

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE FORT MYERS BEACH TOWN COUNCIL APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE APPLICATION VAR20250047 FOR THE PROPERTY AT 6425 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000 IN FORT MYERS BEACH FOR A VARIANCE TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES FROM 115 TO 33 PARKING SPACES AND A BICYCLE RACK FOR A RESTAURANT, COCKTAIL BAR AND ENTERTAINMENT AREA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

LPA makes recommendation for variance requests for Town Council's consideration.

What the action accomplishes:

Approval of this request will decrease the number of required parking spaces to 33 parking spaces and a bicycle rack for the proposed bar, restaurant, and outdoor activity, and entertainment area.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The property at 6425 Estero Blvd was previously a movie theater with food service. The applicant is proposing the redevelopment of the property as a restaurant and bar on the first level above flood and a bar with games and entertainment area on the open ground floor, that previously provided under building parking. The second story above flood will be used for storage and office space. No substantive changes are proposed to the parking lot adjacent to the building, which previously contained 34 spaces and will be slightly modified to provide 2 ADA parking spaces and a total of 33 spaces.

The application is proposing several changes to the building exterior. Exterior improvements include: a deck with shade structure for restaurant seating on the first level above flood, that extends toward Estero Blvd approximately 15 feet, a wall along the rear of the building on the first floor to block sounds and light from the bar and entertainment area to the adjacent single-family residential property, a type C buffer with a fence along the property line adjacent to the single family residential property, and landscaping.

The LPA unanimously recommended approval with conditions including application submit an agreement to the Town regarding shared parking; employees parked off-site; signage installed on Curlew and Egret.

A letter requesting an additional review by the Town Council was received within 10 days.

Attachments:

1. Resolution 25-240 VARIANCE_revised
2. Resolution Exhibit A Findings/Variance Criteria
3. Staff Report
4. Staff Report Exhibit A Site Plan
5. Staff Report Exhibit B Schedule of Uses
6. Project Narrative_Request -Variance 025-01-2025
7. CONDITIONS OF APPROVAL_revised

8. Restaurant Schematic Design Plan
9. Postcards
10. Objection to 2 Beach Theater Project ordinances passed today

Financial Impact:

Unknown

6. Alternative Action

Approval/ Approve with conditions

7. Management Recommendations:

Denial

8. Recommended Approval:

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 - 7/21/2025
Approved - 7/21/2025
Approved - 7/22/2025
Approved - 7/24/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-240

A RESOLUTION OF THE FORT MYERS BEACH TOWN COUNCIL APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE APPLICATION VAR20250047 FOR THE PROPERTY AT 6425 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000 IN FORT MYERS BEACH FOR A VARIANCE TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES FROM 115 TO 33 PARKING SPACES AND A BICYCLE RACK FOR A RESTAURANT, COCKTAIL BAR AND ENTERTAINMENT AREA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, 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, Applicant, The Neighborhood Company, on behalf of the property owner, 6425 Estero, 4148 LLC, is requesting a variance from Section 34-2020 of the Land Development Code to allow a decrease in the number of parking spaces from 115 to 33 parking spaces plus one bike rack for a restaurant with cocktail bar and entertainment area; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-00046.0000; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Commercial Boulevard" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 10, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted 6-0, to recommend approval with conditions of the variance; and

WHEREAS, on August 4, 2025 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the Land Development Code ("LDC"); and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving/ approving with conditions/ denying the variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variance as described herein.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council has considered the following criteria set forth in Section 34-84 and 34-87 of the LDC for each of the requested approvals as stated in more detail in Exhibit A:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

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

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

ADOPTED this ____th day of August 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:**

Nancy Stuparich, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of August 2025.

Exhibit C Code Required Findings

Special Exception for COP: The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

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

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed COP requires a special exception in the CB zoning district.

Exhibit C Code Required Findings

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

Special Exception for outdoor entertainment: The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor entertainment may not be appropriate in this location. If music or

Exhibit C Code Required Findings

amplified entertainment is too loud or at inappropriate times, could cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

Special Exception for live entertainment: The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

Exhibit C Code Required Findings

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

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

Special Exception for outdoor seating: The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

Exhibit C Code Required Findings

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor seating should not cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.

Variances for Parking: Section 34-2020(b)(2) requires that new uses in a building must provide code required parking, Section 34-2020(d)(2)(h) requires restaurants to provide eight spaces per 1,000 square feet of total floor area plus outdoor seating area, Section 34-2020(d)(2)(h) 2. Requires bars to provide eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar, plus outdoor seating area. Staff proposes a single variance from Section 34-2020 to provide 33 automobile parking spaces, 2 bicycle racks, and 4 golf cart parking spaces where the code would require 115 parking spaces.

Section 34-87 required variance findings:

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

The parking lot adjacent to the building is existing and it would not be possible to add parking spaces to that parking lot without a substantial cost. However, parking places existed under the building previously and that area will be utilized for a bar, seating and entertainment.

*(2) That the conditions justifying the variance **are/** are not the result of actions of the applicant taken after the adoption of the regulation in question;*

Exhibit C Code Required Findings

The building previously had parking spaces on the ground floor. The proposed new use of outdoor entertainment and bar will utilize a portion of the previous parking area.

*(3) That the variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The request is the minimum variance necessary to allow the proposed layout of the property.

*(4) That the granting of the variance **will (may)** /will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The lack of parking on site may result in people parking where they are not allowed. They may park along Curlew St or Egret St or in the condominium parking lots across Estero Blvd from the proposed use.

*(5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are**/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Staff recognizes that the parking code is in need of updating. However, the reduction being requested may be more than is appropriate without some mitigation such as valet parking.

The Variance from Section 34-2020 for a reduction in the number of required parking spaces **does not meet** the criteria found in Section 34-87.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exceptions & Variance

CASE NUMBER: SEZ20250046 & VAR20250047

CASE NAME: 6425 Estero Blvd

SEZ: 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units, and 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district, and 3) New live entertainment in the CB zoning district, and 4) New outdoor seating that is open after sunset in the CB zoning district.

VAR: 1) Sec. 34-2020(b)(2) from the requirement to provide additional parking spaces that are necessary for a change of use, and 2) Sec. 34-2020(d)(2)(h) from the minimum required parking spaces for a restaurant, and 3) Sec. 34-2020(d)(2)(h)2. from the minimum required parking spaces for a bar.

LPA

HEARING DATE: June 10, 2025 at 9:00 AM

STAFF

RECOMMENDATION: **Approve** Special Exception for COP
Deny Special Exception for new Outdoor Entertainment
Approve Special Exception for new Live Entertainment
Approve Special Exception for Outdoor Seating after dark
Deny Variance for Parking Reduction

**PREPARED/
SUBMITTED BY:** Jason Utley

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/Estero 4148 LLC

Request: A special exception to allow a bar within 500 feet of residences, and new outdoor entertainment, new live entertainment, and new outdoor seating past sunset in

the CB zoning district, AND a variance from the parking requirements to provide 33 parking spaces for the new use.

Subject property: See attached site plan

Physical Address: 6425 Estero Blvd.

STRAP #: 34-46-24-W4-00046.0000

FLU: Mixed Residential

Zoning: Commercial Boulevard (CB)

Adjacent zoning and land uses:

North(northwest): Commercial Boulevard (CB)/Boulevard
(previously Charley's Boathouse)

South (southeast): Commercial Resort (CR)/Mixed Residential

East (northeast): Residential Single family (RS)/ Low Density

West (southwest): Residential Multi-family (RM)/ Mixed Residential

II BACKGROUND AND ANALYSIS

Background:

The property at 6425 Estero Blvd was previously a movie theater with food service. The applicant is proposing the redevelopment of the property as a restaurant and bar on the first level above flood and a bar with games and entertainment area on the open ground floor, that previously provided under building parking. The second story above flood will be used for storage and office space. No substantive changes are proposed to the parking lot adjacent to the building, which previously contained 34 spaces and will be slightly modified to provide 2 ADA parking spaces and a total of 33 spaces.

The application is proposing several changes to the building exterior. Exterior improvements include: a deck with shade structure for restaurant seating on the first level above flood, that extends toward Estero Blvd approximately 15 feet, a wall along the rear of the building on the first floor to block sounds and light from the bar and entertainment area to the adjacent single-family residential property, a type C buffer with a fence along the property line adjacent to the single family residential property, and landscaping.

Analysis:

The applicant is requesting a total of four special exceptions for new uses on the property and three variances to allow the proposed uses without meeting the parking requirements found in 34-2020. The building modifications do not require variances or

special exceptions. The building is currently nonconforming for CB zoning district setbacks which require a build-to line of 5-10 feet from Estero Blvd, and a setback from Egret of 10 feet. The proposed deck will decrease the nonconforming Estero Blvd build-to requirement.

Special Exception for COP: The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

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

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed COP requires a special exception in the CB zoning district.

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

Special Exception for outdoor entertainment: The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor entertainment may not be appropriate in this location. If music or amplified entertainment is too loud or at inappropriate times, could cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

Special Exception for live entertainment: The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

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

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

Special Exception for outdoor seating: The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

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

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

Whether the request meets or exceeds all performance and locational standards set forth

for the proposed use.

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

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

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

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 outdoor seating should not cause nuisance.

Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.

Variances for Parking: Section 34-2020(b)(2) requires that new uses in a building must provide code required parking, Section 34-2020(d)(2)(h) requires restaurants to provide eight spaces per 1,000 square feet of total floor area plus outdoor seating area, Section 34-2020(d)(2)(h) 2. Requires bars to provide eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar, plus outdoor seating area. The Applicant proposes a single variance from Section 34-2020 to provide 33 automobile parking spaces, 2 bicycle racks, and 4 golf cart parking spaces where the code would require 115 parking spaces.

The applicant suggests that due to the previous use of movie theater, the space does not readily calculate to restaurant space and that the large square footage is not commensurate with the code required number of parking spaces. While this seems to be a legitimate argument, staff feels that the proposed number of parking spaces may not be adequate for the number of proposed dining room seats, bar seats, and bar seating and entertainment area on the ground floor. The number of proposed parking spaces equates to a single parking space for each table currently shown on the 2nd floor dining room plan.

Section 34-87 required variance findings:

*(1) That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to*

protect public policy;

The parking lot adjacent to the building is existing and it would not be possible to add parking spaces to that parking lot without a substantial cost. However, parking places existed under the building previously and that area will be utilized for a bar, seating and entertainment.

*(2) That the conditions justifying the variance **are**/ are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The building previously had parking spaces on the ground floor. The proposed new use of outdoor entertainment and bar will utilize a portion of the previous parking area.

*(3) That the variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The request is the minimum variance necessary to allow the proposed layout of the property.

*(4) That the granting of the variance **will (may)** /will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The lack of parking on site may result in people parking where they are not allowed. They may park along Curlew St or Egret St or in the condominium parking lots across Estero Blvd from the proposed use.

*(5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are**/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Staff recognizes that the parking code is in need of updating. However, the reduction being requested may be more than is appropriate without some mitigation such as valet parking.

The three Variances from Section 34-2020 for a reduction in the number of required parking spaces **does not meet** the criteria found in Section 34-87.

II. RECOMMENDATION

Based on the code requirements for Special Exceptions found in Section 34-88, staff recommends:

- Approval of the Special Exception for COP,
- Denial of the Special Exception for Outdoor Entertainment,
- Approval of the Special Exception for Live Entertainment, and
- Approval of Special Exception for Outdoor Seating after dark

Based on the code requirements for Variances found in Section 34-87, staff recommends:

- Denial of Variance for Parking Reduction

III. CONDITIONS OF APPROVAL

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on Weekends.
3. No consumption of alcohol shall be permitted outside the entertainment and seating area, as depicted on the plan attached.
4. Games in the entertainment area cannot include loud electronic beeping, ringing, or buzzing.
5. The development must comply with the LDC sea turtle conservation requirements.
6. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department.
7. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided six days a week (excluding Sundays).
8. Any violation of the conditions of approval shall render the special exception null and void.

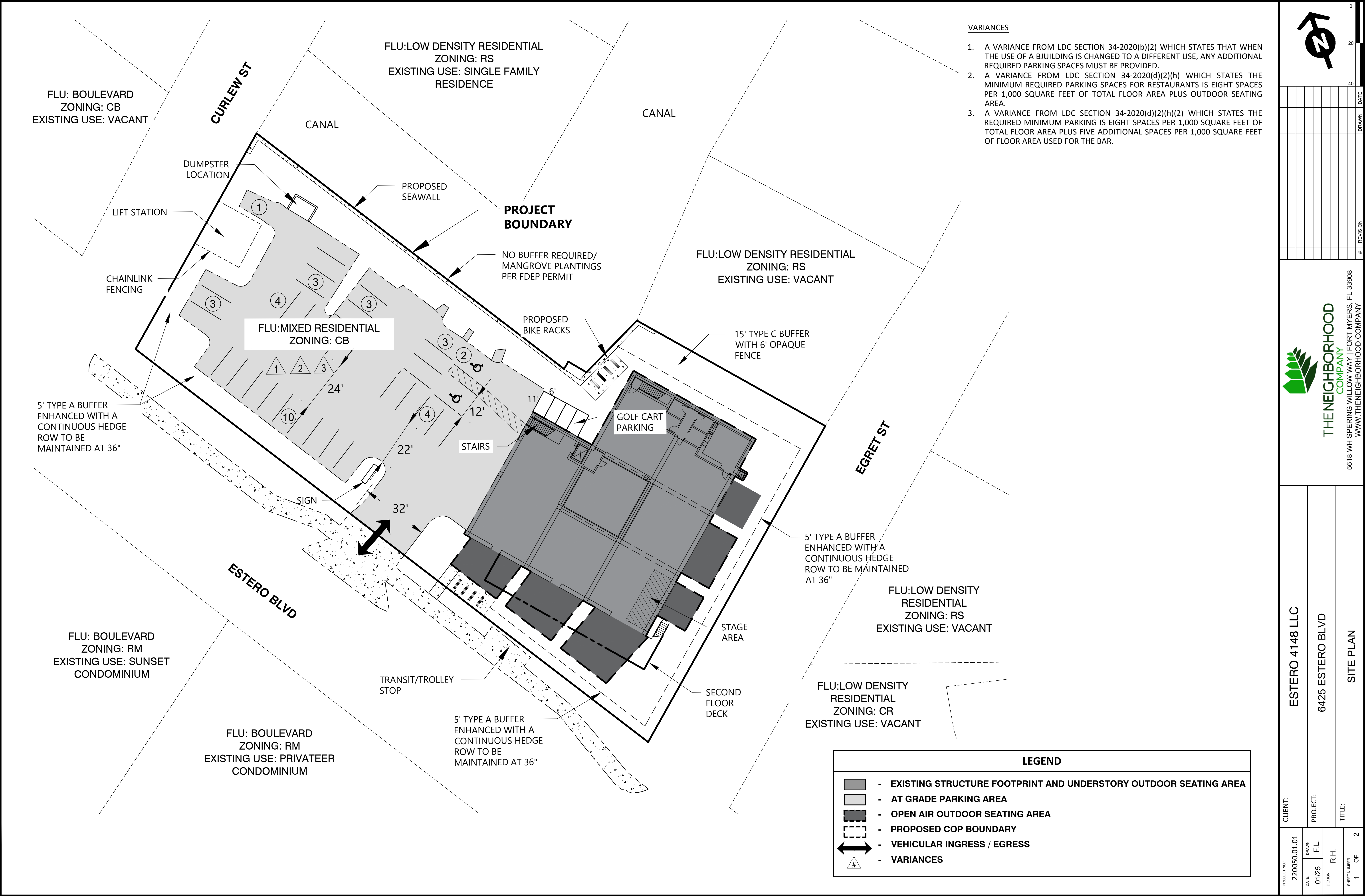


EXHIBIT B: Schedule of Uses

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units,
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district,
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district



6425 ESTERO BOULEVARD VARIANCE NARRATIVE STATEMENTS

REQUEST & BACKGROUND

The Neighborhood Company, on behalf of Estero 4148 LLC, requests a variance for the redevelopment of the former Fort Myers Beach Theater property located at 6425 Estero Boulevard, Fort Myers Beach, FL 33931. The enclosed variance application seeks relief from the following code section:

1. LDC Section 34-2020(b)(2) When the use of a building is changed to a different use that is required to have more parking than exists, the additional parking must be provided in accordance with the standards specified.
2. LDC Section 34-2020(d)(2)(h) Required parking spaces for restaurants, the minimum parking requirements for restaurants is eight spaces per 1,000 square feet of total floor area plus any outdoor seating area.
3. LDC Section 34-2020(d)(2)(h) 2. Bars. If the restaurant contains a bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

The subject property encompasses 0.70 +/- acres (30,405 SF) (See Figure 1) and is identified through STRAP #34-46-24-W4-00046.0000.

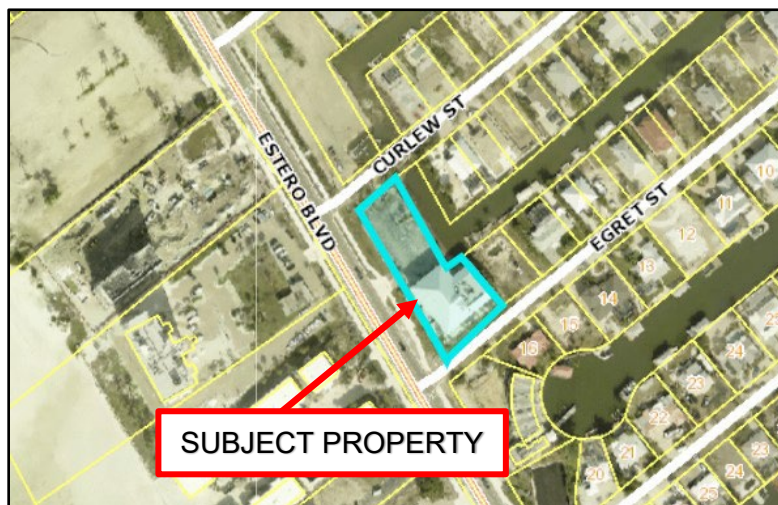


Figure 1. Location Map



The property has a Future Land Use (FLUM) Map Designation of Mixed Residential and is within the Commercial Boulevard Zoning District. The subject property is located approximately two miles from the Big Carlos Pass Bridge (See Figure 2) on the south end of the island.



Figure 2. Vicinity Map

The vacant building was acquired by the current owners in May of 2022. The property was previously home to the Fort Myers Beach Theater, which was constructed in 1999 and consisted of 4 theaters containing 272 seats. The theater provided food service and had an approved COP (Resolution #99-46) to serve wine and beer.

PROPOSED REDEVELOPMENT

The applicant is submitting this variance request along with a companion Special Exception application for a new restaurant venue to be located within the former Beach Theater property, to include outdoor entertainment, live entertainment, outdoor seating that is open past sunset and consumption on premises. The redevelopment proposes renovating the building to create an upscale steak house restaurant, with a bar and office space on the main floor (2nd story), and a more casual outdoor dining area with bar, and a game/entertainment area on the ground level (1st story). Ancillary storage space and office for the restaurant



will be located within the former mezzanine/projection room area on the 3rd story. The ground floor bar will be hardened, resilient and designed to meet floodplain requirements. Due to the lot and structure size, and the re-use of the existing building, three variances will be needed to address the parking requirements due to the change of use. These variances, as discussed in greater detail below, are necessary to allow the redevelopment of the site as described above

The existing building is a non-conforming structure as it was constructed prior to current setback requirements. The current build-to line for Estero Boulevard is 5' to 10' while the existing setback is approximately 25'. A 15' exterior deck is planned for the Estero Boulevard side of the building which will decrease the setback to approximately 13' from the closet point of the building to the property line. In accordance with LDC Sec. 34-3234(1) a variance will not be required as this redevelopment does not violate Div. 2 of Article V of Chapter 34. The deck will include a louvered shade structure to protect patrons from the elements. This outdoor seating area will be accessible mainly from the indoor dining area but as a secondary means of egress, a stairway at the Egret Street side of the building is provided for safety.

The site contains 34 parking spaces outside of the existing building footprint. Previously, additional parking was provided under the building; however, this space will be converted into restaurant use. These spaces will be used in their current configuration with the exception of the three spaces closest to the building entrance which will be reconfigured to accommodate two (2) ADA spaces. We propose a total of 33 parking spaces, with credit for one space through the substitution of one bike rack for four bicycles. We will also provide additional parking for alternative modes of transportation including a second bike rack for four bicycles, designated parking for four golf carts and boat dockage. Below we have provided two parking calculation scenarios, one adhering to the current parking regulations and one based on the requested variances.

Existing Regulations

The following calculation is based on the current minimum parking requirement for a restaurant per LDC Sec. 34-2020(d)2(h) which is a minimum of 8 spaces per 1,000 square feet of total floor area plus any outdoor seating areas, and an additional 5 spaces per 1,000 square feet of floor area used for the bar. This results in a requirement of 172 parking spaces for the proposed redevelopment.



Use	Square Footage	Parking Requirements	Required # of Spaces
Ground Floor Outdoor Seating	6,723	8 spaces/1000 SF	54 (53.784)
Ground Floor Game Area	3,150	8 spaces/1000 SF	25 (25.2)
Ground Floor Bar Area	1,336	13 spaces/1000 SF	17 (17.368)
Restaurant - less office area	7,162	8 spaces/1000 SF	57 (57.296)
Office – 2 nd floor	662	8 spaces/1000 SF	5 (5.296)
Restaurant Bar Area – 2 nd floor	345	13 spaces/1000 SF	4 (4.485)
Mezzanine	1,257	8 spaces/1000 SF	10 (10.056)
		Total # of spaces required	172

Parking Calculations with Variances

The following parking calculation is based on the architectural plans prepared by Studio AD Architect, dated 04-17-2025 (Exhibit A). These numbers reflect the total square footage minus all “core area” which does not generate additional vehicular traffic such as restrooms, hallways, storage areas, and ground floor game area.

Use	Square Footage	Parking Requirements	Required # of Spaces
Ground Floor Outdoor Seating	5,891	8 spaces/1000 SF	47
Ground Floor Game Area	2650	N/A	
Ground Floor Bar Area	1,336	13 spaces/1000	17
Restaurant – Interior	4,377	8 spaces/1000 SF	35
Restaurant - Exterior	1,156	8 spaces/1000 SF	9
Restaurant Bar Area – 2nd floor	345	13 spaces/1000 SF	4
Office – 2 nd floor	662	2 spaces/1000 SF	2
Dry Storage – 3rd floor	846	N/A	
		Total # of spaces required	115

The resulting number of parking spaces required, based on the restaurant, bar, outdoor seating on both



levels and office square footage, minus the core area square footage is 115 spaces.

The redeveloped site contains 33 parking spaces, 2 bicycle racks and 4 golf cart parking spaces as well as a boat dockage. Per LDC Section 34-2020(c) Commercial buildings may eliminate one required parking space by providing and maintaining a bicycle rack able to hold four bicycles. As such, the total number of parking provided is 34 spaces.

Due to the nature of the existing building which was designed and used as a multi-room theater, it should be understood that the proposed re-use provides numerous design challenges including excess space that will be repurposed as storage, office, and overflow kitchen area that should not be considered “official” restaurant space. Therefore, we believe that it is appropriate to request our parking reduction based on the 115-space requirement. As such, we are requesting a reduction of 81 parking spaces or a 70.5% decrease in the number of parking spaces required.

NARRATIVE STATEMENT

The following information is provided to address the narrative statement requirement contained within the Supplement Form PH-B, Additional Required Information for a Variance Application. The directions contained and questions posed within the application are presented in bold and underlined format, with our responses below. Please forgive the redundancy found within these answers. Even though this is a unified project, the code requires that we address the same questions and all evaluation criteria for each variance requested.

Variance Request #1

Request for variance from LDC Section 34-2020(b)(2) which states that when the use of a building is changed to a different use that is required to have more parking than exists, the additional parking must be provided in accordance with the standards specified. Explain the specific regulation contained in this section from which relief is sought:

The Land Development Code Section 34-2020(b)(2) requires that when the use of a building is changed to a different use, if the new use requires more parking than exists, additional parking must be provided. The additional parking that is required for this use is not attainable on the existing lot due to the lot's size and the size of the existing structure.

Reasons for request. Explain why the variance is needed:

This petition seeks a variance from LDC Section 34-2020(b)(2) due to the inability to expand the parking



area while providing outdoor seating to the restaurant patrons. Although there was previously parking under the building, the current business model for the site includes outdoor underbuilding dining, bar, and a game/entertainment area. This outdoor area is a critical component of this dining venue aimed at providing island residents and visitors with alternative dining and entertainment experiences in this area of the island.

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

This variance, if granted, will have no negative impacts on surrounding properties as there will be adequate opportunities for vehicle parking on site as well as parking for alternative modes of transportation. The site will contain bicycle racks, golf cart parking spaces and a dock for boat parking. There is also a transit stop on Estero Boulevard across Egret Street from the subject site. It is common in this area of the island for residents and visitors to walk or bike as there are adequate sidewalks and less traffic than in other areas of the island.

In the future, should there be a need for additional parking, there is an opportunity for a shared parking agreement with the adjacent Gulfview Manor and Dolphin Inn properties which share common ownership. There has also been discussion with Town council members regarding the possibility of a shared parking agreement with the new Town Hall location.

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

The limited size of the lot, which is ± 0.7 acres and the existing building with a footprint of approximately 9,100 square feet, does not allow for the expansion of the parking lot. There is an existing Fort Myers Beach Sewer District easement with fencing which prohibits expansion into the north-west side of the parking lot and the remaining green areas of the property are needed to address stormwater and open space requirements. The property is also bound by a canal and three streets. The existing infrastructure and building were constructed approximately 25 years ago, with the infrastructure being in proper working order.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making in LDC Section 34-87. The guidelines for decision making regarding a request for a variance are as follows:

- (1) **Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;**

Fort Myers Beach was severely impacted by Hurricane Ian in September 2022, as such the conditions of the island and the subject property are not the same as they were in May of 2022



when the current owners purchased the property. The owners feel that the site would better serve the residents and visitors of the island as both an upscale steakhouse and a casual a restaurant with a bar and outdoor seating/entertainment area. This area of the island no longer contains the restaurants which it had before Hurricane Ian. This results in residents and visitors having to travel to other areas of the island and even off island to locate restaurants. The existing Beach Theater is being re-purposed to meet a current need for restaurants on the south end on the island and to assist with the redevelopment of Fort Myers Beach. The re-use of this building is taking a fallow asset and making it productive once again. However, due to the size of the property and the existing building footprint, meeting parking requirements is not feasible.

This variance is de minimis in that it is the minimum variance needed to allow the proposed use. The Applicant feels confident that there is sufficient parking onsite and should additional parking be required, alternative parking options such as shared and valet parking can be used to prevent any impact on the neighborhood. Rigid compliance is not necessary to protect public policy and to the contrary would hinder redevelopment on Fort Myers Beach.

(2) Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;

The exceptional or extraordinary conditions are not a result of the actions of the Applicant. Hurricanes are an “act of god,” the lot was previously configured, and the building was constructed prior to the hurricane in compliance with the regulations which were in existence at the time of construction. The changes in use are a result of changed market demands and the need for appropriate businesses to be located in this area of the island.

(3) Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;

The requested variance to allow a change in use without additional parking is the minimum variance to relieve the applicant of an unreasonable burden and to make the proposed redevelopment feasible. Moreover, the site has a proven history of being adequately parked with the previous movie theater/restaurant use.

(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
--	-----------------	-----------------	--------------------



NORTH	BOULEVARD	RESIDENTIAL SINGLE-FAMILY & COMMERCIAL BOULEVARD	VACANT COMMERCIAL, RESIDENTIAL AND CANAL
SOUTH	MIXED RESIDENTIAL	RESIDENTIAL MULTI-FAMILY & COMMERCIAL RESORT	EGRET STREET ROW & RESIDENTIAL CONDO
EAST	BOULEVARD	RESIDENTIAL SINGLE-FAMILY	SINGLE FAMILY RESIDENTIAL AND EGRET STREET ROW
WEST	MIXED RESIDENTIAL	RESIDENTIAL MULTI-FAMILY & COMMERCIAL RESORT	ESTERO BLVD. ROW, CONDOMINIUMS

The site to be redeveloped is zoned Commercial Boulevard which allows restaurants. Through the addition of buffers, under building configuration and the construction of a solid breakaway wall at ground level on the northeast side of the building, any potential effects to the neighboring properties are being negated. The reduction in parking will not affect surrounding properties, will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Providing adequate parking is a business decision that can be addressed via shared parking or valet parking if needed.

(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

No, the conditions, use and request are unique and are not general or recurrent in nature. The variance sought is due to the unique circumstances as this is an existing site with an existing building which is bound by streets on three sides and a canal on the fourth.

Variance Request #2

Request for variance from LDC Section 34-2020(d)(2)(h) Required parking spaces for restaurants, the minimum parking requirements for restaurants is eight spaces per 1,000 square feet of total floor area plus any outdoor seating area.

The Land Development Code Section 34-2020(d)(2)(h) states that the minimum parking requirements for restaurants is eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. This calculation does not take into account that the building was originally constructed to be a movie theater and contains large restrooms, hallways, numerous stairways, and oversized rooms to accommodate the needs of a theater. As such, we are requesting that areas not used for dining or restaurant operations be removed from the total square footage calculation when determining the required parking for this site as these large open spaces will not be attributed to more seating and patrons within the restaurant.



Reasons for request. Explain why the variance is needed:

The redevelopment of the Beach Theater presents unique opportunities and challenges. The strict adherence to LDC Section 34-2020(d)(2)(h) requires that the total square footage of a building be counted in the calculation for required parking. The unique layout of the structure which was a multi-screen movie theater was created with large common areas often referred to as “core space.” This core space does not directly contribute to restaurant use and is not space used to accommodate additional patrons. Therefore, we request that this space be omitted from the total square footage calculation. Some of these common areas include hallways, balconies, stairways and storage areas, and oversized restrooms.

In addition to the outdoor seating, the ground floor will contain a game/entertainment area for yard games such as cornhole, billiards, darts and giant Jenga blocks. These areas will be an amenity to the restaurant patrons and will not be restaurant seating. For this reason, we request that these amenity areas be excluded from the parking calculation. The enclosed schematic design plans are color coded to indicate the use of the areas and the square footage for the corresponding areas in which the parking calculation is based upon.

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

The variance, if granted, will have no effect on the surrounding properties since this establishment will have sufficient off-street parking and will cater to nearby residents and visitors that can walk or bike to the venue. The subject property is located in an area of the Town of Fort Myers Beach with numerous condominium towers, where many of the residents are within a 15-minute walking distance, and many more within a short, easy bike ride. A tram/trolley stop is located at the front of the property where a pedestrian connection is provided to the building. There will also be bicycle racks located on the front sidewalk and at the rear entrance to the building. Golf cart parking is provided near the entrance to the building to provide options for alternative modes of transportation.

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

The configuration of the site and building are unique in that it was previously home to the Fort Myers Beach Theater. Through the redevelopment, the building will be re-purposed, and the interior of the building will be reconfigured for restaurant use. However, this is a large building with large areas not being used for customer seating or restaurant operations. These areas include wide hallways, large restrooms, balconies, and much of the mezzanine area that used to be the projection room. The parking area cannot be expanded due to the limited lot size, existing infrastructure, and the three rights-of-way and canal surrounding the property.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making in LDC Section 34-87. The guidelines for decision making regarding a request for



a variance are as follows:

- (1) **Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;**

The destruction caused by the recent hurricanes and the existing size and configuration of the subject property have created exceptional circumstances. The requested variance to exclude “core area” from the required parking calculation will not be harmful to the public while rigid compliance to existing requirements will be injurious to the applicant, the proposed project, and the collective desire to redevelop the island and commercial uses in a timely fashion. The variance requested is de minimis in that it is the minimum variance needed to make the proposed project feasible.

- (2) **Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;**

The exceptional or extraordinary conditions are not a result of the actions of the Applicant. Hurricanes are an “act of god,” and the lot was previously configured, and the building previously constructed. The changes in use are a result of changed market demands and the need for appropriate businesses to be located on this area of the island.

- (3) **Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question:**

The requested variance to not include “core areas” as indicated on the enclosed schematic design plan in the total square footage for calculation to determine the necessary parking spaces is the minimum variance to allow the applicant to redevelop the site and provide adequate parking for the use of a restaurant.

- (4) **Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and**

The variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This variance will allow a previously vacant structure to redevelop into a much-needed restaurant venue in an area of the island that is still recovering and seriously lacking in dining and entertainment options. The additional parking for golf carts, bicycles, and boats as well as the pedestrian connection and location of the trolley/tram stop also provide alternatives for patrons to arrive at the location.



(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The property's conditions, use and request are unique to the site and are not general or recurrent in nature. This variance is sought due to the presence of an existing building and parking lot on a property which is bound by three streets and a canal.

Variance Request #3

Request for variance from LDC Section 34-2020(d)(2)(h)2. Bars. If the restaurant contains a bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

The Land Development Code Section LDC Section 34-2020(d)(2)(h)2 states that if a restaurant contains a bar, the minimum requirement of parking is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar and that if outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates. The applicant is seeking a 70.5% reduction in parking spaces for the use.

Reasons for request. Explain why the variance is needed:

As mentioned previously, this variance, in conjunction with the other variances as outline above is to allow for the redevelopment of the Beach Theater with an upscale steak house restaurant, containing a bar and office on the 2nd story, a casual outdoor dining venue with a bar, game/entertainment area on the ground level (1st story) and an office and restaurant storage on the 3rd story. The infrastructure is in place for the existing building and parking lot, which does not leave room for additional parking on the property.

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

The variance, if granted, will have no effect on the surrounding properties since this establishment will have sufficient off-street parking and will cater to nearby residents and visitors that can walk or bike to the venue. The subject property is located in an area with numerous condominium towers, where many of the residents are within a 15-minute walking distance, and many more within a short and easy bike ride, A tram/trolley stop is located at the front of the property where a pedestrian connection is provided. There will also be bicycle racks located on the front sidewalk and at the rear entrance to the building. Golf cart parking is provided near the entrance to the building to provide options for alternative modes of transportation.



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

The existing building, infrastructure and lot size limit the amount of parking which can be provided on the site. The parking area cannot be expanded as the existing infrastructure will remain in place and the lot is bound by three rights-of-way and a canal. The double-counting of square footage for a bar which is an accessory use to a restaurant, results in overparking of the development.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making in LDC Section 34-87. The guidelines for decision making regarding a request for a variance are as follows:

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

Fort Myers Beach was severely impacted by Hurricane Ian in September 2022, as such the conditions of the island and the subject property are not the same as they were in May of 2022 when the current owners purchased the property. The current owners feel that the site would better serve the residents and visitors of the island as both an upscale steakhouse and a casual a restaurant with a bar and outdoor seating/entertainment area. This area of the island no longer contains the restaurants which it had before Hurricane Ian. This results in residents and visitors having to travel to other areas of the island and even off island to locate restaurants. The existing Beach Theater is being re-purposed to meet a current need for restaurants on the south end on the island and to assist with the redevelopment of Fort Myers Beach. The re-use of this building is taking a fallow asset and making it productive once again. However, due to the size of the property and the existing building footprint, meeting parking requirements is not feasible.

This variance is de minimis in that it is the minimum variance needed to allow the proposed use. The Applicant feels confident that there is sufficient parking onsite and should additional parking be required alternative parking options such as shared and valet parking can be used to prevent any impact on the neighborhood. Rigid compliance is not necessary to protect public policy and to the contrary would hinder redevelopment on Fort Myers Beach.

- (2) **Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question.**

The exceptional or extraordinary conditions are not a result of the actions of the Applicant. Hurricanes area an “act of god”. The lot was previously configured with the existing parking lot and



the building and infrastructure were previously constructed. The changes in use are a result of changed market demands and the need for appropriate businesses to be located in this area of the island.

(3) Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question:

The requested variance is de minimis in nature and represents the minimum variance needed to allow the Applicant to redevelop the property within the limitations of the current lot size, infrastructure and building.

(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The granting of the requested variance would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The site will provide adequate parking for its patrons as well as encouraging alternative modes of transportation and will provide bicycle and golf cart parking.

(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The conditions and circumstances for which this variance is requested are specific to the subject property. The limitations of the site due to the existing building and infrastructure limit the ability to provide parking consistent with the current regulations.

CONDITIONS OF APPROVAL – SEZ20250046 & VAR20250047

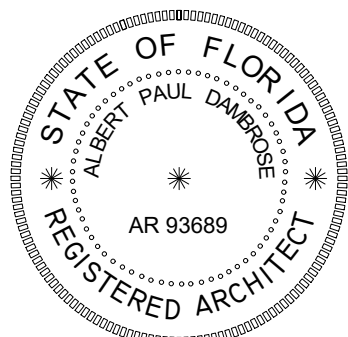
1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. General hours of operation will be from 7 AM to Midnight. No food and beverage service prior to 10 AM at the ground-level restaurant.
3. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on weekends. All amplified music will be distributed through a unified speaker system controlled by Management. A centralized sound system with distributed speakers, not individual speakers/amps for performers; live entertainment limited to single or duo acts; no cornhole. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process.
4. Sound mitigation will be provided by concrete block walls and bi-fold glass doors (or other retractable door) as depicted on the attached Schematic Plan sheet D1.
5. No consumption of alcohol shall be permitted outside the restaurant, bar, and accessory game area delineated by the 36' Railing and depicted on the attached Schematic Plan sheet D1.
6. Games in the accessory game area cannot include loud electronic beeping, ringing, or buzzing.
7. The development must comply with the LDC's sea turtle conservation requirements.
- ~~8. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department. (LDO and construction of dock already occurred)~~
9. At time of site development, signage will be installed on the dock stating that the dock is not open to the public and that it is for private use only.
10. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided at a minimum twice per week excluding Sundays.
11. The property owner will submit a shared parking agreement with the Dolphin Inn or other nearby properties per LDC 34-2183C prior to DO approval. Should the Dolphin Inn property be sold or redeveloped into any use other than parking, a shared parking agreement with another nearby property will be needed prior to the Dolphin Inn parking operations ceasing.
12. All employees are required to park off-site. Off-site employee parking; must have valet parking available for opening; no parking signage on ROW; and shared parking agreement with Dolphin Inn per sec. 34-2018(c)3.
13. Valet parking service will be established when restaurant operations begin and will be

available as needed to meet peak parking needs.

14. The property owner will coordinate with Town staff to install “No Parking” signs along the right-of-way where the subject property abuts Egret and Curlew Streets.
15. At time of site development, the property must provide perimeter buffers as depicted on the approved site plan.
16. Any unremedied violation of the conditions of approval shall render the special exception null and void.

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

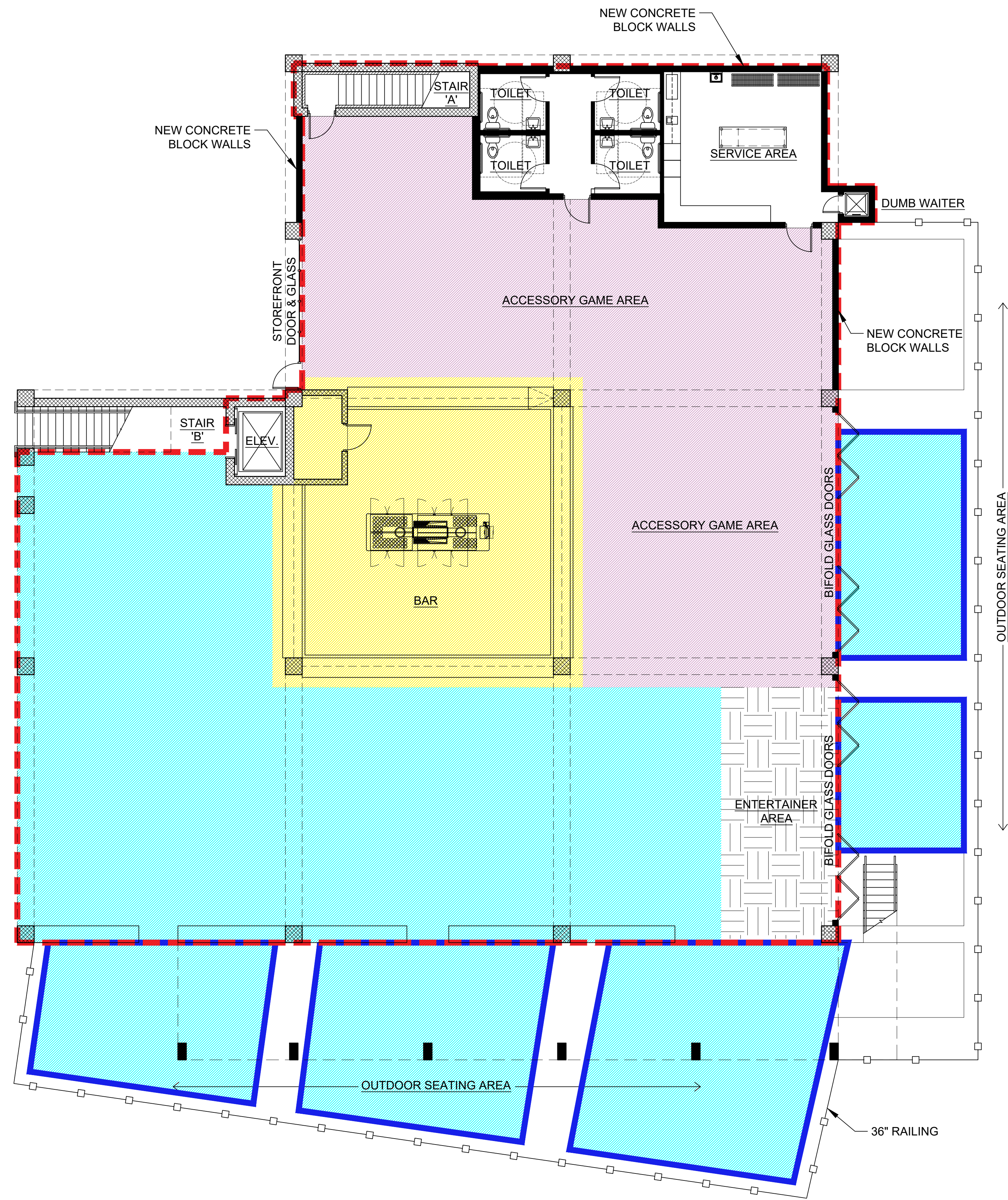
DATE ISSUED: 8 JUL 2025

REVISIONS:

SHEET

D1

OF 4

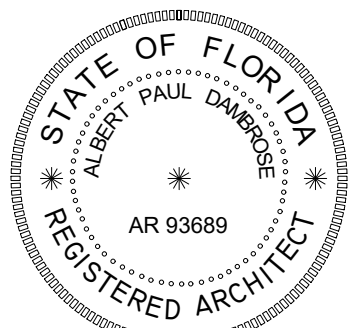


NORTH
SCHEMATIC FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

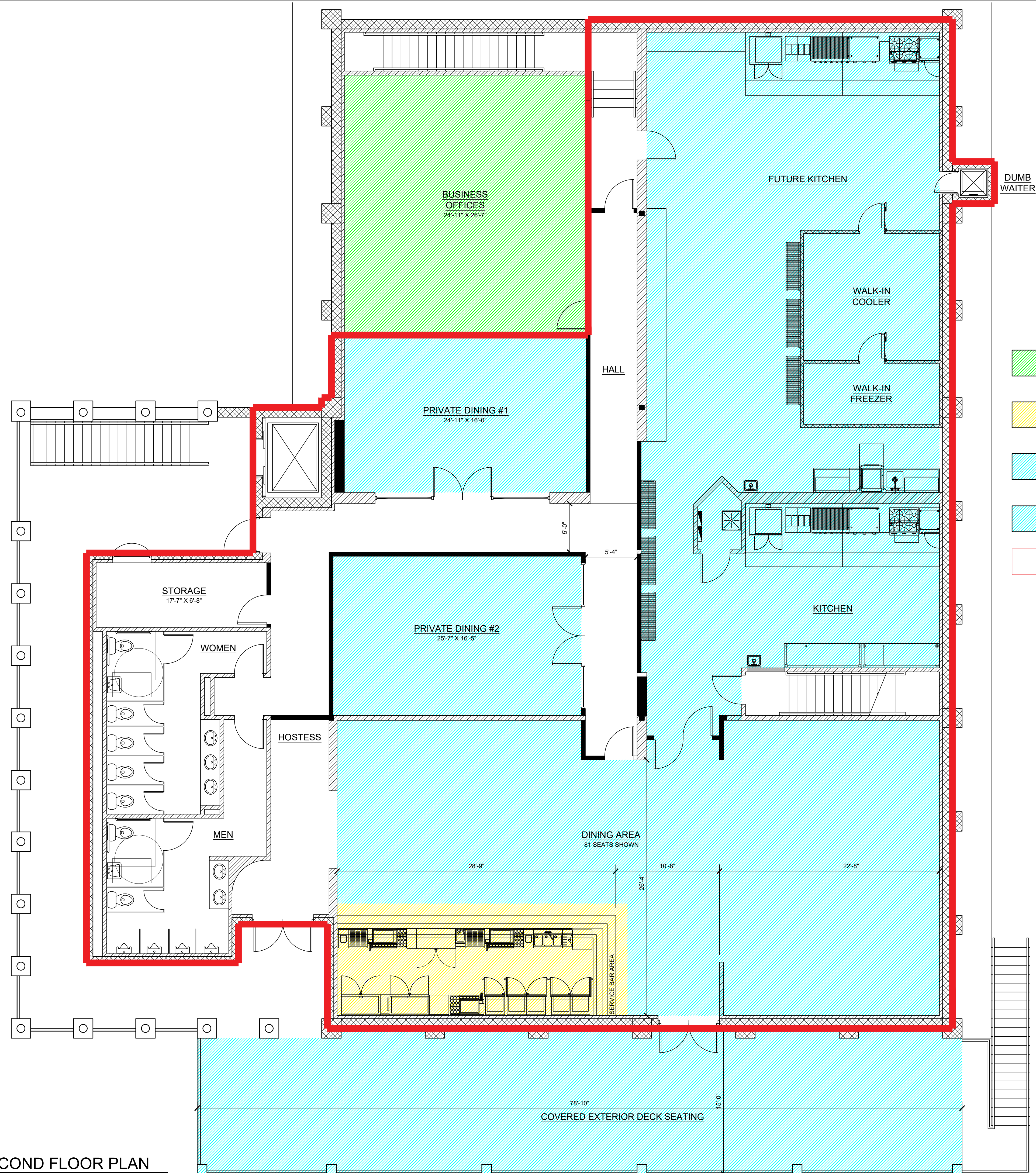
DATE ISSUED: 8 JUL 2025

REVISIONS:

SHEET

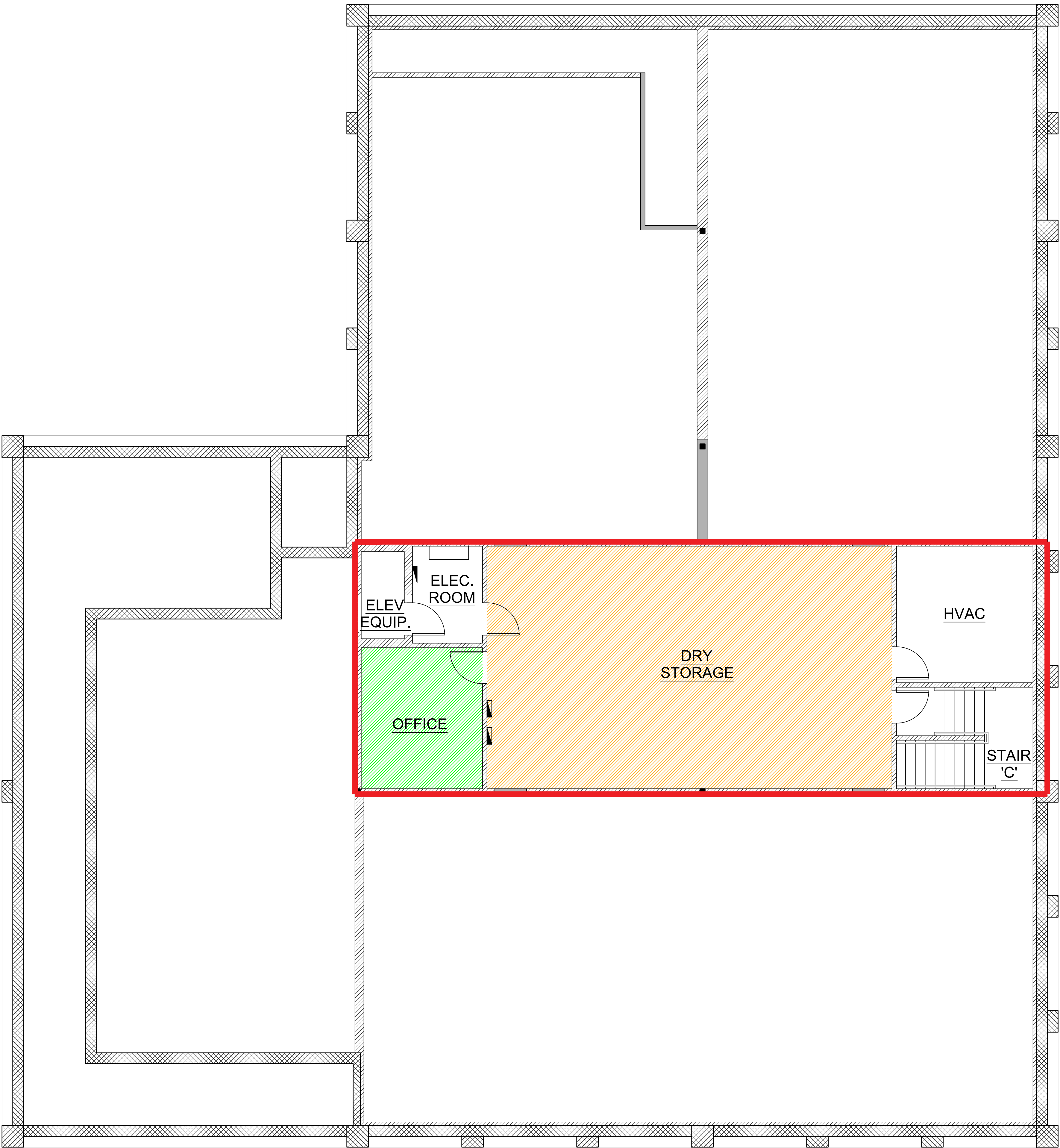
D2

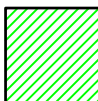
OF 4

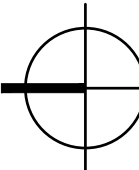


- OFFICE = 662 SQ. FT.
- BAR = 345 SQ. FT.
- RESTAURANT (INDOOR NOT INC. BAR) = 4,377 SQ. FT.
- RESTAURANT (OUTSIDE) = 1,156 SQ. FT.
- INDICATES RESTAURANT GROSS FLOOR AREA = 6,969 SQ. FT.

NORTH
SCHEMATIC SECOND FLOOR PLAN
SCALE: 3/16" = 1'-0"



-  OFFICE = 147 SQ. FT.
-  STORAGE = 846 SQ. FT.
-  INDICATES GROSS FLOOR AREA = 1,505 SQ. FT.

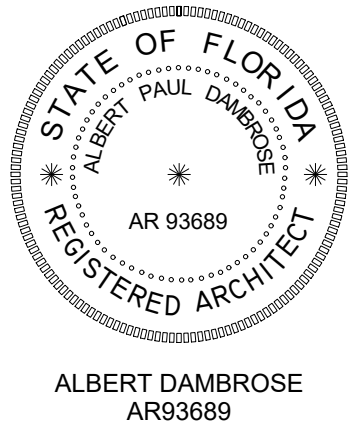
NORTH  EXISTING MEZZANINE PLAN

SCALE: 3/16" = 1'-0"

Studio A.D. hereby reserves its common law copyright & other property rights in these plans, ideas & designs. These ideas, designs & plans are not to be reproduced, changed or copied in any form or manner whatsoever, nor are they to be assigned to any third party, without first obtaining the express written permission from Studio A.D.

A SCHEMATIC DESIGN FOR:
6425 ESTERO BLVD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 8 JUL 2025

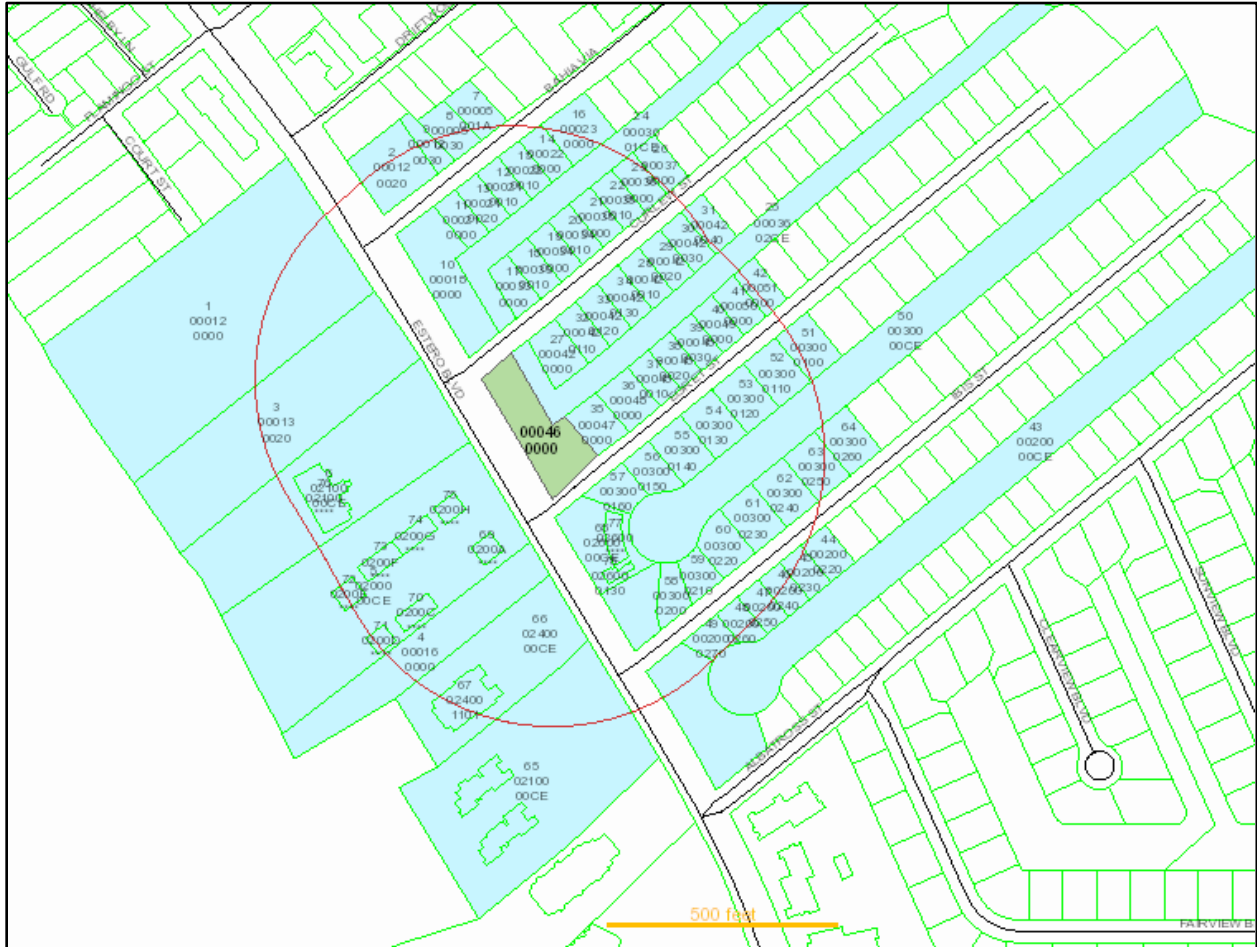
REVISIONS:



THE NEIGHBORHOOD COMPANY

6425 ESTERO BLVD SPECIAL EXCEPTION

500' PROPERTY OWNER MAP



6200 ESTERO BLVD INVESTMENTS L
2210 VANDERBILT BEACH RD #1300
NAPLES FL 34109

TOWN OF FORT MYERS BEACH
2731 OAK ST
FORT MYERS BEACH FL 33931

CAROUSEL BEACH REDEVELOPMENT L
815 N EAST AVE
OAK PARK IL 60302

ESTERO 4148 LLC
4517 BRYNWOOD DR
NAPLES FL 34119

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH FL 33931

SUNSET CONDO
6400 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHOMEL JEFFREY & CATHY
2201 LINCOLN AVE
CONNERSVILLE IN 47331

HAINBUCHNER ERONIM PATRIK
200 NEW COURT
NOVI MI 48377

BROWN GEORGE KEITH
PO BOX 4
LA CROSSE WI 54602

6200 ESTERO BLVD INVESTMENTS L
2210 VANDERBILT BEACH RD #1300
NAPLES FL 34109

MURPHY TERRANCE P &
110 BAHIA VIA
FORT MYERS BEACH FL 33931

BARTOW MARTIN J &
130 BAHIA VIA
FORT MYERS BEACH FL 33931

BAHIA VIA LLC
4180 BRIGADOON DR
SHOREVIEW MN 55126

DIMURRO JOHN
150 BAHIA VIA
FORT MYERS BEACH FL 33931

MCGRATH PETER J & NICOLE
300 GRAND ST UNIT 412
HOBOKEN NJ 07030

DIMURRO JOHN
160 BAHIA VIA
FORT MYERS BEACH FL 33931

CAMPBELL ROBERT E & PHYLLIS
3627 HUBBARD MIDDLESEX
WEST MIDDLESEX PA 16159

SPRADLING TYLER J &
127 CURLEW ST
FORT MYERS BEACH FL 33931

KOPPING REBECCA +
12310 115TH ST
LEMONT IL 60439

CUMMINGS JOHN L
4 PETERS BROOK DR
HOOKSETT NH 03106

SCHWIRTZ MARK J & SHEILA L
507 ABBEY WAY
MENDOTA HEIGHTS MN 55120

FINLEY TIMOTHY J & BRENDA J TR
553 WYATT DR
SAINT PETERS MO 63376

KOCISKO MAUREEN J TR
4483 WESTERN GAILS CT #405
FORT MYERS FL 33916

SANTINI CROSS CANAL
CURLEW ST
FORT MYERS BEACH FL 33931

SANTINI CROSS CANAL
CURLEW ST
FORT MYERS BEACH FL 33931

BUSDEKER THOMAS R & SHERI M
WESTFIELD GROUPS
PO BOX 93
GIBSONBURG OH 43431

BECHTEL JOSEPH +
E 19885 COUNTY RD ND
AUGUSTA WI 54722

STOUDT BUILDERS INC
1746 SAINT PETERS RD
POTTSTOWN PA 19465

NACCARATO CARMELO & FRANCA
3220 PINE CONE CT
MILFORD MI 48381

JMB REALTY LLC
25335 PINSON DR
BONITA SPRINGS FL 34135

PORCELLI MARK & GINA
8 KALMAN CT
WARREN NJ 07059

PHILLIPS TIMOTHY SCOTT &
120 CURLEW ST
FORT MYERS BEACH FL 33931

HAINBUCHNER ERONIM PATRIK &
200 NEW CT
NOVI MI 48377

YANAKEFF DAVID & ROSEMARY TR
9560 WALDRON RD
JEROME MI 49249

CAVANAUGH JOHN F
415 S WELLS ST UNIT 304
LAKE GENEVA WI 53147

DUNLAP JAMES E & MICHELE L
10087 IDLE PINE LN
ESTERO FL 34135

GAERTNER MARK A +
8276 SOUTHWIND BAY CIR
FORT MYERS FL 33908

HOLLYWOOD LISA G & SHAWN L
18929 CRESCENT RD
ODESSA FL 33556

VANFLEET JOHN L JR
155 EGRET ST
FORT MYERS BEACH FL 33931

KEHOE DONALD B & SHERRI S
8405 EAGLE CREST LN
INDIANAPOLIS IN 46234

PACCHINO CARMINE E &
6733 HARTLAND ST
FORT MYERS FL 33966

JAMES E & CHARLENE M KRATZKE T
180 BROADWAY ST
PRAIRIE DU SAC WI 53578

SANDPIPER UNIT 1 CANAL
IBIS ST
FORT MYERS BEACH FL 33931

AMOS CONSTANCE JANE
150 IBIS ST
FORT MYERS BEACH FL 33931

SCOTT DONALD E & KAREN L
130 IBIS ST
FORT MYERS BEACH FL 33931

ZUBER JOHN J & DANA R
6 WHISPERING WAY
WARREN NJ 07059

PREPHAN RICHARD S
118 W SOUTH BOUNDARY #1
PERRYSBURG OH 43551

BATISTA JOHN & MICHELE
100 IBIS ST
FORT MYERS BEACH FL 33931

ERBECK ANNETTE E TR
5197 OVERLOOK DR
MASON OH 45040

SANDPIPER UNIT 2 CANAL
IBIS ST
FORT MYERS BEACH FL 33931

SMITH CHERYL L
180 EGRET ST
FORT MYERS BEACH FL 33931

KLOSTERMAN TIMOTHY & KAREN
172 EGRET ST
FORT MYERS BEACH FL 33931

SELK ANDREW R & MELISSA R
1006 RIVERVIEW DR
PLYMOUTH WI 53073

GUANCHE MIGUEL & MAYRA
6995 GLENEAGLE DR
MIAMI LAKES FL 33014

ONSAGER FLORIDA LLC +
1096 TAYLOR LN
STOUGHTON WI 53589

BASS THOMAS L & TIFFANY E TR
4091 STALEY RD
FORT MYERS FL 33905

HENDRICKSON SHARON LEE
915 S 28TH ST
SOUTH BEND IN 46615

SEVOYAN STEPAN & YELENA
8976 EDGEWOOD LN
HIGHLANDS RANCH CO 80130

PREPHAN KATHLEEN
118 W SOUTH BOUNDARY ST STE 1
PERRYSBURG OH 43551

YURCIK JOHN JR
139 IBIS ST
FORT MYERS BEACH FL 33931

MANNELLA FRANK
149 IBIS ST
FORT MYERS BEACH FL 33931

BEASLEY R RAY & LANE
159 IBIS ST
FORT MYERS BEACH FL 33931

FERNANDEZ GUILLERMO &
8727 NW 139 TER
MIAMI LAKES FL 33018

181 IBIS LLC
267 BAREFOOT BEACH BLVD #304
BONITA SPRINGS FL 34134

ISLAND WINDS CONDO
6612 ESTERO BLVD
FORT MYERS BEACH FL 33931

SEAWATCH ON THE BEACH
6550 ESTERO BLVD
FORT MYERS BEACH FL 33931

SEAWATCH ON THE BEACH
HILTON GRAND VACATIONS CO
HOA AR DEPT
6355 METRO WEST BLVD #180
ORLANDO FL 32835

RTJP INVESTMENTS INC
17 DORAL CT
MATTOON IL 61938

FELDMANN GARY
2082 CHARLESTON LN
BARTOW FL 33830

LUCAS MORRIS D & MISTY
4124 RAINTREE BLVD
GREENWOOD IN 46143

WIMBERLY & WIMBERLY
PO BOX 694
RICHMOND KY 40476

ALLEN KARLA F TR
1626 BELFIELD ST
INDIANAPOLIS IN 46217

HAWLEY BRUCE &
6500 ESTERO BLVD #A301
FORT MYERS BEACH FL 33931

ROWE DONN A TR
220 LOOP AVE
MANSON WA 98831

BELFORD JAMES R TR
526 PINEHURST LN
SCHERERVILLE IN 46375

LEFRANCE JANICE S TR
PO BOX 23
SOUTHWICK MA 01077

KIENHOLZ ANDREW EDWARD +
2626 PACIFIC DR S #301
FARGO ND 58103

O'CONNELL JOHN & JEAN
27 GREEN BRIAR DRIVE
SUFFIELD CT 06078

RASH BRENDA L TR
5726 E 800 N
SYRACUSE IN 46567

BREDBERG DOUGLAS J &
7785 CLYDESDALE SE
ADA MI 49301

M&D FLORIDA LLC
1687 SUGARMAPLE DR
COLUMBUS OH 43229

WALTMAN MICHAEL & JEAN
6500 ESTERO BLVD #C219
FORT MYERS BEACH FL 33931

TRIPLE CROWN VACATION RENTALS
19377 AQUA SHORE DR
FORT MYERS FL 33913

RUDY MARLENE Y & JOEL
19 ROXBURY DR
ATHENS OH 45701

HOOBLER NEIL E & SHERRY T
231 STECKLER RD
STONEBORO PA 16153

SMITH RICHARD R TR
3420 CTH NN
WEST BEND WI 53095

WILKERSON ALAN R & RHONDA M
4310 N RIVERSIDE DR
COLUMBUS IN 47203

MARTIN JOHN D & MARY A TR
6877 HARDWOOD DR
GALLOWAY OH 43119

JEWETT HAROLD D TR
2530 BRAEMAR DR
FORT WAYNE IN 46814

KIRSCH DIANE S TR
1228 DRAGONFLY WAY
WATKINSVILLE GA 30677

WYSKIEL JEAN & STEPHANIE L/E
608 STANLEY BLVD
BIRMINGHAM MI 48009

KRUSE STACY & NORMAN TR
9351 KIOWA TRAIL
CHANHASSEN MN 55317

OSUCHOWSKI WILLIAM & SHARON
300 EUCLID AVE STE 12
SYRACUSE NY 13210

BARACUTEY LLC
3958 ASHENTREE CT
FORT MYERS FL 33916

CROWE KYLE R & SUZANNE L
16356 VIANSA WAY #101
NAPLES FL 34110

GALLE THOMAS & SARA
1092 HICKORY HILL PKWY W
HUBERTUS WI 53033

SNEDDON JOY B TR
4790 GOEBLE RD
FORT MYERS FL 33905

WIEN DAVID P & JANICE K
708 GREENBANK RD
WILMINGTON DE 19808

HOSKINS BRIAN K & SUSAN B
801 W COLISEUM BLVD
FORT WAYNE IN 46808

HENRY KATHRYN & TED
16176 LAKESIDE AVE SE
PRIOR LAKE MN 55372

3RC BUTTERCUP LLC
404 EAST COLUMBUS ST
CRAWFORDSVILLE IA 52621

GENZINK RETHA
2085 112TH AVE
HOLLAND MI 49424

PELLETIER SCOTT & JUDY TR
11802 FAR EDGE PATH
COLUMBIA MD 21044

BARTLETT ROBERT M & LILA F
5354 26TH ST S #201
FARGO ND 58104

FLORY SUSAN E TR
3751 PATTY CT
BONITA SPRINGS FL 34134

WALLIS LISA S TR
28270 INSULAR WAY
BONITA SPRINGS FL 34135

RICHARDSON JACK D & DONNA L
8303 MERLOT LN
LAUREL MD 20723

SCHMIDT MARTIN S
1307 SHORELINE DRIVE
WAYZATA MN 55391

DELANEY GARY L & KATHRYN TR
112 PRAIRIE DR
MINOOKA IL 60447

ALVES A DACOSTA & SANDRA J
4543 CATALINA LANE
BONITA SPRINGS FL 34134

KNIBBE DAVID J & GAYLE E
2530 W G AVE
KALAMAZOO MI 49009

RUSSELL WILLIAM G IV &
119 COMMERCE ST
CLINTON CT 06413

BROUGHER DOUGLAS E &
1220 HALF MOON LN
CICERO IN 46034

GIERSZEWSKI STEPHEN T TR
6500 ESTERO BLVD #H202
FORT MYERS BEACH FL 33931

ZDEB DIANE D TR
1697 WHITCOMB AVE
DES PLAINES IL 60018

GREIG LUCIA
10737 FIRST LINE NASSEGEWAYA
MILTON ON L0P 1J0
CANADA

SUNSET 100 LLC
PO BOX 30
DECATUR IN 46733

MCCARTY RONALD ANDREW TR
15840 COUNTRY CT
FORT MYERS FL 33912

RUSSELL ROBERT M &
3 WYCLIFFE RD
EAST WALPOLE MA 02032

FANCHER SHANE R &
825 BUCCANEER PT
DECATUR IL 62521

STONER JONATHAN & LEESA
3631 SILVER BROOK LN
GAINESVILLE GA 30506

PARRISH GREGG S & KAREN
11809 EAGLE VIEW CT
FORT WAYNE IN 46814

BAKER CARL & NELDA
43440 MARIETTA RD
CALDWELL OH 43724

JOHNSON JAMES N
6754 GRAND OAKS CT
MASON OH 45040

DOWNEN JERRY L & MARY ANNE TR
402 N ALTON ST
FREEBURG IL 62243

CARRICO EMIDIO G &
78 S LAKE SHORE DR
BROOKFIELD CT 06804

SPAKE KAREN J
220 LANE 440 LAKE JAMES
ANGOLA IN 46703

DOUGLAS R DANIEL TRUST +
406 POLK ST
IOWA FALLS IA 50126

BAKER TERRY L & NANCY L
2848 E 550TH N
DECATUR IN 46733

SCHRIER LARRY E &
742 HOMESTEAD WY
BROWNSBURG IN 46112

KLUESNER REAL ESTATE LLC
501 TAHOE CT
FARLEY IA 52046

ROSE TERRY L/E
3631 PUTTER POINT LN
FORT MYERS FL 33919

DAWSON TODD A & JAN
205 EMS T34C LN
LEESBURG IN 46538

RUBLE NICOLAS & NICOLE
11225 NORTH 600 EAST 1
MONROEVILLE IN 46773

WALZ STEPHEN N + CHERYL S
6400 ESTERO BLVD #400
FORT MYERS BEACH FL 33931

REIS THOMAS N & KIMBERLY D
981 BAYLESS AVE #2
SAINT PAUL MN 55114

KOORNNEEF EVELYN A
202 MAIN STREET W
GRIMSBY ON L3M 1S3
CANADA

LORIS RENTAL LLC
LORETTA FREY
77E 550N
CRAWFORDSVILLE IN 47933

CARDWELL DOUGLAS F TR
1015 HIGH VISTA TRAIL W
WEBSTER NY 14580

VIECELI DAVID A & DONNA L
6400 ESTERO BLVD #405
FORT MYERS BEACH FL 33931

RAWAS MAHMOUD & FADIA
4149 OLD MANCHESTER CT
MASON OH 45040

JENNER CAROLINE J
1251 LAKEVUE DR
BUTLER PA 16002

CLAWSON MICHAEL R &
3308 GLENVIEW AVE
AUSTIN TX 78703

HOWARD STACY & RHONDA
1600 SOUTH LEE AVENUE
MORTON IL 61550

HARVEY JANICE L
PO BOX 700
EAST AMHERST NY 14051

DANGELO CRAIG M &
3333 CRAIG DR
NORTH TONAWANDA NY 14120

NIEDOSIK DENNIS L/E
6400 ESTERO BLVD #600
FORT MYERS BEACH FL 33931

FRIEDMAN ABIGAIL TR
4919 S DORCHESTER AVE
CHICAGO IL 60615

HOFMAN KYE P & SHERI L
11497 S 450 E
HAUBSTADT IN 47639

GRAHEK KATHLEEN A TR
2500 SUMMERVILLE DR
VALLEY CITY OH 44280

KIMBERLY A TORTORA TRUST +
39700 FIVE MILE RD
PLYMOUTH MI 48170

GRAFF JOHN F TR
118 SADDLE CLUB RD
KITANNING PA 16201

LARRY J HINTZ TRUST +
43W219 TALL PINES RD
ELGIN IL 60124

MUNTEAN ANTOINETTE A TR
7604 SCENICVIEW DR
INDEPENDENCE OH 44131

MONTGOMERY RICKY G &
3 FIRESIDE CT
FRANKFORT IN 46041

FALK DONALD E & NANCY J
1725 W 4TH ST
RED WING MN 55066

ALI MEDIAN & JNEIDI MUNA
9621 TAI TRCE
DAYTON OH 45458

MUSTO RICHARD W & JOANN G
2050 JAMIESON AVENUE APT 1003
ALEXANDRIA VA 22314

VIECELI DAVID A + DONNA L
6400 ESTERO BLVD # 405
FORT MYERS BEACH FL 33931

JONES DEBRA L TR
P O BOX 2476
FORT MYERS BEACH FL 33932

SUNSET 802 LLC
9200 10TH ST N
LAKE ELMO MN 55042

HICKLING NANCY WHITE
24 LOCHAN LANE BOX 1239
BOBCAYGEON ON K0M 1A0
CANADA

TENNESSEA LLC
655 N EAST END
STRAWBERRY PLAINS TN 37871

MARY ANN MOCKLER FAMILY TRUST
2703 JUNONIA CT
FORT MYERS FL 33908

FANCHER MICHELLE L
825 BUCCANEER PT
DECATUR IL 62521

BUCCELLI PHILIP J &
47 WOOD ST
WOBURN MA 01801

SHORT TINA
16555 N MCCAULEY LN
MOUNT VERNON IL 62864

ISLE PROPERTY INVESTMENTS LLC
1842 TOSSING MANE CT
DAYTON OH 45458

HILTON MARK E & DIANA L
23 AGNELL CT
SACRAMENTO CA 95835

BELLINA SUSAN A TR
1248 MILANO DRIVE
NAPLES FL 34103

FORT MYERS BEACHSIDE LLC
10900 N DANA DR
PEORIA IL 61615

GOLDENBERG ALAN L/E
17167 PLANTATION DR
FORT MYERS FL 33967

POPPALARDO PHYLLIS A +
909 RANDOLPH RD
MIDDLETOWN CT 06457

CHIPS AND QUESO TRUST
9951 WOODLANDS DR
FISHERS IN 46037

LINTON DIANE E & DAVID H TR
110 WHITE TAIL LN
LANCASTER MA 01523

DEME MARIE
111 SOUTHSORE DR UNIT 236
EAST HAVEN CT 06512

TAYLOR LYNNE C
6966 OVERLOOK DR
FORT MYERS FL 33919

SUNSET 1101 LLC
731 NE 7TH AVE
FORT LAUDERDALE FL 33304

BRADY STEVEN A & JULIE A TR
1128 PLUM TREE LN
PALATINE IL 60067

BP SUNSET PROPERTIES LLC
ROSALIE PAUCK
1105 TURFRUNNER CT
FLORISSANT MO 63034

ENGDAHL DIANA M +
50595 WAGONWHEEL W
GRANGER IN 46530

PAYETTE MARY MULCAHY TR
579 HOLLY LN N
OAKDALE MN 55128

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

DSSBB LLC
120 S CENTRAL AVE STE 1800
SAINT LOUIS MO 63105

From: [Jason Freeman](#)
To: [Judith Frankel](#); [Nancy Stuparich](#); [Jason Smalley](#)
Subject: FW: Objection to 2 Beach Theater Project ordinances passed today
Date: Tuesday, June 10, 2025 4:56:30 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

FYI-

Best,

**Jason Freeman, , MPA,
CMC**

*Legislative Liaison / Deputy
Clerk, Town Clerk*

Town of Fort Myers Beach

2731 Oak St

Fort Myers Beach, FL 33931

Phone: (239) 765-0202 x1700



From: Samantha Campbell <ssc0140@yahoo.com>
Sent: Tuesday, June 10, 2025 2:07 PM
To: Jason Freeman <JasonF@fmbgov.com>
Subject: Objection to 2 Beach Theater Project ordinances passed today

Forwarding per Ms Bakers out of office

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Tuesday, June 10, 2025, 1:37 PM, Samantha Campbell
<ssc0140@yahoo.com> wrote:

Council and town manger,

I just want to formally request that the LPA decision for this
project not be made final without a hearing in front of the town

council. Please let me know what step we need to complete to insure we have a chance to voice our concerns

We are immediately affected neighbors at 125 Curlew street and we're not notified of this pending hearing. We received not communication from the town or the property owner of their plans

This project is very injurious to our ability to reside in our home. Today LPA did not sufficiently address our noise or parking concerns. We would have hoped the LPA/ council would place limits on the hours and number of days of noise intrusion to the neighbors. Much like was done with the food truck park.

The event they held with the women club was very noisy and did not include a band. Even the outrigger music which was considerably further away from our proper tabs only duo could be heard at our pool. This will be directly next to us. This is not a weekly rental street and residential area continue to push out by over commercial development. We support development but at this location the development should be indoors and only limited outdoor use.

These developers made no effort to discuss their plans with us the neighbors or even consider how we use our home. We purchased here to be in a quiet neighborhood not a downtown district.

We do not find that the developer has provided mitigation to the significant neighborhood intrusion.

Phyllis Campbell
125 Curlew Street

[Sent from Yahoo Mail for iPhone](#)

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: August 4, 2025

This legislative agenda item is a **SECOND** 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 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 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. Second Reading Public Notice Ordinance
2. Business Impact Estimate - Ordinance 25-08 - Public Noticing

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:**

Lizzette Roman, Town Clerk Administrative Coordinator
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 - 7/14/2025
Approved - 7/21/2025
Approved - 7/21/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/22/2025
Final Approval - 7/25/2025

ORDINANCE NO. 25-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, NOTICES 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 2nd, 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 17th day of July, 2025 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 17th day of July, 2025, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 4th day of August, 2025, 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 changes.

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.



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 25-08 An ordinance to amend the Land Development Code (LDC) section 34-236 regarding public hearing notice requirements.

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.

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 law¹ 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;

¹ 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 requires public hearing applicants to provide noticing of their application through mailings and posted signage.

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.

At present the Town conducts the mailings and sign posting and charges the applicants for this work. The ordinance will require the applicant to undertake the notice requirements. Costs are expected to be similar. In the case of variances for single-family and two-family homes the number of mailings will be reduced and the cost will decrease.

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 ordinance will impact applicants for public hearings.

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

N/A

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF 1.25500 MILLS FOR FISCAL YEAR 2026 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2026; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Pursuant to state law, a Tentative Millage Rate must be adopted by the Town Council and submitted to the County Property Appraiser prior to August 5th. Once the tentative millage rate has been set it cannot be increased, only reduced.

What the action accomplishes:

Sets the Tentative Millage Rate in compliance with state law.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

A resolution is required to set the Tentative Millage Rate.

4. **Submitter of Information:**

William McKannay, Town Manager, Susan Roberts, Interim Finance Director

5. **Background:**

A Tentative Millage Rate must be adopted by the Town Council and submitted to the County Property Appraiser prior to August 5, 2025. Currently, the Town staff are developing the General Fund Operating Budget. The Town has been awarded an \$11,900,000 Bridge Loan to offset shortfalls in ad valorem revenue of which the Town's FY2026 preliminary budget includes \$2,447,757. To become more sustainable in the future, staff recommends considering an increase in the millage rate. Once the tentative millage rate has been set it cannot be increased, only reduced.

The first budget hearings will be scheduled for September 11, 2025 at 5:01 pm, and the second budget hearing will be held on September 24, 2025 at 5:01 pm.

Attachments:

1. NS 25-210, Tentative Operating Millage Rate FY2026

Financial Impact:

With the preliminary budget numbers, we are using \$2,447,757 from the Town's bridge loan to cover operating expenditures due to loss in ad valorem revenue since hurricane ian. A millage increase of 1.255 will provide \$1,191,486.

6. **Alternative Action**

Propose alternative millage rates.

7. **Management Recommendations:**

Staff recommends Town Council consider setting the Tentative Millage Rate at 1.255 per \$1,000 of property value, which will provide more sustainable ad valorem revenues and lessen the usage of the Town's bridge loan.

8. **Recommended Approval:**

Kassandra Penner, Budget Manager
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/21/2025
Approved - 7/21/2025
Approved - 7/22/2025
Approved - 7/22/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-210

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF 1.255 MILLS FOR FISCAL YEAR 2026 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2026; 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 services, 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, Section 200.065, *Florida Statutes*, establishes the method for determining and levying an ad valorem millage rate and adopting a budget for all taxing authorities in the State of Florida; and

WHEREAS, the Town of Fort Myers Beach, by and through its Town Council, hereby determines it is in the best interest of the Town and orderly governmental process to hold public hearings as required by Section 200.065, *Florida Statutes*; and

WHEREAS, it is in the best interest of the health, safety and welfare of the residents and visitors of Fort Myers Beach that the Town Council set the tentative operating millage rate as set forth herein and take the other actions set forth herein; and

WHEREAS, the gross taxable value for operating purposes not exempt from taxation within the Town of Fort Myers Beach, Lee County, Florida has been preliminary certified by the Lee County Property Appraiser to the Town of Fort Myers Beach estimated as \$4,609,770,610.

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

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

Section 2. The tentative ad valorem operating millage rate for Fiscal Year 2026 is hereby adopted at 1.255 mills, which equals \$125.5 per \$100,000 dollars of property value.

Section 3. Public meetings and hearings will be held in compliance with Florida Property Tax Truth In Millage (TRIM) Process at the Town Council Chambers located at 2731 Oak Street, Fort Myers Beach, FL, to consider and adopt the final millage rate and to consider and adopt the Town budget for Fiscal Year 2026 as set forth in Section 200.0654, et seq., *Florida Statutes*. The first hearing will be held on Thursday, September 11, 2025 at 5:01 pm, and the second hearing will be held on Thursday, September 24, 2025 at 5:01 pm.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____
John King, Council Member	_____

ADOPTED this 4th day of August 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 of August 2025.

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE EXISTING AGREEMENT BETWEEN THE TOWN AND GOLDMAN WOLFE, LLC FOR FINANCIAL CONSULTING SERVICES: 1) TO INCREASE THE NOT TO EXCEED AMOUNT FROM \$50,000 TO THE BUDGETED AMOUNT OF \$197,600; AND 2) TO ADD A \$5,000 STATUTORY CONTRACTUAL PENALTY IN THE EVENT OF BREACH OF THE AGREEMENT DURING AN EMERGENCY RECOVERY PERIOD TO THE TERMS OF SERVICE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Town Council approval is required to amend the existing contract and authorize continued services in an amount exceeding the Town Manager's approval authority.

What the action accomplishes:

This action amends the existing agreement with Goldman & Wolfe, documents Council's approval, and authorizes continued use of services as needed and within budgeted funds.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Talissa Oliveira, Human
Resources Director

5. **Background:**

Due to recent vacancies within the Finance Department, the Town engaged Goldman & Wolfe, LLC, a financial consulting service firm, to provide temporary financial support and high-level consulting services. The cumulative cost of services has exceeded the Town Manager's purchasing threshold and approval by the Town Council is requested to allow continued service not to exceed budgeted funds in the amount of \$197,600.

Recent changes in Florida law require the updating of terms of service in the existing agreement. More specifically, Section 252.505, Florida Statutes now provides that if a Contractor breaches an agreement during an emergency recovery period (1-year period beginning upon the Governor's initial declaration of a natural emergency), the Contractor shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages.

Attachments:

1. 25-234 First Amendment to Goldman Wolfe, LLC Agreement
2. Final First Amendment Goldman Wolfe, LLC
3. Goldman Wolfe LLC Agreement (Executed)

Financial Impact:

Funding for CFO consulting services has been appropriated in the operating budget. Total expenditures for Goldman & Wolfe services shall not exceed \$197,600.

6. **Alternative Action**

7. Management Recommendations:

Town Management recommends approval and ratification of the contract for continued financial consulting support, not to exceed budgeted funds in the amount of \$197,600.

8. Recommended Approval:

Talissa Oliveira, Human Resources Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/22/2025
Approved - 7/23/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-234

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE EXISTING AGREEMENT BETWEEN THE TOWN AND GOLDMAN WOLFE, LLC FOR FINANCIAL CONSULTING SERVICES: 1) TO INCREASE THE NOT TO EXCEED AMOUNT FROM \$50,000 TO THE BUDGETED AMOUNT OF \$197,600; AND 2) TO ADD A \$5,000 STATUTORY CONTRACTUAL PENALTY IN THE EVENT OF BREACH OF THE AGREEMENT DURING AN EMERGENCY RECOVERY PERIOD TO THE TERMS OF SERVICE 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, the Town Manager on behalf of the Town entered into an agreement with Goldman Wolfe, LLC on June 2, 2025 (“Agreement”), to provide financial consulting services following the departure of the Town’s key finance personnel to ensure the continuity of critical financial operations, including audit support, budget preparation, grant management, month-end close processes, and the timely processing of vendor payments; and

WHEREAS, the Agreement provided for payment of services not to exceed \$50,000, within the Town Manager’s authority; and

WHEREAS, additional financial consulting service is needed as new staff are added to the Finance Department and existing processes are updated; and

WHEREAS, to date service from Goldman Wolfe, LLC has been exemplary and it is in the best interest of the Town of Fort Myers Beach to continue to receive financial consulting services; and

WHEREAS, amendments to the existing Agreement are needed to increase the “not to exceed amount” for continued service and include a penalty for breach of the Agreement during an emergency recovery period as required by Section 252.505, Florida Statutes.

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 findings of the Town Council.

Section 2. The First Amendment to the Agreement, as provided in Exhibit A, is approved.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this _____ day of _____ 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 of _____ 2025.

EXHIBIT A

FIRST AMENDMENT TO SERVICE AGREEMENT GOLDMAN WOLFE

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 Goldman Wolfe, hereinafter referred to as “Contractor”, to that certain existing Services Agreement, dated May 30, 2025 (“Agreement”) for ongoing financial consulting services as approved by the Town Council of the Town of Fort Myers Beach on August 4, 2025.

WITNESSETH:

WHEREAS, the services provided by Contractor under the Agreement to date have been beneficial to the Town, and as a result, the parties desire to continue service into the future, necessitating the need to amend the “not to exceed \$50,000” language in the Agreement to provide for payment of additional future services; and

WHEREAS, as of July 1, 2025, the Florida Legislature amended Section 252.505, Florida Statutes to require a penalty and damages of \$5,000 for any breach of an agreement during an emergency recovery period (1-year period beginning upon Governor’s initial declaration of a natural emergency); and

WHEREAS, approval of this First Amendment to provide for continuous uninterrupted municipal financial consulting service is in the best interest of the Town and its residents.

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

1. Amendment. This First Amendment amends and supplements the existing Agreement between the parties. In the event of a conflict between the terms and conditions contained in the Agreement and this First Amendment, the terms of this Amendment shall prevail.

2. Available Funding. The Agreement is amended to provide that total payment for financial consulting services as shall not exceed \$197,600 in FY 2025 and FY 2026.

3. Breach During Emergency Recovery Period. The Terms and Conditions Agreement attached to the Agreement as Exhibit A is hereby amended to include the following term:

Pursuant to Section 252.505, Florida Statutes, if the Contractor breaches this Agreement during an emergency recovery period (1-year period beginning upon

Governor's initial declaration of a natural emergency) Contractor shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages in addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the days and year indicated below to bind the parties.

Contractor:

Print Name: _____

Company: Goldman Wolfe, LLC

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney



MAIN OFFICE:
NYC | NEWARK | JERSEY CITY
 221 River Street Ste 900 Hoboken, NJ 07030
 551-220-5530 | WWW.GOLDMANWOLFE.COM

SERVICE AGREEMENT

Date: May 30, 2025

Client Name: Town of Fort Myers Beach

Address: 2731 Oak St. Fort Myers Beach, FL 33931

Contact Name: William McKannay

Email: will.mckannay@fmbgov.com

This Service Agreement ("Agreement") is entered on the date written above ("Effective Date"). This Agreement by and between Goldman and Wolf, LLC ("Provider") and the above-mentioned client ("Client"), both herein referred to as "party" and "parties".

1. **Services.** Client agrees to engage Provider to provide such finance business operational services ("Services") as may be agreed upon by the parties. The consultants of Provider possess the requisite knowledge and experience to perform these Services. Provider will be compensated for their Services on an hourly basis for all functions requested by the Client. Hourly rates will be set forth in writing as agreed upon by the parties. Client also agrees to reimburse Provider for all reasonable costs incurred by Provider to perform such Services. All expenses reimbursements require prior approval by the Client, and must be submitted in writing.

*** Services not to exceed \$50,000

Service	Rate/Hr.
CFO Accounting Services	\$190
Controller Accounting Services	\$160
Bookkeeping Accounting Services	\$95

2. **Payments.** Provider will bill biweekly for Services performed, and payment is due immediately. If any invoice is more than 14 days past due, Provider reserves the right to stop work immediately. Client agrees that the Services are consulting by nature, and that Provider is not in any capacity an executive or officer of Client. Client also agrees to Provider's Terms of Service, attached as exhibit A.
3. **Duration.** The term of this Agreement begins as of the Effective Date and continues until the Services are completed, or until earlier terminated by written notice by either party.
4. **Assignment.** Neither party may assign or transfer any right or obligation in connection with this Agreement without the prior written consent of the other party.
5. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida. Any legal cause of action arising from or related to this Agreement shall be commenced in the state or federal courts located in Lee County, Florida. The parties agree to personal jurisdiction in the courts of Lee County, Florida, and agree to waive the right to trial by jury.

IN WITNESS WHEREOF, the parties have entered into this Services Agreement to be effective as of the Effective Date.

Provider: ^{Signed by:} Goldman and Wolfe, LLC
 Sign: Samuel Howell 6/2/2025
BB8F9C77BE264BB...
 Name: Sam Howell Title: Managing Partner
 Email: sam@goldmanwolfe.com
 Phone: 801.750.4364

Client: ^{Signed by:} Town of Fort Myers Beach
 Sign: William B McKannay 6/2/2025
B9F532B722B8408...
 Name: William McKannay Title: Town Manager
 Email: will.mckannay@fmbgov.com
 Phone: 239.313.0895

EXHIBIT A - EXHIBIT A - Terms of Service AGREEMENT

These Terms of Service ("Terms of Service") constitute the terms and conditions that govern the relationships between GOLDMAN AND WOLFE, LLC ("GOLDMAN AND WOLFE"), and their clients (each a "Client") who agree to receive professional finance and accounting consulting services from GOLDMAN AND WOLFE by entering into a GOLDMAN AND WOLFE Services Agreement.

These Terms of Service are expressly incorporated into each Services Agreement. The professional services provided by GOLDMAN AND WOLFE under a Services Agreement may be generally defined hereinafter as the "Services." All capitalized terms defined herein shall have the meaning ascribed to them in the Services Agreement all other terms are defined by their commonly understood meaning or dictionary definition.

By signing a Services Agreement or otherwise receiving any Services from GOLDMAN AND WOLFE, Client agrees to be bound by these Terms of Service.

- 1. Relationship of the Parties.** In providing the Services, GOLDMAN AND WOLFE (and its representatives) will be acting as an independent contractor and not as an agent, partner, employee or representative of Client. Nothing in the Services Agreement or these Terms of Service shall be construed to create a partnership, joint venture, employment relationship, or fiduciary relationship between the parties.
- 2. Confidentiality of Client Information.** In connection with the provision of the Services, GOLDMAN AND WOLFE may require access to Client's books, records, and other information regarding Client, which shall be provided by Client or Client's designated third-party representatives ("Client Information"). Except as consented to in writing by Client or as required by applicable law or court order, GOLDMAN AND WOLFE will maintain the confidentiality of all Client Information, and will use the Client Information for the sole purpose of providing the Services; provided, however, that no confidentiality obligations will apply to Client information that is publicly available or was rightfully obtained from a third party. Any work product created by GOLDMAN AND WOLFE in the course of providing the Services and paid for by Client will be the property of Client. In the event GOLDMAN AND WOLFE is deemed to have any right, title or interest to any work product created for and paid by Client, GOLDMAN AND WOLFE shall waive such right in favor of Client, and shall take all reasonable action as requested by client to secure Client's ownership rights. GOLDMAN AND WOLFE agrees to control the use and disclosure of Client Information with diligence and care, and to treat the Confidential Information with the same level of protection as it affords its own confidential information of a similar nature. GOLDMAN AND WOLFE may share Client Information with its consultants, agents, and representatives who reasonably need to know such information for purposes of performing GOLDMAN AND WOLFE's obligations under the Services Agreement. GOLDMAN AND WOLFE reserves the right to determine which consultants provide Services to Client and where those consultants are located, including remote consultants, which may be located onshore, nearshore, or offshore.
- 3. Reliance on Client Information.** GOLDMAN AND WOLFE will rely on the Client Information provided by Client in performing the Services and will not independently verify or audit

Client Information. Accordingly, it is Client's sole responsibility to ensure that Client Information is accurate and complete, and to inform GOLDMAN AND WOLFE promptly of any suspected error. Services provided by GOLDMAN AND WOLFE are not intended to uncover inherent errors in Client Information; however, GOLDMAN AND WOLFE may notify Client if any such errors are discovered. GOLDMAN AND WOLFE shall not be liable, in any manner, to any third party or any governmental authority, and Client shall defend, indemnify and hold GOLDMAN AND WOLFE harmless from and against, any claims, damages, causes of action, or criminal fines or penalties relating to, arising out of, or concerning any errors or mistakes in any work product, or any other failure in the performance of the Services that relates to, arises out of, or is caused by Client's failure to deliver accurate, complete, and timely Client Information to GOLDMAN AND WOLFE. Client agrees to deliver all relevant Client Information to GOLDMAN AND WOLFE on a timely basis as requested by GOLDMAN AND WOLFE. To the extent GOLDMAN AND WOLFE does not receive necessary Client Information within the timeframes requested, which delays GOLDMAN AND WOLFE's delivery or completion of the Services, Client will nonetheless remain responsible for the payment of all fees and expenses required under the Services Agreement arising out of the Services.

- 4. Default Interest Fees, Collection Costs, Rate Increases, and Deposits.** All fees and expenses required to be paid by Client to GOLDMAN AND WOLFE arising out of the Services shall be due in accordance with the payment terms agreed upon in the Services Agreement. Any fees or expenses remaining unpaid more than fourteen (14) days of the date when due shall bear interest at the rate of 1.5% per month until fully paid or the maximum allowable interest under applicable law, whichever is lower. Further, Client understands and agrees that if Client fails to pay any outstanding invoices following written notice from GOLDMAN AND WOLFE, GOLDMAN AND WOLFE may: (i) assign the outstanding balance to a collections agency; (ii) report Client's non-payment to the credit bureaus; and/or (iii) file a civil legal action to collect the amounts owing. Client agrees to pay all costs incurred by GOLDMAN AND WOLFE in collecting any unpaid fees and expenses, including all collection agency fees and costs, all court costs, witness and expert witness fees, filing fees and reasonable attorneys' fees; whether incurred prior to, during or subsequent to any mediation, arbitration, litigation, bankruptcy, receivership, liquidation, collection or appellate proceeding.

NOTE: For the Town of Ft. Myers Beach only, GOLDMAN AND WOLFE agrees to charge the Town of Ft. Myers Beach a customized fixed rate of \$190/hr rate and hereby "locks in" the agreed hourly rate (\$190/hr) for the duration of this contract (without opportunity for the rate to be increased periodically). Goldman and Wolfe hereby agrees to this fixed rate.

To the extent that Client has any remaining balance in a deposit or prepaid account more than one month after the last invoice has been submitted by GOLDMAN AND WOLFE, Client agrees that such balance becomes non-refundable.

- 5. Background Checks.** As a matter of standard practice, GOLDMAN AND WOLFE conducts background checks of its personnel, including the specific consultant(s) providing the Services to Client pursuant to the Services Agreement. To the extent that GOLDMAN AND WOLFE is hiring a new consultant for purposes of providing the Services to Client, and Client has

requested an expedited start date, GOLDMAN AND WOLFE will run the background check in accordance with its standard practice and notify Client in the event that the new consultant does not meet GOLDMAN AND WOLFE's background check standards.

6. Termination of Services. Either party may terminate the Services Agreement (a) for any reason or no reason upon at least thirty (30) days prior written notice to the other party; (b) with cause following five (5) days prior written notice to the other party regarding the other party's uncured material breach of any covenant, obligation, representation or warranty of the Services Agreement or these Terms of Service; or (c) with cause immediately in the event of any act of fraud, gross negligence, reckless or willful misconduct, felonious conduct, or in the event the other party is insolvent or files for bankruptcy. GOLDMAN AND WOLFE also reserves the right to terminate the Services Agreement immediately in the event GOLDMAN AND WOLFE discovers information regarding Client or its agents or representatives that is counter to GOLDMAN AND WOLFE's business or financial interests, reputation or goodwill, in GOLDMAN AND WOLFE's sole and absolute discretion. In the event of any termination, Client shall be responsible for all fees and costs incurred for GOLDMAN AND WOLFE's performance of the Services up to and including the date of termination. The confidentiality obligations of GOLDMAN AND WOLFE set forth in Section 2 of these Terms of Service shall survive for a period of three (3) years after the termination of the Services Agreement or completion of the Services.

7. Return or Destruction of Client Information. Upon termination of the Services Agreement for any reason, GOLDMAN AND WOLFE will promptly return, or, at the election of Client, destroy, all Client Information and other property of the Client, if any, then in GOLDMAN AND WOLFE's possession or control. Client acknowledges and understands that GOLDMAN AND WOLFE's policy is to delete, destroy or dispose of all communications and Client files and records (including but not limited to emails) that are non-essential for the on-going performance of Services after six (6) months of receipt or last use. Client is on notice to save all of its own work, data and records on its own system in order to keep such documentation intact. GOLDMAN AND WOLFE shall have no obligation to maintain records for Client other than what is necessary to perform the Services. Notwithstanding anything else herein to the contrary, GOLDMAN AND WOLFE, at its sole discretion, may retain copies of its work product and supporting information for its records. Under no circumstances will GOLDMAN AND WOLFE be considered a "custodian of records" under the Rules and Regulations of the US Securities & Exchange Commission. Further, if Client utilizes a storage system for storing its records and data, GOLDMAN AND WOLFE shall not be the creator or controller of such system. Client may allow GOLDMAN AND WOLFE access to such storage system for purposes of providing the Services, but access and authorization to access such storage system shall revert back fully and exclusively to Client upon completion of the Services or termination of the Services Agreement.

8. Indemnification by Client. Except to the extent caused by the gross negligence, fraud or willful misconduct of GOLDMAN AND WOLFE, Client agrees to indemnify, defend and hold

GOLDMAN AND WOLFE harmless from and against all claims, damages, causes of action, fines and penalties (collectively, "Claims") from any third-party or governmental entity relating to, concerning or arising out of the Client's actions or gross negligence of the Client regarding: (i) the Services; (ii) third-party reliance upon GOLDMAN AND WOLFE's work product, including but not limited to banks, leasing companies, financing companies or taxing authorities; (iii) late or missed public entity filings or deadlines caused by past-due invoices, insufficient retainer balances or any other cause of GOLDMAN AND WOLFE work stoppage permitted in the Services Agreement, these Terms of Service, or applicable law; or (iv) any infringement of any intellectual property or trade secrets by reason of Client Information or work product based upon such Client Information. Client agrees to assume full financial responsibility for the payment of any loss, liability or expense (including but not limited to reasonable attorneys' fees) incurred by GOLDMAN AND WOLFE in connection with any such Claim and the defense or settlement of any such Claim. This Section shall survive termination of the Services Agreement. GOLDMAN AND WOLFE may direct the defense and settlement of any such Claim with counsel of GOLDMAN AND WOLFE's choosing, and Client will provide GOLDMAN AND WOLFE with reasonable assistance, as requested. GOLDMAN AND WOLFE shall not be liable for any settlement of an action effected without its written consent, which consent shall not be unreasonably withheld.

9. Indemnification by GOLDMAN AND WOLFE. Subject to Section 14 below, GOLDMAN AND WOLFE agrees to indemnify, defend and hold Client harmless from and against all Claims from any third party or governmental entity relating to, concerning or arising out of (i) physical injury to or destruction of Client's property during the performance of the Services by GOLDMAN AND WOLFE; (ii) gross negligence in GOLDMAN AND WOLFE's work product; or (iii) any infringement of any intellectual property or trade secrets by GOLDMAN AND WOLFE during the course of performing the Services. Subject to Section 14 below, GOLDMAN AND WOLFE agrees to assume full financial responsibility for the payment of any loss, liability or expense (including but not limited to reasonable attorneys' fees) incurred by Client in connection with any such Claim and the defense or settlement of any such Claim. This Section shall survive termination of the Services Agreement. Client may direct the defense and settlement of any such Claim with counsel of Client's choosing, and GOLDMAN AND WOLFE will provide Client with reasonable assistance, as requested. Client shall not be liable for any settlement of an action effected without its written consent, which consent shall not be unreasonably withheld.

10. Miscellaneous Expenses. No miscellaneous expenses will be reimbursed by the Town of Ft. Myers Beach to GOLDMAN AND WOLFE.

11. Limited Warranty. GOLDMAN AND WOLFE represents and warrants that it will perform the Services in a diligent, professional and competent manner in accordance with industry standards, utilizing personnel with a level of skill commensurate with the Services to be performed. GOLDMAN AND WOLFE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, AND HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF ACCURACY,

QUALITY, FREEDOM FROM ERROR, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GOLDMAN AND WOLFE, ITS AGENTS, OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY PROVIDED HEREIN. GOLDMAN AND WOLFE may, in the course of providing the Services, provide advice or opinions regarding the outcome of certain matters or predictions of future outcomes or performance. Although GOLDMAN AND WOLFE will make reasonable efforts to ensure the accuracy of such advice or opinions, future outcomes or performance are naturally uncertain and therefore cannot be guaranteed. The Town shall be added to GOLDMAN AND WOLFE'S existing insurance coverages as additional insured with a minimum E&O coverage of \$1 million per incidence and occurrence.

12. Tax Filings. Client acknowledges that it is solely responsible for the accuracy of any tax filings. Therefore, to the extent the Services involve preparation of any tax filings, Client agrees that its authorized representatives will review and approve such filings before signing and submitting such filings.

13. Funding Applications. In the event that Client requests GOLDMAN AND WOLFE to assist Client with any application for loans, grants or other funding ("Funding Application"), GOLDMAN AND WOLFE is entitled to rely on information provided by Client to complete the Funding Application and shall not be held liable for any inaccuracies, misstatements or mistakes on any Funding Application. It is the sole responsibility of Client to ensure that the Funding Application has correct and complete information. Further, GOLDMAN AND WOLFE does not and cannot guarantee that a Funding Application will be accepted or that funding will be granted.

14. Limitation of Liability. IN NO EVENT WILL GOLDMAN AND WOLFE BE LIABLE TO CLIENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, WHETHER OR NOT GOLDMAN AND WOLFE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE TO THE EXTENT RECOVERY OF DAMAGES IS NOT OTHERWISE AVAILABLE FROM ANY INSURANCE COVERAGE. MOREOVER, GOLDMAN AND WOLFE'S TOTAL LIABILITY UNDER THE SERVICES AGREEMENT AND THESE TERMS OF SERVICE SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO GOLDMAN AND WOLFE PURSUANT TO THE SERVICES AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

15. Basis of the Bargain. The limited warranty and disclaimer, exclusive remedies, and damages cap set forth above are fundamental elements of the basis of the agreement between GOLDMAN AND WOLFE and Client. GOLDMAN AND WOLFE would not be able to provide the Services to Client on an economic basis without such limitations. Furthermore, the limitations or exclusions of warranties, remedies or liability contained in

these Terms of Service shall apply only to the extent permissible under applicable law, which may vary from state to state.

16. Force Majeure. If the performance of the Services or any other obligation under the Services Agreement or these Terms of Service is prevented, restricted, or interfered with by causes beyond a party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrences, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, and/or work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such cause of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

17. Integration and Severability. The Services Agreement and these Terms of Service represent the complete and exclusive agreement between GOLDMAN AND WOLFE and Client and supersedes all prior communications, whether written or oral, relating to the subject matter hereof. No amendment or modification to the Services Agreement shall be valid or binding upon the parties unless in writing and signed by each party. No course of conduct shall be deemed to constitute an amendment or modification, and no waiver shall be deemed a continuing waiver unless agreed to in writing by the party to be charged therewith. If any provision of the Services Agreement or these Terms of Service is determined by a court of competent jurisdiction to be invalid or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability. All other terms hereof and thereof shall remain in full force and effect.

18. Assignment. Neither party may assign or transfer any right or obligation in connection with the Services Agreement without the prior written consent of the other party; provided, however that, upon written notice to Client, GOLDMAN AND WOLFE may assign the Services Agreement or transfer its rights and obligations hereunder to any affiliate that GOLDMAN AND WOLFE controls, is controlled by, or is under common control with, or to a party that acquires all or substantially all of GOLDMAN AND WOLFE's assets.

19. Modifications. These Terms of Service may be amended and updated from time to time at the sole discretion of GOLDMAN AND WOLFE. Modified versions of these Terms of Service will be considered effective as of the date and time posted to GOLDMAN AND WOLFE's website. Client's continued use of the Services after such modifications are posted will signify Client's continued acceptance of, and agreement to be bound by these Terms of Service, as modified.

20. Mediation or Arbitration Preferred Alternative Dispute Resolution. Any controversy or claim arising out of or relating to the Services Agreement or these Terms of Service, or the making, performance or interpretation thereof, other than a claim by GOLDMAN AND WOLFE for injunctive or equitable relief, shall be settled by mediation and/or arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall be held in Florida. Any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the

controversy. In the event of any legal dispute (including arbitration) regarding the interpretation or enforcement of the Services Agreement or these Terms of Service, each party shall pay its' own attorney's fees, costs and expenses incurred in such dispute.

FLORIDA MUNICIPAL CONTRACT TERMS

21. Florida Municipality. This Contract is entered into with the Town of Ft. Myers Beach, a Florida Municipality, which requires compliance with certain Florida Statutes adopted by the Florida Legislature applicable to contracts with Florida Municipalities that are set forth below. In the event of conflict between any terms and conditions in this agreement, the terms and conditions in paragraphs 22-41 shall apply. In paragraphs 22-41, contractor shall refer to GOLDMAN AND WOLFE.

22. 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, subject to applicable law and ethical rules, 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, TOWN AT:**

Amy Baker, Town Clerk
Town of Ft. Myers Beach
2731 Oak Street Fort Myers Beach, FL 33931
239-765-0202
mail@fmvgov.com

23. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action proximately caused by 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 Pinellas County Circuit Court on an expedited basis to enforce the requirements of this section.

24. 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.

25. 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 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 notwithstanding any automatic renewal as may be provided in the Agreement. 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 an appropriation.

26. 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 may be amended from time to time. This includes but is not limited to utilization of 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 Town incurred as a result of the termination of this Agreement in accordance with this section. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., 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, Fla. Stat.

27. 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.

Accordingly, 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.

28. Public Entities Crime or Convicted Vendor List. The Contract has 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.

29. 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.

30. Compliance with Ethics Codes. This Agreement is subject to Chapter 112, Florida Statutes and Contractor shall disclose the name of any officer, director, employee or other agent who is also an employee of the Town of Ft. Myers Beach. The Contractor shall also disclose the name of any Town of Ft. Myers Beach employee who owns, directly or indirectly, more than a five percent (5%) interest in the Contractor's or its affiliates, business entity.

31. Data Management; Notice of Breach. Contractor shall cooperate with timely incident reporting, response activities/fact gathering, public and agency notification requirements, severity level assessment, after-action reports as provided in Section 282.3185 (5) & (6), Florida Statutes.

32. Environmental and Social Government and Corporate Activism. Contractor is prohibited from giving preference to any subcontractor based on the subcontractor's social, political or ideological interests as mandated in Section 287.05701, Florida Statutes.

33. Funding. All payments are contingent upon approval and continued funding by the governing body.

34. Disclosure Requirements "Foreign Countries of Concern". 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."

35. 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.

36. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Municipality 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.

37. Data Management; Notice of Breach. Contractor shall cooperate with the Municipality 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.

38. 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.

39. 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.

40. Human Trafficking - 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.

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

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. stat., Contractor declares that Contractor has read the foregoing Section entitled " Human Trafficking - No coercion for labor or services" above and that the facts stated in it are true:

FOR GOLDMAN AND WOLFE:

Signed by:
Samuel Howell
8B8F9C77BE264BB... 6/2/2025
Date: _____

Print Name: Samuel Howell
Title: Managing Partner
Entity: GOLDMAN AND WOLFE

BY TOWN OF Ft. Myers Beach:

Signed by:
William B McKannay
B9F532B722B8408... 6/2/2025
Date: _____

Print Name: William McKannay
Title: Town Manager

ATTESTED TO:
Amy Bala
DEPUTY TOWN CLERK

APPROVED AS TO FORM: Nancy Stewart TOWN ATTORNEY

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DESIGNATING AN ADMINISTRATIVE AUTHORITY TO RECEIVE, REVIEW, AND PROCESS PLAT AND REPLAT SUBMITTALS AND AN ADMINISTRATIVE OFFICIAL RESPONSIBLE FOR APPROVING, APPROVING WITH CONDITIONS, OR DENYING PROPOSED PLATS AND REPLATS, AS SPECIFIED IN SECTION 177.071, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

This action is necessary to comply with State regulation.

What the action accomplishes:

this action ensures Town compliance with new State regulation.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

On June 20, 2025, the Governor approved Senate Bill 784 ("SB 784"), which amended Section 177.071, Florida Statutes, to provide new statutory requirements related to the administrative approval of plats and replats, effective July 1, 2025. Under the newly amended Section 177.071, Florida Statutes (2025), local governments must designate, by ordinance or resolution, an administrative authority to receive, review, and process the plat or replat submittal, including designating an administrative official responsible for approving, approving with conditions, or denying the proposed plat or replat. This resolution designates the Town Manager with that authority.

Attachments:

1. Final 25-232, Designation of Administrative Authority
2. Senate Bill 784

Financial Impact:

Unknown

6. **Alternative Action**

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

Judith Frankel, Principal Planner
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/18/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/23/2025
Final Approval - 7/25/2025

RESOLUTION NO: 25-232

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DESIGNATING AN ADMINISTRATIVE AUTHORITY TO RECEIVE, REVIEW, AND PROCESS PLAT AND REPLAT SUBMITTALS AND AN ADMINISTRATIVE OFFICIAL RESPONSIBLE FOR APPROVING, APPROVING WITH CONDITIONS, OR DENYING PROPOSED PLATS AND REPLATS, AS SPECIFIED IN SECTION 177.071, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 20, 2025, the Governor approved Senate Bill 784 (“SB 784”), which amended Section 177.071, Florida Statutes, to provide new statutory requirements related to the administrative approval of plats and replats, effective July 1, 2025; and

WHEREAS, under the newly amended Section 177.071, Florida Statutes (2025), a plat or replat submitted pursuant to Part I of Chapter 177, Florida Statutes, must be administratively approved, and no further action by the governing body is required if the plat or replat complies with the requirements of Section 177.091, Florida Statutes; and

WHEREAS, under the newly amended Section 177.071, Florida Statutes (2025), local governments must designate, by ordinance or resolution, an administrative authority to receive, review, and process the plat or replat submittal, including designating an administrative official responsible for approving, approving with conditions, or denying the proposed plat or replat; and

WHEREAS, as used in this Resolution, the terms “plat” and “replat” refer to plats and replats that comply with the requirements of Section 177.091, Florida Statutes (2025), as may be amended or renumbered from time to time; and

WHEREAS, the purpose of this Resolution is to designate an administrative authority and an administrative official in compliance with the requirements of SB 784 and the newly amended Section 177.071, Florida Statutes (2025).

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

Section 1. **DESIGNATION OF ADMINISTRATIVE AUTHORITY.** The Town Council hereby designates the following individual to serve as the Town’s administrative authority to receive, review, and process plat or replat submittals, in accordance with Section 177.071, Florida Statutes (2025):

Administrative Authority: William McKannay, Town Manager

Section 2. **DESIGNATION OF ADMINISTRATIVE OFFICIAL.** The Town Council hereby designates the following individual to serve as the Town’s administrative official responsible for approving, approving with conditions, or denying a proposed plat or replat, in

accordance with Section 177.071, Florida Statutes (2025):

Administrative Official: William McKannay, Town Manager

Section 3. **EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption and passage.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 of _____ 2025.

2025784er

1
2 An act relating to platting; amending s. 177.071,
3 F.S.; requiring that certain plat or replat submittals
4 be administratively approved with no further action by
5 certain entities under certain circumstances;
6 requiring the governing body of such county or
7 municipality to designate an administrative authority
8 to receive, review, and process plat or replat
9 submittals; providing requirements for such
10 designation; defining the term "administrative
11 authority"; requiring the administrative authority to
12 submit a certain notice to an applicant; providing
13 requirements for such notice; requiring the
14 administrative authority to approve, approve with
15 conditions, or deny a plat or replat submittal in
16 accordance with the timeframe in the initial written
17 notice to the applicant; requiring the administrative
18 authority to notify the applicant in writing if it
19 declines to approve a plat or replat submittal;
20 requiring that the written notification contain the
21 reasons for denial and other information; prohibiting
22 the administrative authority or other official,
23 employee, agent, or designee from requesting or
24 requiring that the applicant request an extension of
25 time; amending s. 177.111, F.S.; conforming provisions
26 to changes made by the act; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:

2025784er

Section 1. Section 177.071, Florida Statutes, is amended to read:

177.071 Administrative approval of plats ~~plat~~ by designated county or municipal official ~~governing bodies~~.—

(1)(a) A plat or replat submitted under this part must be administratively approved and no further action or approval by the governing body of a county or municipality is required if the plat or replat complies with the requirements of s. 177.091. The governing body of the county or municipality shall designate, by ordinance or resolution, an administrative authority to receive, review, and process the plat or replat submittal, including designating an administrative official responsible for approving, approving with conditions, or denying the proposed plat or replat.

(b) As used in this section, the term "administrative authority" means a department, division, or other agency of the county or municipality. For purposes of issuing a final administrative approval of a plat or replat submittal, the term also includes an administrative officer or employee designated by the governing body of a county or municipality, including but not limited to, a county administrator or manager, a city manager, a deputy county administrator or manager, a deputy city manager, an assistant county administrator or manager, an assistant city manager, or other high-ranking county or city department or division director with direct or indirect oversight responsibility for the county's or municipality's land development, housing, utilities, or public works programs.

(2) Within 7 business days after receipt of a plat or

2025784er

replat submittal, the administrative authority shall provide written notice to the applicant acknowledging receipt of the plat or replat submittal and identifying any missing documents or information necessary to process the plat or replat submittal for compliance with s. 177.091. The written notice must also provide information regarding the plat or replat approval process, including requirements regarding the completeness of the process and applicable timeframes for reviewing, approving, and otherwise processing the plat or replat submittal.

(3) Unless the applicant requests an extension of time, the administrative authority shall approve, approve with conditions, or deny the plat or replat submittal within the timeframe identified in the written notice provided to the applicant under subsection (2). If the administrative authority does not approve the plat or replat, it must notify the applicant in writing of the reasons for declining to approve the submittal. The written notice must identify all areas of noncompliance and include specific citations to each requirement the plat or replat submittal fails to meet. The administrative authority, or an official, an employee, an agent, or a designee of the governing body, may not request or require the applicant to file a written extension of time.

(4)~~(1)~~ Before a plat or replat is offered for recording, it must be administratively approved as required by this section ~~by the appropriate governing body~~, and evidence of such approval must be placed on the plat or replat. If not approved, the governing body must return the plat or replat to the professional surveyor and mapper or the legal entity offering the plat or replat for recordation. For the purposes of this

2025784er

part:

(a) When the plat or replat to be submitted for approval is located wholly within the boundaries of a municipality, the ~~governing body of the~~ municipality has exclusive jurisdiction to approve the plat or replat.

(b) When a plat or replat lies wholly within the unincorporated areas of a county, the ~~governing body of the~~ county has exclusive jurisdiction to approve the plat or replat.

(c) When a plat or replat lies within the boundaries of more than one county, municipality, or both ~~governing body~~, two plats or replats must be prepared and each county or municipality ~~governing body~~ has exclusive jurisdiction to approve the plat or replat within its boundaries, unless each county or municipality with jurisdiction over the plat or replat agrees ~~the governing bodies having said jurisdiction agree~~ that one plat is mutually acceptable.

~~(5)(2)~~ Any provision in a county charter, or in an ordinance of any charter county or consolidated government chartered under s. 6(e), Art. VIII of the State Constitution, which provision is inconsistent with anything contained in this section shall prevail in such charter county or consolidated government to the extent of any such inconsistency.

Section 2. Section 177.111, Florida Statutes, is amended to read:

177.111 Instructions for filing plats ~~plat~~.—After the approval by the appropriate administrative authority ~~governing body~~ required by s. 177.071, the plat or replat must ~~shall~~ be recorded by the circuit court clerk or other recording officer upon submission thereto of such approved plat or replat. The

2025784er

circuit court clerk or other recording officer shall maintain in
his or her office a book of the proper size for such papers so
that they will ~~shall~~ not be folded, to be kept in the vault. A
print or photographic copy must be filed in a similar book and
kept in his or her office for the use of the public. The clerk
shall make available to the public a full size copy of the
record plat or replat at a reasonable fee.

Section 3. This act shall take effect July 1, 2025.

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING AN EASEMENT RELATED TO THE PROVISION OF PUBLIC STORM DRAINAGE PIPES AND APPURTENANT DRAINAGE FACILITIES IN, OVER, UNDER, THROUGH, UPON, AND ACROSS A PORTION OF REAL PROPERTY LOCATED IN THE TOWN OF FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

To formally accept the drainage easement from Dreammaker Legacy, LLC.

What the action accomplishes:

This action will allow an outfall pipe to be installed and maintained in the easement area as a part of the Carlos Circle drainage project to address persistent flooding on Carlos Circle.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director, Mark Ashton,
Utilities Manager

5. **Background:**

The Town has engaged Tetra Tech to design and permit drainage improvements to address persistent flooding on Carlos Circle. To implement these improvements, Tetra Tech has advised that the Town must acquire a drainage easement to construct an outfall pipe. Dreammaker Legacy, LLC has agreed to grant the Town a drainage easement for the construction, reconstruction, alteration, extension, relocation, operation, maintenance, and repair of public storm drainage pipes and appurtenant drainage facilities, which will provide the rights needed to construct the outfall pipe. The Town Council must formally accept the easement from the property owner.

Attachments:

1. Resolution 25-519 Accepting Drainage Easement Agreement

Financial Impact:

6. **Alternative Action**

Do not accept the easement.

7. **Management Recommendations:**

Approve a Resolution accepting the Drainage Easement Agreement from Dreammaker Legacy, LLC for the construction, reconstruction, alteration, extension, relocation, operation, maintenance, and repair of public storm drainage pipes and appurtenant drainage facilities.

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 7/22/2025

Jeff Hauge, Community Services Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Approved - 7/22/2025
Approved - 7/23/2025
Approved - 7/23/2025
Approved - 7/24/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-519

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING AN EASEMENT RELATED TO THE PROVISION OF PUBLIC STORM DRAINAGE PIPES AND APPURTENANT DRAINAGE FACILITIES IN, OVER, UNDER, THROUGH, UPON, AND ACROSS A PORTION OF REAL PROPERTY LOCATED IN THE TOWN OF FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Dreammaker Legacy, LLC, a Florida Limited Liability Company, is the owner of certain real property located in the Town of Fort Myers Beach, Florida, which Property is more particularly described in the legal description and sketch made subject to the Drainage Easement Agreement in Attachment 1; and

WHEREAS, the Town requested from Grantor, a perpetual, non-exclusive easement in, over, under, through, upon, and across a portion of the Property for the construction, reconstruction, alteration, extension, relocation, operation, maintenance, and repair of public storm drainage pipes and appurtenant drainage facilities; and

WHEREAS, Grantor has agreed to grant an easement to the Town as provided in the Drainage Easement Agreement in Attachment 1; and

WHEREAS, the Town Council has determined that acceptance of the Drainage Easement Agreement serves a public purpose and is in the best interests of the Town and its residents.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH 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 and made a specific part of this Resolution.

Section 2. The Town Council hereby accepts and approves the Drainage Easement Agreement, a copy of which is attached hereto as Attachment 1.

Section 3. The Drainage Easement Agreement in Attachment 1 shall be properly recorded in the Public Records of Lee County, Florida.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this ____ day of _____ 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.

Attachment "1"

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Vose Law Firm LLP
324 W. Morse Blvd.
Winter Park, FL 32789

Property Owner: Dreammaker Legacy, LLC
Legal: Lots 14 and 15, Block D, Unit No. 4, ISLAND SHORES
Parcel ID: 24-46-23-W1-0070D.0140

DRAINAGE EASEMENT AGREEMENT

THIS INDENTURE is made this ____ day of _____, 2025, by and between Dreammaker Legacy, LLC, a Florida Limited Liability Company, with a mailing address of 5211 Skyline Boulevard, Cape Coral, Florida 33914, as GRANTOR, and TOWN OF FORT MYERS BEACH, FLORIDA, a Florida municipal corporation, with a mailing address of 2525 Estero Blvd, Fort Myers Beach, FL 33931, as 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)

WITNESSETH

That the GRANTOR, in consideration of the sum of \$1.00, the covenants of GRANTEE herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GRANTOR does hereby grant, covenant and agree as follows:

1. Grant of Easement: GRANTOR does hereby grant and convey unto GRANTEE, its successors, assigns, lessees, licensees, heirs and agents, a permanent, non-exclusive easement forever for the construction, reconstruction, alteration, extension, relocation, operation, maintenance, and repair of public storm drainage pipes and appurtenant drainage facilities, including, but not limited to, storm sewers, drainage channels, tributary connections, control structures and other appurtenances thereto, within an Easement described as follows:

See Exhibit "A"

Additionally, GRANTOR does hereby grant and convey unto GRANTEE, its successors, assigns, lessees, licensees, heirs and agents, the right of ingress and egress at all times to enter upon the Easement for the purposes herein described. Subject to the other terms and conditions of this Easement Agreement, GRANTEE shall have the right to remove impediments to operation and maintenance of the Easement such as trees, asphalt, sidewalks, and any structures, however, with the exception of any structures built on the Property within the Easement, GRANTEE shall restore any disturbed property of GRANTOR to its existing condition as soon as reasonably practicable. GRANTEE further agrees all construction, reconstruction, operation, maintenance, removal and any other activities which disturb the Easement will be coordinated, if possible, with GRANTOR so as to minimize any disruption to GRANTOR's property. GRANTOR reserves the right to the full use and enjoyment of the drainage easement area for all other lawful purposes that do not interfere with the rights conveyed to GRANTEE herein. This Easement shall apply to all interests in the described Property, now owned or hereafter acquired or assigned by GRANTOR or GRANTEE and shall be deemed to be a covenant that runs with the land.

2. Unencumbered Title. Grantor warrants that the Easement granted herein is granted free and clear of all liens and encumbrances.
3. Operation and Maintenance. The operation and maintenance of the drainage facilities described herein and located within the Easement shall be the responsibility of the GRANTEE.

Attachment "1"

4. Successors and Assigns. This Easement Agreement and the rights and obligations created hereunder shall run with the land, and shall be binding upon, and inure to the benefit or, the parties, including their respective successors and assigns. Any reference to the parties herein, unless specified otherwise, also refers to their respective heirs, legal representatives, successors, and assigns.
5. Use of the Property. The Easement shall not be construed to restrict GRANTOR from the use of the Property within the Easement so long as such use does not impair or interfere with the use and maintenance of the Easement by the GRANTEE or otherwise impact, alter or affect the storm drainage facilities constructed within. Retained uses notwithstanding, the GRANTOR shall not construct, establish, modify or enlarge any (1) structures upon the easement or (2) any ditches, swales, culverts, pipes or other drainage facilities that would direct additional water into the public storm drainage facilities to be constructed and/or maintained by the GRANTEE without the written consent of the GRANTEE.
6. Release. The GRANTEE'S liability is limited as provided in Section 768.28, Florida Statutes. GRANTOR hereby waives and releases GRANTEE, its employees and agents, from any and all claims for damage, known and unknown, foreseen and unforeseen, arising by reason of the use of the described real estate for the purposes herein described.

IN WITNESS WHEREOF, the GRANTOR has caused this Drainage Easement to be executed in GRANTOR'S name.

Signed, sealed and delivered
in the presence of:

Witness

Printed Name

Address

Witness

Printed Name

Address

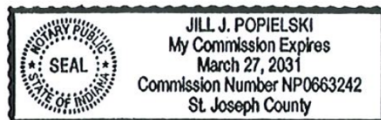
By:

Printed Name: Michael Leep Jr. as
Manager of Dreammaker Legacy, LLC,
a Florida Limited Liability Company

STATE OF FLORIDA
COUNTY OF ST. JOSEPH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27th day of June, 2025 by Michael Leep Jr., as Manager of Dreammaker Legacy, LLC, a Florida Limited Liability Company, who is personally known to me or who has produced _____ as identification.

[Notary Seal]



Notary Public

Name typed, printed or stamped
My Commission Expires: 3/27/2031

Attachment "1"

ACCEPTANCE

This DRAINAGE EASEMENT was accepted for public use by the Town of Fort Myers Beach Town Council, as authorized by action of the Town Council of Fort Myers Beach, Florida at its meeting held on the ____ day of _____, 2025.

TOWN OF FORT MYERS BEACH,
FLORIDA

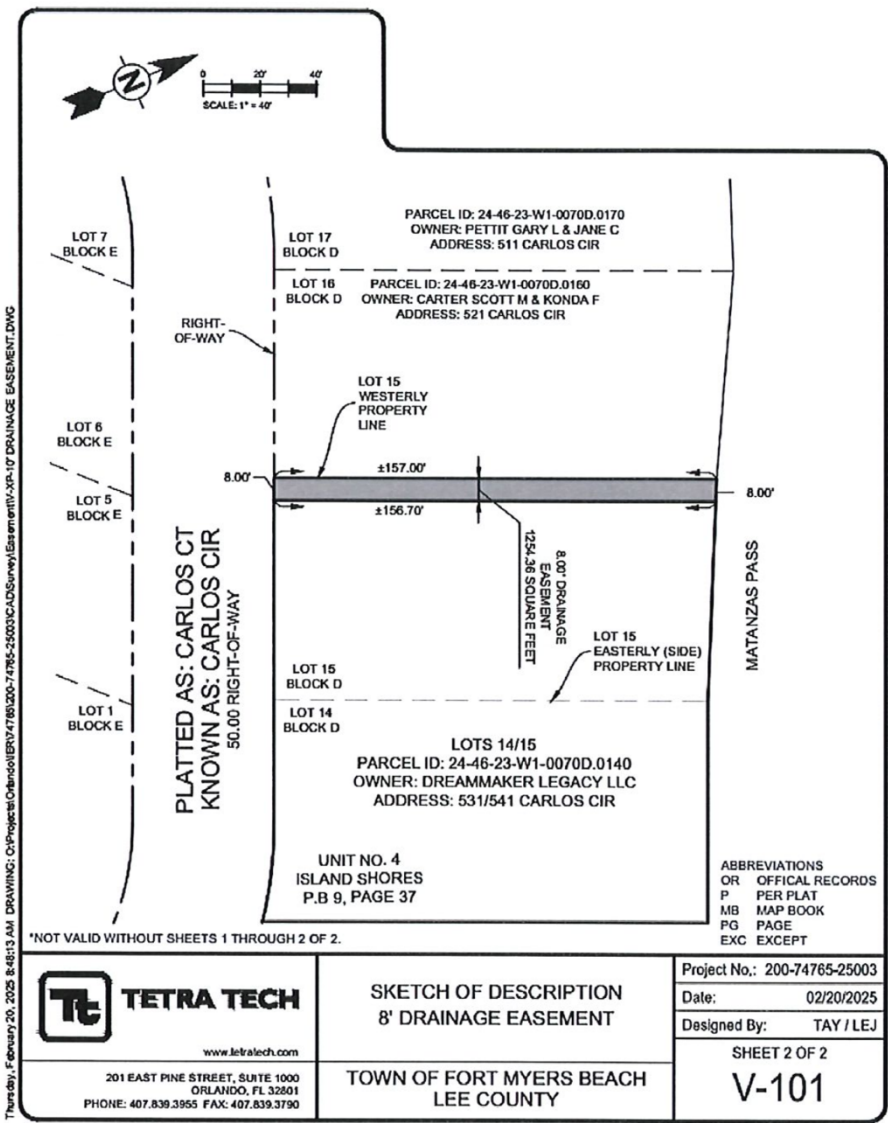
By: Dan Allers
Its: Mayor

ATTEST: AMY BAKER
TOWN CLERK

TOWN CLERK

Attachment "1"

Exhibit "A" (Page 2 of 2)



1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN ON APRIL 22, 2025 AND APPROVING A CONTRACT WITH ANDREW SITEWORK FOR THE EMERGENCY PURCHASE AND REPLACEMENT OF 36 NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN IN THE AMOUNT OF NOT-TO-EXCEED \$290,512; APPROVING AN ADDENDUM TO THE RATIFIED CONTRACT TO INCLUDE ADDITIONAL TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$290,512 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:**

Jeff Hauge, Community
Services Director

5. **Background:**

In cooperation with the Fort Myers Beach Fire Department, the Town Utilities Department identified 36 fire hydrants that no longer operate. The non-operable hydrants are currently bagged out of service. The only way to make them operable is to replace them. This is partially due to age, being underwater (multiple times) and the delay in starting the hydrant maintenance programs after all the hurricanes (starting with Ian). That amounts to more than 10% of the hydrants on the island. In accordance with the National Fire Protection Association, there are a minimum number of hydrants for buildings to meet adequate fire flow. With 10% of the hydrants not working, we are not meeting minimum standards for the protection of buildings and businesses. Andrew Sitework (Teir 1 contractor) was currently working on the island and had hydrants in stock and started to replace them. The work is ongoing and scheduled for completion in late 2026.

Attachments:

1. 25-236, Emergency Purchase, ASW Fire Hydrants Final
2. Exhibit A to Resolution - Andrew Sitework, LLC
3. Exhibit B to Resolution (NS TO EDITCOMPLETION DATE) Standard Form Addendum - Andrew Sitework, LLC
4. Justification for Emergency Purchase - Fire Hydrants

Financial Impact:

The total expenditure will be funded through Water Dept Fund Balance.

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:

Amy Baker, Town Clerk
Jeff Hauge, Community Services Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/21/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/23/2025
Approved - 7/23/2025
Final Approval - 7/25/2025

RESOLUTION NUMBER 25-236

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN ON APRIL 22, 2025 AND APPROVING A CONTRACT WITH ANDREW SITEWORK FOR THE EMERGENCY PURCHASE AND REPLACEMENT OF 36 NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN IN THE AMOUNT OF NOT-TO-EXCEED \$290,512; APPROVING AN ADDENDUM TO THE RATIFIED CONTRACT TO INCLUDE ADDITIONAL TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; 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 for the emergency purchase of supplies, services or construction items when there exists a threat to the public health, welfare or safety; and

WHEREAS, Town staff was advised by the Fort Myers Beach Fire Department that there were 36 inoperable fire hydrants located throughout the Town, which created a safety risk justifying immediate action to resolve the situation; and

WHEREAS, because the contract with Andrew Sitework, LLC was for a "not-to-exceed amount of \$290,512" in excess of the authority of the Town Manager, ratification of the emergency contract as provided in Section 2-480(d) of the Town of Fort Myers Beach Code of Ordinances as soon as practicable is required and is in the best interest 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 memorializes and ratifies approval of the contract between the Town and Andrews Sitework, LLC for the purchase and installation of the 36 fire hydrants as provided in Exhibit A and the Addendum to the contract attached as Exhibit B.

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

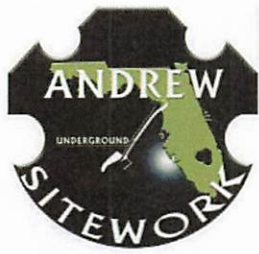
ATTEST:

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.



ANDREW SITEWORK LLC.



TO

JOB

Hydrant Replacements
Various Locations on FMB

CONTACT: Mark Ashton DATE: April 22, 2025
PHONE: (239) 765-0202 PROPOSAL TO BE VALID FOR 30 Days
EMAIL: mashton@fmbgov.com
TERMS: Net 10th of the month following invoice date.

PROJECT SUMMARY PER ATTACHED SCHEDULE:

Please see attached Schedule of Values

PROJECT TOTAL:

\$290,512.00

Notes:

#1

This proposal includes the removal & replacement of the existing fire hydrant assembly, and does not include the valve & tee. If the valve & tee is deemed to be replaced, ASW can provide a separate pricing to do so accordingly.

EXCLUSIONS:

The following items are excluded from the price of this proposal unless specifically mentioned:
utility deposit fees, permits, tapping and/or connection fees, impact fees, fill dirt, construction layout, engineering services, soil & material testing, asphalt repair, base material and/or repair, concrete repair, curb inlet tops and aprons, bonding, power supply to lift station control unsuitable soil removal, demolition, valve supervision, Landscape Replacement

TERMS:

Payment is due as stated above with an approved account. Accounts over 30 days will be subject to a monthly service charge of 1.5% monthly (18% A.P.R.). If it becomes necessary to undertake any legal process to collect payment due for material and/or services, purchaser agrees to pay in addition to any costs or damages, all reasonable attorney's fees incurred by seller. No retainage permitted on projects under \$20,000.00.

PROPOSED BY:

Andrew Sitework

Ralph C Andrew III
Project Manager

SIGN:

NAME:

TITLE:

DATE:

ACCEPTED BY:

Jeff Hough
Community Service Director
7.21.25

ANDREW

SCHEDULE OF VALUES

Project: Town of FMB - Hydrant Replacements in Various Locations

Bid Date: April 22, 2025

Engineer: N/A

Item No.	Description	Bid Quantity	Unit	Unit Price	Extended Amount
1	Hydrant Replacements	36	EA	\$7,862.00	\$283,032.00
1	Site Restoration & Clean up	400	SY	\$18.70	\$7,480.00
TOTAL					\$290,512.00

2511 Palm Ave., Fort Myers, FL 33916
Fax: (239) 226-1605 Phone: (239) 226-1606
Lic #10399600012008
ralph@andrewsitework.com

TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM 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 _____, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute;

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

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

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

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

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

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

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

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

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

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

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

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

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. 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. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach during Emergency Recovery Period. Pursuant to Sec. 252.505, Fla. Stat., if vendor breaches this agreement during an emergency recovery period (1-year period beginning upon Governor's initial declaration of a natural emergency) Contractor shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM

Town Attorney

REQUEST/JUSTIFICATION FOR EMERGENCY PURCHASE
(ATTACH ADDITIONAL PAGES IF NECESSARY)

REQUESTER NAME: Mark Ashton _____ DATE: 6-27-2024 7.21.25 JAH
DEPT/INSTITUTION: Utilities PHONE: 239-560-2081
AGENCY/OFFICE: _____ REQUISITION #: _____

NATURE, CAUSE OF THE EMERGENCY. Explain what the emergency is and/or what caused the emergency situation to exist.

36 Fire hydrants have failed inspections and are not usable.

FINANCIAL/OPERATIONAL DAMAGE TO THE TOWN. Explain the financial or operational damage that will occur if this purchase is not made immediately

The fire department cannot provide adequate protection for the island residents without working fire hydrants.

REASON NEED WAS NOT ANTICIPATED. State the reason(s) why the need for the purchase was not, or could not be anticipated, so the items could have been procured through normal procedures.

Until the inspections were done, we were not aware of any problems.



Signature of Head of Dept.

7.21.25

Date



Signature of Administrative Services/Finance Director

7.22.25

Date

7/22/25

Date

Any emergency purchase in excess of \$25,000 must be approved by the Town Council as soon as practicable after the purchase.

Agenda Date _____ Attach Copy for Audit _____

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF EQUIPMENT AND PROGRAMMING SERVICES FROM BCI TECHNOLOGIES AS A SOLE SOURCE PROVIDER IN ACCORDANCE WITH SECTION 2-480(C) OF THE TOWN'S CODE OF ORDINANCES IN THE AMOUNT OF \$63,502.37 TO ALLOW MONITORING OF THE WATER PRESSURE IN THE TOWN'S UTILITY SYSTEM AT THE SOUTH BOOSTER STATION; AUTHORIZING THE TOWN MANAGER TO SIGN THE PURCHASE ORDER; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$63,502.37 is over \$20,000 which is the limit that can be approved as a sole source purchase.

What the action accomplishes:

This action enables the town to comply with its purchasing ordinance which requires the Town Council ratification of sole source purchase of over \$20,000.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director, Mark Ashton,
Utilities Manager

5. **Background:**

The Town is changing the South Distribution Tower operation to a fill and pump station. This incorporates new fill piping (already being done), new Variable Frequency Drive (VFD) driven pumps (already purchased waiting for delivery), and a new operating program. By making these changes, the station will be able to provide water and pressure on a more consistent basis for the entire day on the south end of the island. This expenditure is the last piece of the puzzle that will allow the tower to operate with the new equipment. Most of the current hardware and software were original with the station (1986). The new equipment must work in conjunction with Lee County Utilities (LCU) and the Town of Ft Myers Beach (Homeland security approved vendor). The equipment is the SCADA (supervisory control and data acquisition) part and the PLC (programmable logic controller). The SCADA system gathers all the data needed (pressures, tank levels, flows, etc.) and feeds into the PLC. We then program the PLC to allow us to set the equipment to operate the station how we need it to. It also gives us real-time data of what is happening in the system (pressure, flows etc.). When we receive calls for problems, this aids in determining if it is an island-wide issue or just a single house problem. In addition, we must send all this to the LCU water plant that controls the station (24 hrs/ day 7 days per week). Without the controls the tower will be unusable.

Attachments:

1. 25-238; BCI Controls NS
2. Exhibit A to Resolution 25-238 - BCI Quote
3. Justification of BCI
4. Sole Source Justification - BCI South Tower 7-2025

Financial Impact:

The total expenditure will be funded through Water Dept Fund Balance.

6. **Alternative Action**

7. **Management Recommendations:**

Management recommends ratification of these expenditures to comply with the town's purchasing ordinance.

8. **Recommended Approval:**

Amy Baker, Town Clerk
Susan Roberts, Interim Finance Director
Jeff Hauge, Community Services Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Final Approval - 7/28/2025

RESOLUTION NUMBER 25-238

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF EQUIPMENT AND PROGRAMMING SERVICES FROM BCI TECHNOLOGIES AS A SOLE SOURCE PROVIDER IN ACCORDANCE WITH SECTION 2-480(C) OF THE TOWN'S CODE OF ORDINANCES IN THE AMOUNT OF \$63,502.37 TO ALLOW MONITORING OF THE WATER PRESSURE IN THE TOWN'S UTILITY SYSTEM AT THE SOUTH BOOSTER STATION; AUTHORIZING THE TOWN MANAGER TO SIGN THE PURCHASE ORDER; 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's South Booster Station is in need of a PLC Upgrade and VFD Coding in order to effectively monitor the water system's pressure as work continues to upgrade the pressure in the Town's water system; and

WHEREAS, BCI controls is the only authorized vendor to work on both the Towns and Lee County Utilities operating system; and

WHEREAS, the purchase of the requested equipment and services from BCI Technologies is in the best interest of the Town and its residents.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The requested sole source purchase from BCI Technologies in the amount of \$63,502.37 is approved and the Town Manager is authorized to sign the purchase order, a copy of which is attached as Exhibit A to this Resolution.

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.



Remit to address:
US Water Services Corporation
dba Blackburn Controls

Quotation #: 11611
Revision #: 001
Date: 5/22/2025

Controls & Integration
13891 Jetport Loop Unit 14
Fort Myers, FL. 33913
Ph. 239.433.9600

dba BCI Technologies
4939 Cross Bayou Blvd.
New Port Richey, FL 34652

Corporate Office
1619 E. Vine St.
Kissimmee, FL. 34744
Ph. 407.847.8848
Fax. 407.847.8824

Quotation for: Town of Fort Myers Beach

Phone:

Email: mashton@fmbgov.com

Attention: Mark Ashton

Validity: 60 Days

Terms: Net 30 Days

Project Reference: Fort Myers Beach South Booster Station PLC Upgrade and VFD Coding

Scope of Work: see below

Addendums Reviewed: n/a

Item	Qty	Description	Unit Price	Total Price
1	1	PLC Upgrade and VFD additional coding New SCADAPack 474 (current PLC is obsolete) New Local HMI (current HMI is obsolete) Update electrical schematics with new PLC Update electrical controls within panel Add electrical controls for new VFDs Update PLC code for new theory of operation Update local HMI and remote SCADA at Green Meadows Write new functional testing procedure Install new PLC and update control wiring Functional test new system Provide new O&M Manual for new system <u>Project Includes:</u> Engineering, commissioning, training and O & M Manual <u>Project Excludes:</u> VFDs and Wiring between VFD and Control Panel Any other items not expressly mentioned in this proposal.	\$63,502.37	\$63,502.37
Subtotal				\$63,502.37
Sales Tax			0.00%	\$0.00
Total				\$63,502.37

Thank you for your consideration,
Daniel Blocker
Vice President I&C Division



July 22, 2025

This letter is justification for the Town to use BCI Controls to install new update hardware and reprogram the software to allow for the operation of the South Water Tower with the new pumps and valves currently being installed at the tower location. BCI Controls is the only authorized vendor approved to work on both the Towns and Lee County Utilities operation system.

Sincerely,

 7.26.25

Jeff Hauge, Community Services Director

**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 supplier is to replace and program the PLC (Programmable Logic Controller) that operates the South Tower Distribution pumping station. The station delivers water to the south end of the island and is critical to our system to achieve the FDEP (Florida Department of Environmental Protection) required pressures in the system.

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:** BCI controls is the only authorized vendor to work on both the towns and Lee County Utilities operating system.

6. Efforts to Obtain Competition: Review of the company is attached to this document.

7. Fair and Reasonable: Cost comparisons are limited since no one is allowed access to the system, therefore we recommend BCI controls 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.

accurate and complete.

Jeff Hauge  7.28.20
Name Signature Date

Finance Review: _____

If over \$20,000 Must go to Town Council for approval

Agenda Date _____ Attach Copy for Audit _____

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #9 WITH TETRA TECH, INC. IN AN AMOUNT NOT TO EXCEED \$74,500 FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 22-25-AD IN THE AMOUNT OF \$727,348, FOR THE CONTINUATION OF MAPPING SERVICES IN THE TOWN'S GEOGRAPHIC INFORMATION SYSTEM (GIS) TO COMPLY WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION RULES REQUIRING A LOCAL GOVERNMENT TO KEEP MAPPING OF ITS UTILITY DISTRIBUTION SYSTEM UPDATED; AUTHORIZING THE TOWN MANAGER TO SIGN STA #9 AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$74,500 added to the RFP22-25-AD brings the amount to 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:**

Jeff Hauge, Community
Services Director, Mark Ashton,
Utilities Manager

5. **Background:**

The Town does not have a full-time staff (host) for our GIS system. Therefore, we have worked in conjunction with Tetra Tech Engineering to manage our GIS system. This STA is to continue the services while also educating, training, and upgrading the staff with the tools necessary to update our layers. The GIS system gives us a complete overview of our utilities system. The layers are water valves, fire hydrants, distribution, storm water. Then, in each layer are the individual nodes say for a fire hydrant. We will have the ability to have Global Positioning System (GPS) coordinates (the GIS system is based off GPS coordinates) plus enter in any other data we may have on that item. Date installed, date maintained or flushed, make, model, size, condition, special notes, and pictures. This is also required by the Department of Environmental Protection (DEP) 62-555.350(14) which states community water systems must have and maintain a map showing the location and size of water mains if known; the location of valves and fire hydrants; and the location of any pressure zone boundaries, pumping facilities, storage tanks, and interconnections with other public water systems. It also meets the requirements for our MS4 permit dealing with stormwater. Compiling data from the Tier 1 project valve exercising program, fire hydrant quarterly flushing program, and our Vaccon (stormwater) truck cleaning out drains, must be input into the GIS. By continuing our GIS system, we help all the customers of our utilities system by being able to pinpoint the valves hydrants, pipes and other items in the system so after storm events or emergency situations (water breaks) we can quickly and efficiently shut water off, if required, preventing unnecessary water outages. This improves the health and safety of all our citizens and visitors.

Attachments:

1. NS 25-237, STA 3, Tetra Tech GIS (1)

2. Exhibit A to Resolution 25-237 -STA # 9 - GIS Mapping Update

Financial Impact:

The total expenditure will be funded through Water Dept Fund Balance.

6. **Alternative Action**

7. **Management Recommendations:**

Management recommends ratification of these expenditures to comply with the town's purchasing ordinance.

8. **Recommended Approval:**

Amy Baker, Town Clerk
Jeff Hauge, Community Services Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Final Approval - 7/28/2025

RESOLUTION NUMBER 25-237

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #9 WITH TETRA TECH, INC. IN AN AMOUNT NOT TO EXCEED \$74,500 FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 22-25-AD IN THE AMOUNT OF \$727,348 FOR THE CONTINUATION OF MAPPING SERVICES IN THE TOWN'S GEOGRAPHIC INFORMATION SYSTEM (GIS) TO COMPLY WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION RULES REQUIRING A LOCAL GOVERNMENT TO KEEP MAPPING OF ITS UTILITY DISTRIBUTION SYSTEM UPDATED; AUTHORIZING THE TOWN MANAGER TO SIGN STA #9 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 became aware of the need to update its geographic information system during an emergency water break when looking for valves and piping as well as its obligation to keep information regarding its utility system up to date as required by the Florida Department of Environmental Protection; and

WHEREAS, the Town has an existing contract with Tetra Tech, Inc. for various professional services, which to date have been reliable and beneficial to the Town; and

WHEREAS, the Town requested and Tetra Tech, Inc. provided a quote to complete the Town's need in an amount not to exceed \$74,500, which requires approval by the Town Council since the cumulative amount of the Town's contract with Tetra Tech, Inc. exceeds the Town Manager's approval authority; and

WHEREAS, approval of STA #9 is in the best interest of the Town and its residents by providing a safer and more reliable utility system as well as compliance with state regulatory rules.

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. STA #9 is hereby approved and the Town Manager is authorized to execute STA #9, a copy of which is attached as Exhibit A.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon 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.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 9

CONTRACT/PROJECT NAME: FY25 GIS Support

CONSULTANT: Tetra Tech, Inc.

PROJECT NO.: _____

SOLICIT NO.: RFQ-22-25-AD

CONTRACT NO.: RFQ-22-25-AD

REQUESTED BY: Mark Ashton

DATE OF REQUEST: 04/09/2025

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: 06/23/2025

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: 06/23/2025

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: 06/23/2025

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: 06/23/2025

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date _____ By: _____ Date _____
Department Director Contracts Manager

By: _____ Date _____
Finance Department

ACCEPTED: Tetra Tech, Inc.

By:  6/23/25
Consultant/Provider Date

TOWN APPROVAL:

By: _____ Date _____
Town Manager

Date to Proceed: _____

Cost of STA: \$74,500

Completion Due Date: _____

EXHIBIT ASCOPE OF PROFESSIONAL SERVICES
FY25 GIS SUPPORT**Overview****STA NO. 3: FY25 GIS SUPPORT**

The Town of Fort Myers Beach (TOWN) owns and maintains various assets, including potable water and stormwater systems. The TOWN utilizes an online GIS system (through ArcGIS) to maintain a digital documentation of its inventory, maps, databases and overall GIS platform. The CONSULTANT provides miscellaneous services to the TOWN to host and maintain this system. To continue with this assistance, the following is proposed:

Task A: As-Needed GIS Support

CONSULTANT will perform various tasks on an as-needed basis at the request of the TOWN. These services may include:

Online GIS Platform Maintenance

The TOWN's existing GIS infrastructure for potable water and stormwater is posted and maintained within the CONSULTANT's secure GIS environment. Data from Tetra Tech's servers are shared to ESRI's GIS web portal known as ArcGIS Online. TOWN staff has access to the data through the web or via smart phone through the ArcGIS Online service. The CONSULTANT will continue to maintain the TOWN's GIS data on its servers, and to maintain the existing ArcGIS online platform for the next year through this task authorization. This includes hosting, maintenance, and troubleshooting services. A 1-year annual renewal fee from the ArcGIS Online provider are included in this task. This renewal also includes up to six (6) users for the TOWN's employees to access the system.

As-Built Conversion

As changes or improvements are made to the TOWN's potable water or stormwater systems, the CONSULTANT's GIS team will use the digital as-built record drawings to update the existing GIS system upon completion of construction. This includes the locations of infrastructure assets such as water mains, valves, storm inlets and hydrants. Additionally, important asset descriptors such as material, diameter will be updated in the data tables for each asset.

Continuing GIS Professional Services

CONSULTANT will perform miscellaneous GIS services at the TOWN's request. This may include layering modifications, assistance with input of data (such as improvements performed by the TOWN), training TOWN staff or extracting data from the GIS system for the TOWN's use.

Hourly Breakdown:

Personnel	Hourly Rate	Hours	Cost
Sr Engineer 1	\$245	48	\$11,760
Sr Consultant 2	\$225	227	\$51,075
Sr CAD Designer 1	\$130	60	\$7,800
Other Direct Costs – GIS Platform			\$3,865
TOTAL		339	\$74,500

Total Cost (of Job): \$74,500.00

EXHIBIT B

Date 06/23/2025

COMPENSATION AND METHOD OF PAYMENT

FY25 GIS Support

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
A	As-Needed GIS Support	\$74,500	NTE	WIPP
TOTAL		\$74,500		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 06/23/2025, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 06/23/2025, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 06/23/2025

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR

FY25 GIS Support

Consultant or Sub-consultant Name: Tetra Tech, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule as Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 06/23/2025

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

FY25 GIS Support

CONSULTANT OR SUB-CONSULTANT NAME: Tetra Tech

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.54/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 06/23/2025

TIME AND SCHEDULE OF PERFORMANCE

FY25 GIS Support

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
A	As-Needed GIS Support	400	400

EXHIBIT D

Date: 06/2399999/2025

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

FY25 GIS Support

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	NONE					



Price Proposal

Labor Plan

3 Resources

Price Summary / Totals

Task Pricing Totals 74,500

FY25 GIS Support

Bill Rate >

245.00 225.00 130.00

As-Needed GIS Support

Submitted to: Town of Fort Myers Beach (Attn: Mark Ashton)

Contract Type: T&M

Total
Labor Hrs

335

Sr Engineer 1 (Fey, Eric)

Sr Consultant 2
(Montalvo, Alex M)

Sr CAD Designer 1 (Cyr,
Steven J)

48

227

60

Pricing by Resource

Task Pricing
Totals

Labor

ODCs

70,635

3,865

74,500

Project Phases / Tasks

Task A - As-Needed GIS Support

335

48

227

60

70,635

3,865

74,500

Online GIS Platform Maintenance

48

8

40

10,960

3,828

14,788

As-Built Conversion

117

20

37

60

21,025

21,025

Continuing GIS Professional Services

170

20

150

38,650

37

38,687

Totals

335

48

227

60

70,635

3,865

74,500

1. **Request:**

Meeting Date: August 4, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO AWARD THE WATER METER REPLACEMENT PROJECT BID TO THE NATIONAL METERING SERVICE FOR A PRICE OF \$1,619,790. THIS ACTION ALLOWS FOR THE REPLACEMENT OF ALL 5/8- AND 1-INCH METERS IN THE TOWNS WATER DISTRIBUTION SYSTEM, WITH AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$1,619,790 is over \$75,000 which is the limit that can be approved by the Town Manager.

What the action accomplishes:

This action enables the Town to comply with its purchasing ordinance which requires the Town Council ratification of purchases over \$75,000.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director, Mark Ashton,
Utilities Manager

5. **Background:**

The Town of Fort Myers Beach plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (ERT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AIM System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection. In addition, the meters in the system have been through numerous hurricanes, floods, and storm surges and damage causing the corrosion of the electrical components of the AMR meters due to water intrusion which caused the meters to provide inaccurate readings or no reading at all for billing purposes (loss of revenue). Also, health hazards are possible due to corrosion of the internal components of the water meters which can contaminate the potable water running thru it. There are also many meters that are too old and will not work in the AMI system. The project also includes replacing meter boxes, curb stops, meter spuds, and installing antennas. The only stipulation is if the contractor comes to a meter box with an antenna already installed, they will skip, because this indicates that the town has already replaced the meter and brought it up to standards.

Attachments:

1. NS 25-235, ITB-25-05-PW Water Meter Replacement
2. Staff Selection Recommendation
3. Ranking Sheet of Bid Responses
4. National Metering Services, Inc. Response to Bid
5. ITB-25-05-PW Water Meter
6. Ranking Sheet of Project Costs

Financial Impact:

The total expenditure will be funded through Water Department Fund Balance and reimbursed through the Federal Emergency Management Agency (FEMA, Tidal basin),

6. **Alternative Action**

Do not approve the bid.

7. **Management Recommendations:**

Management recommends ratification of these expenditures to National Metering Service to comply with the town's purchasing ordinance.

8. **Recommended Approval:**

Amy Baker, Town Clerk
Jeff Hauge, Community Services Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Approved - 7/28/2025
Final Approval - 7/28/2025

RESOLUTION NUMBER 25-235

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AWARDING ITB 25-05-PW TO NATIONAL METERING SERVICE TO REPLACE ALL 5/8- AND 1-INCH WATER METERS IN THE DISTRIBUTION SYSTEM FOR USE IN THE ADVANCED METERING INFRASTRUCTURE METER READING SYSTEM (AMI) THE TOWN IS INSTALLING IN ORDER TO PROVIDE FOR A SAFE AND RELIABLE UTILTIY METERING SYSTEM IN AN AMOUNT TO EXCEED AMOUNT OF \$1,619,790; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH NATIONAL METERING SERVICE SUBJECT TO LEGAL SIGN-OFF; 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 became aware of non-reading or inefficient meters and issued ITB-25-05-PW, seeking contractors to replace all 5/8- and 1-inch meters in the Town's distribution system to allow the meters to be able to be compatible with the advanced metering infrastructure meter reading system (AMI) the town is installing; and

WHEREAS, 5 responses to ITB 25-05-PW were received and the bid from National Metering Service was evaluated by Community Services Director Hauge and Utilities Manager Ashton, and determined to be the most responsive bidder; although not the lowest bid due to negative references received of the lowest cost vendor, and

WHEREAS, authorizing the Town Manager to negotiate and execute an agreement with National Metering Service in an amount not to exceed \$1,619,790 in accordance with the Bid requirements and subject to legal sign-off is in the best interest of the Town and the residents of the Town of Fort Myers Beach.

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. The ITB 25-05-PW is awarded to National Metering Service and the Town Manager is authorized to negotiate and execute an agreement with National Metering Service in an amount not to exceed \$1,619,790 in accordance with the Bid requirements and subject to legal sign-off.

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.



(239) 765-0202

2731 Oak St, Fort Myers Beach, Florida 33931

www.fortmyersbeachfl.gov

July 22, 2023

This letter is justification for the Town to accept the bid of \$1,619,790.00 from National Metering Service. National Metering Services were the lowest responsible bidder. There was one bid that was lower, Utilities One, however, reference checks came back with negative reviews including multiple change orders for projects after they were selected for the work.

Sincerely,

Jeff Hauge

Community Services Director
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL. 33931
Phone: (239) 765-0202

bidder	Meters				Antennas		Curb stops		Spuds		Box and lid		Bid without mltipling as needed items	Total bid proposed.
	5/8" cost per meter #2500		1" cost per meter #250		Cost per antenna #3000		5/8	1	5/8	1	Box	lid		
Town cost	\$353		\$425		\$37									
Ackerman Plumbing														
Cathcart	\$1,224	\$3,060,000	\$1,350	\$337,500	\$160	\$480,000	\$950	\$975	\$350	\$360	\$690	\$335	\$3,883,894	\$3,881,160
National Metering Serv	\$455	\$1,137,500	\$599	\$149,750	\$41	\$123,000	\$176	\$218	\$26	\$33	\$175	\$69	\$1,412,042	\$1,619,790
Utlities One	\$236	\$590,000	\$425	\$106,250	\$269	\$807,000	\$254	\$318	\$58	\$69	\$614	\$480	\$1,505,973	\$1,505,044
Vanguard	\$461	\$1,152,500	\$633	\$158,250	\$51	\$153,000	\$140	\$206	\$24	\$29	\$160	\$67	\$1,465,521	\$1,641,624



TOWN of FORT MYERS BEACH

National Metering Services, Inc. **BIDDER SUBMITTAL CHECKLIST**

THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE BIDDER IN PREPARING A COMPLETED BID SUBMITTAL

IMPORTANT: 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
- ☒ 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)

FOR

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

Bids are to be submitted by
Monday, July 7, 2025, at 12:00 pm LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

**LOCATION: Town Hall
Town Hall Council Chambers
6231 Estero Blvd
Fort Myers Beach, FL. 33931**

Monday, July 7, 2025, at 1:00 pm LOCAL TIME

BIDDER: National Metering Services, Inc.
(Individual or Firm Name)



ADDENDUM TO PROPOSAL

ITB-25-05-PW

Addendum No.: 1

Project Name: Water Meter Replacement Project

Date of Issue: June 30, 2025

The following inquiries were received regarding the above reference RFP:

Q. Is a Neptune meter only proposal or are you accepting alternative bids?

A. Neptune is the required meter.

Q. Is there an estimated budget?

A. At this time, we will examine the bids first.

Q. Is there a start date and end date?

A. The project should take no more than one year and the start date is within 30 days of receiving the Notice to Proceed.

Deb Glavin, Contracts & Procurement Specialist
bids@fmbgov.com 239-765-0202

John McArthur
1 | Page

6/30/25



ADDENDUM TO PROPOSAL

ITB-25-05-PW

Addendum No.: 2

Project Name: Water Meter Replacement Project

Date of Issue: June 30, 2025

The following inquiries were received regarding the above reference ITB:

Q. What is the existing meter brand?

A. Neptune

Q. What is the approximate geographic area of the meters to be covered under this contract?

A.

Q. What is the billing software the town utilizes?

A. CUSI-UB4 and Neptune 360

Q. If the Contractor provides storage, will the Town provide an area for the Contractor to place the storage container?

A. Depends on size and space available

Q. Will the Contractor be paid for "stored materials"?

A. Town will not pay for the storage

Q. How are the current meters being read?

A. AMR

Q. Will the transmitters be mounted through the meter box lids?

A. Yes

Q. Are there any existing holes in the lid?

A. Some, if new boxes are installed then it is up to the contractor to buy lids with holes


6/30/25
1 | Page

Q. What percentage of meter boxes are located in concrete or asphalt?

A. Unknown

Q. Do all settings have shut off valves before the meters?

A. Can not guarantee they all do that is part of the job if they do not, then they must be installed.

Q. Are all valves in the meter box?

A. Not all but most

Q. What is the procedure for any inoperable or broken valves?

A. Contractor will replace

Q. What is the age and primary make-up of service lines? (copper, plastic or galvanized)

A. The majority are poly lines with some pvc or galvanized (very rare)

Q. Who will provide Meter Tags for the old meters?

A. Contractor

Q. Electronic page 5 "Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required." Question Will the Town provide a list of these locations, or will the contractor have to determine out in the field?

A. Contractor determines the field

Q. Please confirm the Town is Tax Exempt?

A. Yes

Q. Please confirm that the contractor will be providing all material listed on the Bid Sheet.

A. The Contractor is responsible to provide all material on the bid sheet.

Q. Please confirm the contractor will only be responsible for leaks they have caused, no pre-existing leaks?

A. The Contractor will be responsible to repair leaks the Contractor created.

Q. Please confirm the contractor will be replacing existing curb stops?

A. Yes, if needed

Q. Will testing be required as part of this contract?

A. The meter must be turned on and fittings tested for leaks

Deb Glavin, Contracts & Procurement Specialist

John Costa
6/30/25
2 | Page

bids@fmbgov.com 239-765-0202



RESCHEDULED

**PUBLIC NOTICE
--- BID OPENING ---**

**THE TOWN OF FORT MYERS BEACH WILL HOLD A PUBLIC
BID OPENING FOR:**

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

Wednesday, July 9, 2025, at 1:00PM

NEW LOCATION

**MOUND HOUSE
451 CONNECTICUT STREET
FORT MYERS BEACH, FL 33931**

John Catu
7/2/25

All awards made as a result of this bid shall conform to applicable State laws and local ordinances. The Town reserves the right to accept or reject any bid in its sole discretion or not make any award.



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM

(2 of 5 Pages)

Monday, July 7, 2025

(DATE)

12:00 pm. LOCAL TIME

(TIME)

Town Hall Council Chambers

2371 Pak 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:

**WATER METER REPLACEMENT PROJECT
ITB-25-05-PW**

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
 - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
 - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is



TOWN of FORT MYERS BEACH

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.



TOWN of FORT MYERS BEACH

Water Meter Replacement Project Bid Sheet					
Size	Brand Specific	Model	Approx Number of Units	Unit Price	Extended Price
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500	\$454.80	\$1,137,000.00
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250	\$599.35	\$149,837.50
Antenna	Neptune Technology Group		3,000	\$41.00	\$123,000.00
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites	\$176.93	\$176,930.00
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites	\$218.12	\$32,718.00
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed	\$26.34	\$26.34
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites	\$33.45	\$33.45
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed	\$175.95	\$175.95
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed	\$69.48	\$69.48
				Base Bid Total	\$1,619,790.72

Name of Bidder: National Metering Services, Inc.

Total Base Price: \$1,619,790.72



TOWN of FORT MYERS BEACH

(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: 6/30/25 Addendum No. 2 Dated 7/1/25

Addendum No. 3 Dated: 7/2/25 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 240 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 365 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.

Peter Martin

(Name of License Holder)

CUC-1224998

(State Certificate No.)

74-8017540071-2

Business Tax Receipt No. (Specify jurisdiction)

F03000002137

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this 3rd day of July, 2025.

William Castle

President

By: Printed

By: Signature

President

TITLE: President

National Metering Services, Inc.

Company Name

235 Hatteras Ave Suite 200

Mailing Address

Clermont Florida 34711

City, State, and Zip

William Castle

Contact Person

wcastle@nmsnj.com

E-mail / Contact Person

201-628-2850

Telephone Number

201-246-1831

Fax Number

ATTEST:

Secretary John Castle

(Seal)

THE TOWN OF FORT MYERS BEACH



INVITATION TO BID

WATER METER REPLACEMENT PROGRAM

Project# ITB-25-05-PW

Issued: Thursday, June 6, 2025

Proposals Due: Monday, July 8, 2025, at 1:00 p.m.

Prepared by:

Town of Fort Myers Beach
6231 Estero Blvd
Fort Myers Beach, FL 33931



TABLE OF CONTENTS

INVITATION TO BID	3
LEGAL NOTICE TO BIDDERS	5
INSTRUCTIONS TO BIDDERS	8
FEDERAL AND STATE GUIDELINES	16
TECHNICAL SPECIFICATIONS.....	29
BID PROPOSAL FORMS	41
SAMPLE CONSTRUCTION CONTRACT.....	67



INVITATION TO BID

ITB-25-05-PW

The TOWN OF FORT MYERS BEACH, Florida will receive **ELECTRONIC BIDS** for **Water Meter Replacement Program, ITB-25-05-PW** electronically via Demandstar.com on or before **July 8, 2025, 12:00 P.M. local time.**

INTRODUCTION: The Town of Fort Myers Beach (the “TOWN”) plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (ERT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AMI System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection.

The requirements for the Water Meter Replacement project also includes, but is not limited to, the repairing or replacing of the water meter box, removal of existing water meters and boxes, maintenance of traffic, trench/roadway restoration, site restoration, and all the other appurtenances necessary to complete the project. The Town currently uses two sizes of meters: 5/8 inches and 1 inch.

During the course of the project, Bidder will be required to work and coordinate with multiple departments within the Town to ensure smooth process and accuracy in reporting and documentation.

- Coordination with the Customer Service Department is critical to ensure that sectors of the Town (cycle route) are not being read on or billed at the same time as meter exchanges.
- Coordination with the Water Department is needed in the process of receiving a snapshot of all water meters in the Town.

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 Technical Specifications. For the locations of the work areas in the Town, the Customer Service Department will assist when awarded. The project is the residential area.

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 Bid Bond on this project.

Project documents and specifications can be viewed at Demandstar.com or by contacting the Town



TOWN of FORT MYERS BEACH

Clerk's office.

The official bid documents shall be obtained from 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.

Anticipated Schedule:

Task	Date
Non-Mandatory Pre-Bid Meeting	N/A
Questions Due	Monday, June 23, 2025, by 1pm
Bids Due	Monday, July 8, 2025, at 12:00pm
Bid Opening	Monday, July 8, 2025, at 1:00pm
Town Council Award and Authorize Contract Execution	Monday, August 4, 2025, Town Council Meeting



LEGAL NOTICE TO BIDDERS

LEGAL NOTICE TO BIDDERS Water Meter Replacement Project

ITB-25-05-PW

NOTICE IS HEREBY given that sealed, electronic bids will be received by the TOWN OF FORT MYERS BEACH through www.demandstar.com until 12:00 pm LOCAL TIME on Tuesday, July 8, 2025. Bids will be opened at 1:00pm, July 8, 2025, at a location to be determined.

PROJECT: Water Meter Replacement Project

Any bid received by the Town after the above date and time shall remain unopened.

SCOPE OF WORK: The Town of Fort Myers Beach (the "TOWN") plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (RT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AMI System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection..

The Bidder is expected to purchase materials and equipment for approximately 3,000 water meters and complete the installation for the residential properties. Bidder is also required to purchase and inventory the materials and equipment.

The requirements for the Water Meter Replacement project also includes, but is not limited to, the repairing or replacing of the water meter box, removal of existing water meters and boxes, maintenance of traffic, trench/roadway restoration, site restoration, and all the other appurtenances necessary to complete the project. The Town currently uses two sizes of meters: 5/8 inches and 1 inch

Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required.

During the course of the project, Bidder will be required to work and coordinate with multiple departments within the Town to ensure a smooth process and accuracy in reporting and documentation.

- Coordination with the Customer Service Department is critical to ensure that sectors of the Town (cycle route) are not being read or billed at the same time as meter exchanges.
- Coordination with the Water Department is needed in the process of receiving a snapshot of all water meters in the Town.

The TOWN will require a Bid Bond

The official bid documents and project specifications shall be obtained from 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
- 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

WATER METER REPLACEMENT PROGRAM
ITB-25-05-PW

- 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. Signed Acknowledgment of Receipt of Addenda (if any).
 - 3.2.8. Bid Sheet

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:



TOWN of FORT MYERS BEACH

- 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.

INSTRUCTIONS TO BIDDERS

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. "SAMPLE 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.



TOWN of FORT MYERS BEACH

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 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

- 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
- \$3,000,000 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
- \$1,000,000 Aggregate Bodily injury per accident



TOWN of FORT MYERS BEACH

\$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.

This required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

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.



TOWN of FORT MYERS BEACH

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.



TOWN of FORT MYERS BEACH

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. 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.

15. IMMIGRATION LAWS

- 15.1. 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").
- 15.2. 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.

END OF INSTRUCTION TO BIDDER

FEDERAL AND STATE REQUIREMENTS

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 of 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.



TOWN of FORT MYERS BEACH

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 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



TOWN of FORT MYERS BEACH

invoice, the contractor shall promptly refund to the Town the amount of such overpayment.

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



TOWN of FORT MYERS BEACH

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 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 HALL
6231 ESTERO BLVD**



TOWN of FORT MYERS BEACH

FORT MYERS BEACH, FLORIDA 33931

(239)765-0202

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 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



TOWN of FORT MYERS BEACH

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 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.

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



TOWN of FORT MYERS BEACH

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.

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.



TOWN of FORT MYERS BEACH

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 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,



TOWN of FORT MYERS BEACH

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 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



TOWN of FORT MYERS BEACH

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, 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:

End of Federal and State



WATER METER REPLACEMENT PROJECT TECHNICAL SPECIFICATIONS

TS-1.0 Scope of Work

The Town of Fort Myers Beach (the “Town”) plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (RT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AMI System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection.

The Bidder is expected to purchase materials and equipment for approximately 3,000 water meters and complete the installation for the residential properties. Bidder is also required to purchase and inventory the materials and equipment.

The requirements for the Water Meter Replacement project also includes, but is not limited to, the repairing or replacing of the water meter box, removal of existing water meters and boxes, maintenance of traffic, trench/roadway restoration, site restoration, and all the other appurtenances necessary to complete the project. The Town currently uses two sizes of meters: 5/8 inches and 1 inch

Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required.

During the course of the project, Bidder will be required to work and coordinate with multiple departments within the Town to ensure a smooth process and accuracy in reporting and documentation.

- Coordination with the Customer Service Department is critical to ensure that sectors of the Town (cycle route) are not being read or billed at the same time as meter exchanges.
- Coordination with the Water Department is needed in the process of receiving a snapshot of all water meters in the Town.

TS-2.0 Work Plan

Prior to commencement of Work the Contractor must understand the additional requirements besides the replacement of the water meter for the project:

- As needed, repair or replace curb stops.
 - Repair or replacement is to the resident’s connection.
- Requirement – meter couplings required (spuds) on both sides of the new meter.
- If needed – replace the water meter box

TS-2.1 Reports

The Contractor shall maintain a record of the meter replacements through the meter

exchange tickets. The Contractor shall take a photograph for the Town of each existing meter and new meter once the meter has been replaced to verify replacement has occurred.

- Serial Number
- Meter Size
- Location Address

TS-2.2 Meetings/Communication

During the project, Contractor will be required to meet, work and coordinate with multiple departments with the Town to ensure smooth transition and accuracy in reporting and documentation.

- Utilities Customer Service Department – Coordinate efforts to ensure sectors of the Town (cycle routes) are not being read or billed at the same time of the meter exchange.
- Water Department – Coordinate if needed to receive a snapshot of the water meter.

TS-3.0 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-3.1 Timeline

Project duration for completion is one (1) year from the time the contract is fully executed.

TS-3.2 Testing

Performance tests and checks are required for each meter and is the Contractors responsibility. The Town will assign a representative to periodically inspect the meters, appurtenances and site restoration.

TS-3.3 Repairs

The Contractor will have 24 hours to repair any and all leaks from the time the Contractor is notified by the Town's representative.

TS-4.0 Disposal of Old Meters

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

TS-5.0 Warranty

The Contractor shall provide the full manufacturer warranty. In addition, the Contractor shall provide an installation warranty covering workmanship and labor for a period of three (3) months.

The Contractor will repair the leaks and related damages to the residential property at no cost to the Town.

TS-6.0 Contractors Responsibility

The Contractor also accepts sole responsibility for any damage to any person and or property resulting from their performance of the work, whether based on negligence or any other equitable claim.

TS-6.1 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-7.0 General

The Contractor shall purchase the materials and equipment required for the Project as well as be responsible for storing and inventory. Table 1 presents the required Brand Specific materials and equipment. No deviations to Table 1 are allowed.

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

Proposed Water Meter Replacement Materials

Table 1

Size	Brand Specific	Model	Approx Number of Units
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250
Antenna	Neptune Technology Group		3,000
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed

TS-8.0 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.

TS-8.1 Disposal

Disposal of any materials, waste, trash, garbage, 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.



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

- ☐ 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)

FOR

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

Bids are to be submitted by
Monday, July 7, 2025, at 12:00 pm LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

LOCATION: Town Hall
Town Hall Council Chambers
6231 Estero Blvd
Fort Myers Beach, FL. 33931

Monday, July 7, 2025, at 1:00 pm LOCAL TIME

BIDDER: _____
(Individual or Firm Name)



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM

(2 of 5 Pages)

Monday, July 7, 2025

(DATE)

12:00 pm. LOCAL TIME

(TIME)

Town Hall Council Chambers

2371 Pak 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:

WATER METER REPLACEMENT PROJECT

ITB-25-05-PW

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
 - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
 - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is



TOWN of FORT MYERS BEACH

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.



TOWN of FORT MYERS BEACH

Water Meter Replacement Project Bid Sheet					
Size	Brand Specific	Model	Approx Number of Units	Unit Price	Extended Price
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500		
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250		
Antenna	Neptune Technology Group		3,000		
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites		
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites		
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed		
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites		
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed		
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed		
				Base Bid Total	

Name of Bidder: _____

Total Base Price: _____



TOWN of FORT MYERS BEACH

(4 of 5 Pages)

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 ____ consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in ____ 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

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:

**WATER METER REPLACEMENT PROJECT
ITB-25-05-PW**

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 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)

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)

15. Attach a list of the no fewer than five (5) prime contracts involving 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:

19. List no less than three (3) and preferably five (5) financial references:



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 _____ 2025

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)

- 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 _____, 2025, 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 _____, 2025, 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

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 _____



FMB:024 - LIST OF SUB-CONTRACTORS

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any BIDDER who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the BIDDER/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

The BIDDER identifies the following firm as the proposed subcontractor of the:

Name of Firm: _____

Address and Phone: _____

Contact Person: _____

<u>Other Subcontractor and Address</u>	<u>Specialty</u>
1. _____ _____	_____
2. _____ _____	_____
3. _____ _____	_____

Signed _____



FMB:025 –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-25-02-PW**

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 _____,
2025, 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)

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 (PROJECT NUMBER) 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, 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 20th Judicial Circuit in and for Lee County, Florida.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due

consideration of the recommendations and analysis of the TOWN's 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)

(Corporate Seal)

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"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____, 2025,
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

FEDERAL CONTRACT PROVISIONS AND

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

FEDERAL CONTRACT PROVISIONS AND

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

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

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

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																						
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																						
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																						
A. PRIME VENDOR/CONTRACTOR INFORMATION																						
PRIME NAME		PRIME FED NUMBER		CONTRACT DOLLAR AMOUNT																		
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SOB BA? Y N		IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																		
IS THIS SUBMISSION A REVISION?		Y N		IF YES, REVISION NUMBER																		
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																						
DBE VETERAN	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
TOTALS:																						
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																						
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																		
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																		
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																						
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: left;">ETHNICITY</th> <th style="text-align: left;">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 cease all construction activities and prepare the project site when a storm event is anticipated to affect the locality. The CONTRACTOR shall respond immediately to the notice given by the TOWN for such preparation. Site preparation shall

consist of but not limited to the following

- a. Remove all construction signs
- b. Portable latrines should be removed from the site. If the latrines cannot be removed from the site, they must be laid down on their right side (looking from the front) to prevent waste from leaking out.
- c. The construction site must be clear of all loose tools, lumber, metal, aluminum and any other miscellaneous items that could create a hazard during strong wind conditions and/or storm surges. All other construction materials shall be adequately secured on-site.
- d. All chains, poles and weights used to block off construction sites, vacant lots and parking lots shall be removed as to not create a hazard during strong wind conditions and/or storm surges.
- e. Silt fence posts shall be secured in the ground ten inches (10") as to reduce the potential hazard of the post being uprooted, the silt fence meshing must be a minimum of four inches (4") below ground properly back filled. Other erosion control devices shall be adequately secured so as to not wash out or become a hazard.

7.28.2 If the CONTRACTOR fails to secure the site as provided in the Contract Documents, the TOWN may do so and the cost thereof shall be deducted from the final retainage due the CONTRACTOR.

Continuing the Work

7.29 The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the TOWN. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 13.7 (The TOWN May Stop Work) or as the CONTRACTOR and the TOWN may otherwise agree in writing.

Anti-Discrimination

7.30 The CONTRACTOR for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:

7.30.1 In the furnishing of services to the TOWN hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the grounds of race, religion, color, age, sex, national origin, handicap or marital status.

7.30.2 The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The CONTRACTOR will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

7.30.3 CONTRACTOR agrees to post in a conspicuous place, available to employees and applicants

for employment, notices setting forth the provisions of this anti-discrimination clause.

7.30.4 CONTRACTOR will provide all information and reports required by relevant regulations and/or applicable directives.

In addition, the CONTRACTOR shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN to be pertinent to ascertain compliance. The CONTRACTOR shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the TOWN its efforts made toward obtaining said information. The CONTRACTOR shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this CONTRACT.

7.30.5 In the event of breach of any of the above anti-discrimination covenants, the TOWN shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the CONTRACTOR or canceling, terminating or suspending this CONTRACT, in whole or in part.

Additionally, the CONTRACTOR may be declared ineligible for further TOWN contracts by rule, regulation or order of the Town of Fort Myers Beach, or as otherwise provided by law.

7.30.6 The CONTRACTOR will send to each labor union, or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the CONTRACTOR'S commitments under this assurance and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

7.30.7 The CONTRACTOR will include the provisions of paragraphs 7.30.1 through 7.30.6 in every sub-contract under this contract to 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. The Contract Representative, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the CONTRACTOR of the action taken by the Wage and Hour Division under this section. The CONTRACTOR must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination.

The wage rate (including fringe benefits where appropriate) determined pursuant to this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in

accordance with the criteria set forth in the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside, in a separate account, assets for the meeting of obligations under the plan or program.

(vi) **Interest.** In the event of a failure to pay all or part of the wages required by the Contract, the CONTRACTOR will be required to pay interest on any underpayment of wages.

(2) **Withholding** —

(i) **Withholding requirements.** The TOWN may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the CONTRACTOR so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the CONTRACTOR or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this Contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same CONTRACTOR. The necessary funds may be withheld from the CONTRACTOR under this contract, any other Federal contract with the same CONTRACTOR, or any other federally assisted Contract that is subject to Davis-Bacon labor standards requirements and is held by the same CONTRACTOR, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the CONTRACTOR liability for which the funds were withheld. In the event of the CONTRACTOR'S failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the CONTRACTOR'S failure to submit the required records as discussed in this section, the TOWN may on its own initiative and after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with this section, or both, over claims to those funds by:

(A) A CONTRACTOR'S surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) The TOWN for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A CONTRACTOR'S assignee(s);

(E) A CONTRACTOR'S successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) **Records and certified payrolls** —

(i) **Basic record requirements** —

(A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the CONTRACTOR and any subcontractor during the course of the work and preserved for all

laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under [paragraph \(a\)\(1\)\(v\)](#) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the CONTRACTOR must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements —**

(A) **Frequency and method of submission.** The CONTRACTOR or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to FEMA if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR will submit the certified payrolls to the TOWN, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA. The CONTRACTOR is responsible for the submission of all certified payrolls by all subcontractors.

FEMA or CONTRACTOR may permit or require subcontractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the CONTRACTOR, the TOWN, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the Contract has been completed; and the TOWN or CONTRACTOR permits other methods of submission in situations where the CONTRACTOR is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a CONTRACTOR to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor

to the TOWN that maintains such records).

(B) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subcontractor, or the CONTRACTOR or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (1) That the certified payroll for the payroll period contains the information required to be provided under this section, the appropriate information and basic records are being maintained under this section, and such information and records are correct and complete;
- (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by this section.

(E) **Signature.** The signature by the CONTRACTOR, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(G) **Length of certified payroll retention.** The CONTRACTOR or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) **Contracts, subcontracts, and related documents.** The CONTRACTOR or subcontractor must maintain this Contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The CONTRACTOR or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access —**

(A) **Required record disclosures and access to workers.** The CONTRACTOR or subcontractor must make the records required under this section, and any other documents that the TOWN or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the TOWN or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be,

that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action. In addition, any CONTRACTOR or other person that fails to submit the required records or make those records available to the TOWN within the time TOWN requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to TOWN. TOWN will take into consideration a reasonable request from the CONTRACTOR or person for an extension of the time for submission of records. TOWN will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** CONTRACTOR and its subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the TOWN and FEMA if FEMA is a party to the Contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the Contract, the CONTRACTOR, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) ***Apprentices and equal employment opportunity —***

(i) ***Apprentices —***

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program.

In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) **Apprenticeship ratio.** The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing

work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) **Reciprocity of ratios and wage rates.** Where a CONTRACTOR is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) **Equal employment opportunity.** The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The CONTRACTOR shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.

(6) **Subcontracts.** The CONTRACTOR or its subcontractor must insert in any subcontracts the clauses contained in this section, along with the applicable wage determination(s) and such other clauses or contract modifications as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The CONTRACTOR is responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in this section. In the event of any violations of these clauses, the CONTRACTOR and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a subcontractor as provided in [29 CFR 5.12](#).

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

- (i) By entering into this contract, CONTRACTOR certifies that neither it nor any person or firm who has an interest in the CONTRACTOR'S firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and

Criminal Procedure, [18 U.S.C. 1001](#).

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any CONTRACTOR of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#). per the standard described above, TOWN must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10)

18.1.5 Copeland “Anti-Kickback Act” - CONTRACTOR and its subcontractors shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement. CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of these contract clauses may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

18.1.6 Contract Work Hours and Safety Standards

(1) Overtime requirements. No CONTRACTOR or its subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth above the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The TOWN shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to

be withheld, from any moneys payable on account of work performed by the CONTRACTOR or its subcontractor under any such contract or any other federal contract with CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of CONTRACTOR or its subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. CONTRACTOR and its subcontractors shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(5) CONTRACTOR and its subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(6) Records to be maintained under this provision shall be made available by the CONTRACTOR or its subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

18.1. 7 Clean Air Act - The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONTRACTOR agrees to report each violation to TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA

18.1.8 Federal Water Pollution Control Act – The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The CONTRACTOR agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to FEMA, and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.”

18.1.9 Debarment - This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000.

As such, the CONTRACTOR is required to verify that none of the CONTRACTOR'S principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The CONTRACTOR must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the TOWN. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C,

in addition to remedies available to TOWN, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

18.1.10 Bryd Anti-Lobbying Act – CONTRACTOR shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

CONTRACTOR certifies, to the best of its knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. CONTRACTOR shall require that the language of the certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. CONTRACTOR’S certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of a certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

18.1.11 Procurement of Recovered Materials - In the performance of this Contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Contract performance schedule; meeting contract performance requirements; or at a reasonable price. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

18.1.12 Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, CONTRACTOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing— (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28 (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, the CONTRACTOR shall report the information in paragraph (d)(2) of this clause to the TOWN, unless elsewhere in this contract are established procedures for reporting the information.

(2) The CONTRACTOR shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the

CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The CONTRACTOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

18.1.13 Domestic Preference - As appropriate, and to the extent consistent with law, the CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

18.1.14 Audit - In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the TOWN and CONTRACTOR acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.”

18.1.15 DHS Seal, Flags, etc - THE CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The CONTRACTOR shall include this provision in any subcontracts.

PART E
FMB:007 – CONSTRUCTION CONTRACT
PUBLIC CONSTRUCTION BOND
(1 of 3 Pages)

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 ____, 2025_, 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)

- 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 _____, 2025

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)

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 _____, 2025 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 \$ _____	Original Contract Time _____ Calendar Days
Previous Change Order No. _____ to No. _____ \$ _____	Net Change from previous Change Orders _____ Calendar Days
Contract Price prior to this Change Order \$ _____	Contract Time prior to this Change Order _____ Calendar Days
Net Increase (Decrease) of this Change Order \$ _____	Net Increase (Decrease) of this Change Order _____ Calendar Days
Contract Price will all approved Change Orders \$ _____	Contract Time with all approved Change Orders _____ 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:
By: _____
Consultant (if applicable) Date

By: _____
Department Director Date

Contracts Management

APPROVED:

Town Attorney Date

ACCEPTED

By: _____
Contractor

Date Accepted: _____

(CORPORATE SEAL)

TOWN APPROVAL:

By: _____
Finance Director (Under \$75,000)

Date
Approved: _____

By: _____
Town Manager (Under \$75,000)

Date
Approved: _____

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

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)

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name(s): _____

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)

Contractor Name: _____

Project Manager: _____ Phone: _____

Project Name: _____ Fax: _____

Town Project Manager: _____ Bid #: _____

Notice to Proceed Date: _____ Completion Date: _____

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)

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

(Attach Additional Remarks)

Submitted _____
Project Manager Date

CONTRACTOR'S COMMENTS

(Attach Additional Remarks)

Submitted _____
Contractor Signature Date

Approved _____
Department/Division Director Date

Bid Tabulation	
Vanguard Utilites Services	\$ 1,641,624.02
Utilites One	\$ 1,505,044.02
Ackerman Plumbing	\$ 2,151,710.00
Cathcart Construction	\$ 3,881,160.00
National Meter Services	\$ 1,619,790.12

1. **Request:**

Meeting Date: August 4, 2025

A six-month review of approved Resolution 23-87 for Special Exception SEZ20230126 that allows for temporary outdoor consumption on premises with retail use at 163 Old San Carlos Boulevard.

Why the action is necessary:

A condition of the resolution approval requires that the case be reviewed every 12 months to ensure the applicant is making progress towards reconstruction of 185 Old San Carlos. At the August 7th, 2024 Town Council meeting, Council directed staff to reduce the review time to six months.

What the action accomplishes:

The special exception allowed the applicant to move the business at 185 Old San Carlos to 163 Old San Carlos, for an outdoor retail business with consumption on premises. Review of the resolution ensures that the applicant will move toward development of the property at 185 Old San Carlos.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Judith Frankel, Principal
Planner, Frankie Kropacek,
Community Development
Director

5. **Background:**

In 2023, Resolution 23-87 approved the transfer of an existing Consumption on Premises ("COP") permit from 185 Old San Carlos, a building severely damaged in Hurricane Ian, to 163 Old San Carlos to allow for the operation of an outdoor bar. A condition of Resolution 23-87 requires review by the Town Council every 6 months with an expiration at the end of August 2025. The property owner has advised that an additional extension beyond August 2025 is not needed as continued operations are not feasible. The existing Emergency Temporary Use Permit on 163 Old San Carlos will expire at the end of September 2025. No additional action by the Town Council is necessary. This matter was placed on the agenda for record keeping purposes only.

Attachments:

1. Staff Report - February 2024
2. Resolution 23-87 (Exhibit A to February 2024 Staff Report)

Financial Impact:

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Review and determine if the applicant has met the conditions of the resolution.

8. Recommended Approval:

Lizzette Roman, Town Clerk Administrative Coordinator
Judith Frankel, Principal Planner
Georgina Cid, Community Development Manager
Frankie Kropacek, Community Development Director
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/21/2025
Approved - 7/21/2025
Approved - 7/21/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/22/2025
Approved - 7/22/2025
Final Approval - 7/25/2025



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exception Amendment

CASE NUMBER: SEZ—Amendment, 20230126

CASE NAME: 163 Old San Carlos Blvd, six-month review of Special Exception 20210050 to temporarily move the 2 COP to an adjacent property and to amend conditions of approval.

LPA

HEARING DATE: February 3rd, 2024 at 9:00 AM

STAFF

RECOMMENDATION: Approve

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

I. APPLICATION SUMMARY

Applicant/Owner: Suzanne Bahan

Request: In August 2023 a special exception was approved to temporarily amend the existing Special Exception Resolution 21-46 to move the allowed use of the Consumption on Premises from 185 Old San Carlos to 163 Old San Carlos due to storm damage and to amend the Conditions of Approval B and C. modification of these conditions allowed consumption on premises outside of the building and allowed live music.

Physical Address: 163 Old San Carlos Blvd.

STRAP #: 24-46-23-W3-0050A.0140

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North:	Downtown/ Pedestrian Commercial Severely damaged previous location of SEZ
South:	Downtown/ Pedestrian Commercial Structure (current use unknown)
East:	Downtown/ Pedestrian Commercial Parking Lot
West:	Downtown/ Pedestrian Commercial Vacant Lot

II. BACKGROUND AND ANALYSIS

Background:

In 2021 Resolution 21-46 was approved which allowed for outdoor consumption of alcohol on premises in correlation with a retail store. The conditions of the special exception included:

- A. The 2COP is only valid in conjunction with a retail sales operation within the same business.
- B. No amplified music or entertainment unless within an entirely enclosed building. All activities are subject to the Town's noise regulations.
- C. No consumption of alcohol beyond the footprint of the existing enclosed structure.
- D. Any violation of the conditions of approval shall render the special exception null and void.

The property at 185 Old San Carlos Blvd. was approved for consumption on premises but was severely damaged by Hurricane Ian. The owner of 185 Old San Carlos also owns the adjacent, lot at 163 Old San Carlos. The owner requested a temporary amendment to the special exception to allow for the transfer of the 2COP to 163 Old San Carlos Blvd. This amendment also included modification to conditions B to allow amplified music and live entertainment, outside of a building, and C to allow consumption of alcohol within the confines of a fenced area, rather than within a building.

Analysis:

The outdoor retail store with sales of alcohol and a seating area for patrons is currently operational. Staff is not aware of any complaints regarding this use. Permits have not been applied for the demolition or repair of 185 Old San Carlos Boulevard. The conditions of approval are listed below and resolution 23-87 is included with the agenda packet.

At the August 2024 Town Council meeting, owner Susie Bahan stated that no permit applications were submitted because insurance was still in litigation. She reported that after her property is sold in Texas, she will begin repairing the building. She noted her tiki bar was open on Fridays and Saturdays. AT that meeting, Council Member Woodson indicated that the music was too loud. Ms. Bahan replied that she would turn down the amplified music at 10:00 p.m. The Town Council voted unanimously to grant a six month extension.

III. CONDITIONS OF APPROVAL

1. The 2 COP is only valid in conjunction with a retail sales operation within the same business.
2. All music and entertainment on the property will be in compliance with the Town's noise regulations.
3. No consumption of alcohol shall be permitted outside the fenced area, as depicted on the site plan attached.
4. This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.
5. Any violation of the conditions of approval shall render the special exception null and void.

IV. STAFF REPORT EXHIBITS:

A – Approved Resolution 23-87

RESOLUTION NUMBER 23-87

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230126 TO TEMPORARILY ALLOW OUTDOOR CONSUMPTION ON PREMISES WITH A RETAIL USE AND CONDITIONS FOR THE PROPERTY LOCATED AT 163 OLD SAN CARLOS BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, applicant Suzanne Bahan is requesting a special exception for the use of consumption on premises outdoors within 500 feet of a park, in the Downtown zoning district; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-0050A.0140

WHEREAS, the Property is located in the “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan and the “Downtown” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on August 8, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 4-0 to recommend approval of the special exception with conditions; and

WHEREAS, on August 21, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request.

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

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

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested Special Exception does meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES the special exception for the use of permanent shared parking in the Downtown zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. A. The 2 COP is only valid in conjunction with a retail sales operation within the same business.
- B. All music and entertainment on the property will be in compliance with the Town's noise regulations.
- C. No consumption of alcohol shall be permitted outside the fenced area, as depicted on the site plan attached.
- D. This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.
- E. Any violation of the conditions of approval shall render the special exception null and void.

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

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Absent</u>
John R. King	<u>Aye</u>
Bill Veach	<u>Aye</u>
Karen Woodson	<u>Aye</u>

ADOPTED this 21st day of August, 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers (Nov 19, 2023 06:17 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker

AMY BAKER (Nov 27, 2023 09:33 EST)

Amy Baker, Town Clerk

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

Becky Vose

Becky Vose (Nov 19, 2023 09:33 EST)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of November 2023.

1. **Request:**

Meeting Date: August 4, 2025

Support the distribution plan for the \$167,473 Edward Byrne Memorial Justice Assistance Grant Program Funds (JAG).

Why the action is necessary:

As a condition of participation, the units of local government in each county must reach a consensus concerning expenditure of the funds and must be documented by formal action.

What the action accomplishes:

Provides support to requesting agencies

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

William McKannay, Town
Manager

5. **Background:**

The Florida Department of Law Enforcement has allocated Lee County \$167,473 in FFY 24 Edward Byrne Memorial Justice Assistance Grant Program funding. The Lee County Board of County Commissioners has authorized the Cape Coral Police Department to be the County Coordinator for the county's FFY 24 subawards. Between July 7, 2025, and July 10, 2025, eligible agencies corresponded, identifying their needs and discussing the County's allocations and the best use of the funds for the upcoming Fiscal Year. Lee County and the Sanibel Police Department did not request any funding through the program this year. Below are the recommended proposals and allocation amounts:

Cape Coral Police Department

Amount: \$116,875

Funding will be used to purchase ballistic shields to equip frontline patrol units with life-saving equipment. The shields will be used for rapid deployment during high-risk situations. Equipping officers with this life-saving equipment will not only enhance operational readiness for Cape Coral officers but also provide life-saving equipment to surrounding law enforcement agencies in the event of a high-risk situation that requires a multi-agency response, providing a countywide collaboration.

Fort Myers Police Department

Amount: \$50,598

Funding will be used to purchase license plate readers for agency operations. Cape Coral Police Department, Fort Myers Police Department, Lee County Sheriff's Office, and the Port Authority Police all access the same software application, providing for a countywide collaboration.

Attachments:

1. Edward Byrne Support letter 2025

Financial Impact:

None

6. **Alternative Action**

Do not provide a letter of support.

7. **Management Recommendations:**

Provide letter of support

8. **Recommended Approval:**

Amy Baker, Town Clerk
Susan Roberts, Interim Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 7/16/2025
Approved - 7/17/2025
Approved - 7/21/2025
Approved - 7/22/2025
Final Approval - 7/25/2025



August 4, 2025

Mr. Cody Menacof
Bureau Chief, Office of Criminal Justice Grants
Florida Department of Law Enforcement
P.O Box 1489
Tallahassee, Florida 32302-1489

Dear Mr. Menacof,

In compliance with State of Florida *Rule 11D-9*, F.A.C., the Town of Fort Myers Beach approves the distribution of \$167,473 (total allocation available) of the Federal Fiscal Year 2024 Edward Byrne Memorial Justice Assistance Grant (JAG) Program funds for the following projects within Lee County:

SUBGRANT (City or County)	Title of Project	Federal funds
City of Cape Coral (Law Enforcement)	Ballistic Shields	\$116,875
City of Fort Myers (Law Enforcement)	License Plate Readers	\$50,598
Total:		\$167,473

Sincerely,

Dan Allers
Mayor, Town of Fort Myers Beach