



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931**

Agenda

**Thursday, September 11, 2025
ORDER OF BUSINESS**

9:00 AM

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. PUBLIC COMMENT

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VII. PRESENTATIONS

A. Project Update

David Farmer of Metro Forecasting Models (MFM) will present a brief summary of his work to date with a longer presentation to be given at the October Management and Planning meeting on October 15, 2025.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Anchorage Advisory Committee (AAC)

IX. APPROVAL OF MINUTES

A. Town Council - August 4, 2025

B. Town Council - August 18, 2025

C. Management & Planning Session - August 7, 2025

X. CONSENT AGENDA

A. Resolutions 25-252 through 25-255; 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.

- B. Resolutions 25-258 through 25-261; 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.

- C. Resolutions 25-265 through 25-268; 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.

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Ordinance 25-15, RPD20250181, 138/140 Delmar Ave.

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-15. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for October 6, 2025 at 9:00 AM or at another time identified by Town Council.

ORDINANCE TITLE:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. SEZ20250149, 4750 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

A. Resolution 25-273, Health Insurance Renewal

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SELECTION OF CIGNA FOR MEDICAL INSURANCE COVERAGE AND THE STANDARD FOR SUPPLEMENTAL INSURANCE COVERAGE FOR THE FISCAL YEAR 2025–2026; AND PROVIDING FOR AN EFFECTIVE DATE.

B. Resolution 25-247; CDBG-DR Organizational Change DR10262 North Island Water Tower

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND CHANGE THE ADDRESS TO THE NEW TOWN HALL; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

C. Resolution 25-248; CDBG-DR Organizational Change Notification DR10263 Parks and Recreational Revitalization Program.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND TO CHANGE THE TOWN HALL ADDRESS TO 6231 ESTERO BLVD., FORT MYERS BEACH IN THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

- D. Resolution 25-249; CDBG-DR Organizational Change Notification DR10157 Recovery and Resiliency Planning Program

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

- E. Resolution 25-256; Amendment #1 Andrew Site Works for Additional Fire Hydrants

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE CONTRACT APPROVED AUGUST 4, 2025 WITH ANDREW SITEWORK FOR THE PURCHASE AND REPLACEMENT OF 18 ADDITIONAL NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN FOR AN ADDITIONAL COST NOT TO EXCEED \$145,256 FOR A TOTAL NOT TO EXCEED CONTRACT AMOUNT OF \$435,768; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

- F. Resolution 25-270; Ground Penetrating Radar Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO: 1) INCREASE FUNDS AVAILABLE FOR ADDITIONAL GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$130,000.00 AND 2) INCLUDE ADDITIONAL STANDARD CONTRACT TERMS AND CONDITIONS; AUTHORIZING THE EXECUTION OF THE THIRD AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

- G. Resolution 25-269, Palermo Circle Stormwater Piping

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, UNDER THE EMERGENCY PROCUREMENT POLICY TO APPROVE A PROPSAL FROM ANDREW SITEWORK LLC WITH THE TOWN'S CONTRACT ADDENDUM FOR THE INSTALLATION OF STORMWATER PIPING ON PALERMO CIRCLE FOR A NOT TO EXCEED PRICE OF \$36,171.60 TO ALLEVIATE THE FLOODING ON ESTERO BLVD BY DIVERTING ESTERO STORMWATER TO THE OUTFALL ON SANTOS BLVD VIA PALERMO CIRCLE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE EMERGENCY PURCHASE; AND PROVIDING FOR AN EFFECTIVE DATE.

H. Resolution 25-272; Axis Infrastructure, Inc. STA #17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #17 WITH AXIS INFRASTRUCTURE, INC. IN AN AMOUNT NOT TO EXCEED \$195,000, RETROACTIVE TO MAY 1, 2025, FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 20-22-AD TO CLOSE OUT THE FY2025 FOR THE CONTINUATION OF PLANNING SERVICES ; AUTHORIZING THE TOWN MANAGER TO SIGN STA #17 AND PROVIDING FOR AN EFFECTIVE DATE.

I. Bid Protest, ITB-25-05-PW, Water Meter Replacement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/DENYING THE BID PROTEST FOR THE WATER METER REPLACEMENT PROJECT, ITB-25-05-PW RECEIVED FROM UTILITIES ONE PURSUANT TO SECTION 2-486(a) OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

J. Resolution 25-245; DeBiasi Utility Easement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT FROM THE LEO J. DIBIASI AND VALERI J. DIBIASI REVOCABLE LIVING TRUST DATED AUGUST 20, 2014 ("THE TRUST") AND DIRECTING THE FINANCE DIRECTOR TO MAKE A PAYMENT OF \$85,000 UPON RECORDING OF THE UTILITY EASEMENT AS AGREED TO BY THE TOWN IN A SETTLEMENT AGREEMENT DATED APRIL 7, 2025; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

XIV. FINAL PUBLIC COMMENT**XV. TOWN MANAGER'S ITEMS****XVI. TOWN ATTORNEY'S ITEMS**

A. Executive Session

B. Any action to be taken from the Litigation Executive Session

XVII. COUNCILMEMBERS ITEMS AND REPORTS**XVIII. ADJOURNMENT**

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

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



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202. In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Request:**

Meeting Date: September 11, 2025

David Farmer of Metro Forecasting Models (MFM) will present a brief summary of his work to date with a longer presentation to be given at the October Management and Planning meeting on October 15, 2025.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PRESENTATIONS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Frankie Kropacek, Community
Development Director

5. **Background:**

Metro Forecasting Models (MFM) helps local governments manage growth with highly accurate data. The Interactive Growth Model® (IGM) is a planning tool that delivers a reliable, spatial database of residents and their needs by zone. In March 2025, the Town Council approved a contract with MFM to develop a growth model for the Town.

Attachments:

1. Presentation for 9.11.25
2. MFM Resolution / Contract

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 8/26/2025
Approved - 8/29/2025
Approved - 8/29/2025
Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025



Town of Fort Myers Beach IGM[®] Project Update

Agenda

- Introductions
- Hotel Research
- Baseline Data
- Preliminary Buildout Data
- What are the Town's Goals?
- Homesteaded and Non-Homesteaded Housing Units
- Peak Seasonal Population
- Vacant Land
- The Next Steps

Introductions

Metro Forecasting Models (MFM) is a consulting firm that works exclusively with local governments to model land uses for long-range planning.



David Farmer, AICP, PE, MPA is the Project Manager with 30+ years of experience in planning, land development, and data analysis.



David Farmer, AICP, PE
Dave@metroforecasting.com
239-913-6949 ext. 1



Paul Van Buskirk, PhD, FAICP, PE
pvb@metroforecasting.com
239-913-6949 ext. 2

Paul Van Buskirk, PhD, FAICP, PE is the Principal Planner with 40+ years of experience in planning and public policy analysis.

What is the IGM?

The Interactive Growth Model® (IGM):

- An accurate, complex and powerful growth management tool.
- Used for long-range planning and budgeting.
- Data from multiple data sources is cross referenced for accuracy using on time satellite images at the parcel level.
- Demonstrates **when** and **where** development will likely occur over time.
- Forecasts the need for facilities spatially.



Hotel Research

Tens of thousands of visitors each year use the hotels on Fort Myers each. To collect accurate data, the following steps were taken:

- Identify which hotels are open, temporarily closed, or damaged beyond repair.
- Conduct a telephone survey to verify data.



Fort Myers Beach Baseline 2025 Data

Single Family Units	1,189
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Multi-Family Units	<u>5,500</u>
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Total	6,689
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Hotel Rooms (all existing)	1,635
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Hotel Rooms (open only)	1,484
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Commercial Building Area	289,074 sf
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Occupied Commercial Land	17.1 Ac
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Vacant Commercial Land	23.2 Ac
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FMB Preliminary Buildout Data

Single Family Units	2,596
Multi-Family Units	<u>6,172</u>
Total	8,768
Hotel Rooms (existing & planned)	2,622 (May 2025)
Commercial Building Area	560,617 sf
Occupied Commercial Land	40.3 Ac
Vacant Commercial Land	0 Ac

Community Character

- There's a desire to maintain the “small Florida town” atmosphere while still pursuing necessary upgrades and development.
- Concerns include potential loss of views and changes to the character of residential areas.
- Preserving existing amenities and open spaces is a challenge.



What are the Town's Goals?

Revenue Approach

- Focus on fiscally positive projects i.e., more hotels.
- Attract commercial projects that cater to tourists.
- Encourage overnight visits.
- Encourage seasonal use of homes.
- Recognize that employees working in town will live off-island.

Resident Approach

- Approve fewer hotels.
- Medical care, personal care (barbers, nail salons) on island.
- Encourage daytime tourism.
- Employees live on island.
- Fewer homes being used for seasonal residents.
- Approve more multi-family rentals.
- Increase permanent population.

Homesteaded Housing Units

- Based on 2025 Lee County Property Appraiser database.
- By definition, homesteaded units (houses, condos, trailers, etc.) are occupied “full time.”
- Generally, these homes are not rented out as Airbnb.

Single Family Units -	490
Multi-Family Units -	<u>1,097</u>
Total -	1,587

Non-Homesteaded Housing Units

- Based on 2025 Lee County Property Appraiser database.
- Non-homesteaded units (houses, condos, trailers, etc.) **may** be occupied by full time residents.
- It is likely that the majority of these units are rented to seasonal visitors (daily, weekly, monthly).
- Larger units may be occupied by more than one family at a time.

Single Family Units	696
Multi-Family Units	<u>4,406</u>
Total Units	5,102
Bedrooms	10,903

Peak Seasonal Population (2025)

- Non-homesteaded units have a high probability of becoming short term rentals – AKA Airbnb
- It is a common practice for visitors to maximize occupancy with at least 1 or more people per bedroom.

Non-Homestead	Units	Bedrooms (BR)	1 Vistor /BR	1.5 Vistors /BR	2 Vistors /BR
Homes/Condos	5,102	10,903	10,903	16,355	21,806

*Non-Homestead bedrooms are based on 2025 Lee County parcel data

Peak Seasonal Population (2025) con't

- Peak population includes permanent residents, seasonal residents, and transient visitors.
- Excludes daytime visitors traveling via cars and LeeTran.

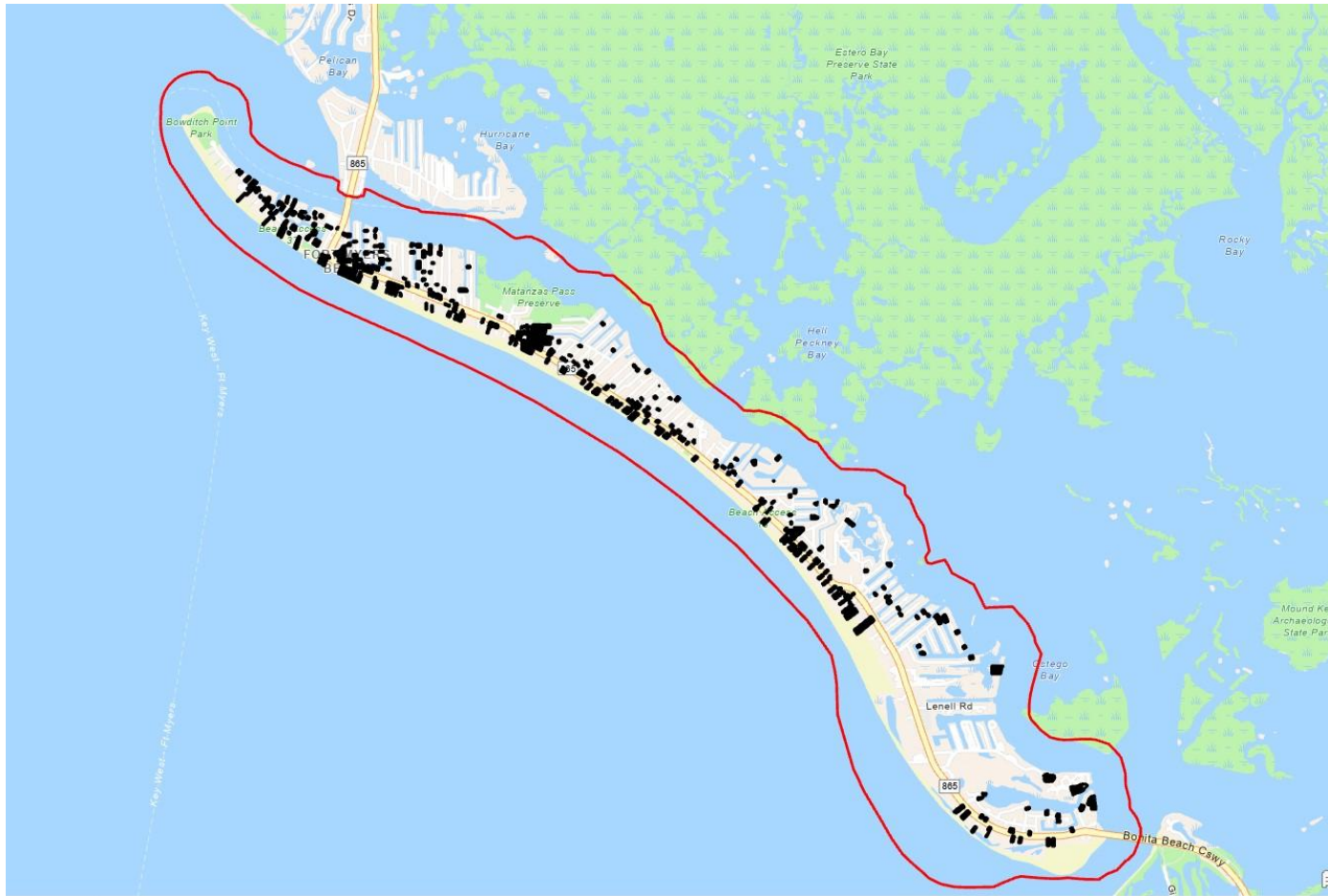
	Units	Population
Homesteaded	1,587	2,811 Permanent
Non-homesteaded	5,102	
Bedrooms	10,903	16,355 Seasonal – 1.5 visitors/bedroom
Hotel Rooms	1,484	<u>2,968</u> Transient
Total		22,134

Economic Development

- The tourism industry is a major economic driver.
- It is crucial to balance the economic benefits of tourism with environmental protection and community preservation
- Integrating sustainable practices such as energy-efficient designs and green spaces is increasingly important.



Vacant Land (2025)



Importance of Vacant Land



- 1,055 vacant parcels (888 are likely to have SF homes)
- 626 parcels with severely damaged structures
- Vacant land is the currency of planning. Use it wisely.
- Vacant land means freedom and the possibility for change.
- You have no planning options without vacant land.
- Every “approved” project reduces flexibility.

The Next Steps

- Complete Buildout analysis
- Generate forecast and commercial analysis

Quality Data leads to quality decision making.

Quality Decisions lead to optimized return on your Capital Investments.

QUESTIONS?

PLEASE CONTACT US FOR
MORE INFORMATION.

Dave@metroforecasting.com
239-913-6949
metroforecasting.com



RESOLUTION NUMBER 25-90

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SCOPE OF SERVICES FROM METRO FORECASTING MODELS, LLC AS A SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT IN THE AMOUNT NOT TO EXCEED \$150,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach needs accurate data and analysis of that data to determine appropriate and sustainable redevelopment targets; and

WHEREAS, funding is available in the form savings from Fiscal Year 2024; and

WHEREAS, Section 2-480(c)(1)(a) of the Town of Fort Myers Beach Code of Ordinances provides that when it is in the best interest of the Town of Fort Myers Beach, a contract may be awarded without competition when the Town Manager, with the recommendation of the finance department director and department director, determines after conducting a good faith review of available sources that there is only one source for the required supply, equipment, service, or construction item; and

WHEREAS, Metro Forecasting Models, LLC has provided a copy of their United States Trademark and Copyright demonstrating that they are the sole provider (source) of their trademarked and copyrighted “Interactive Growth Model,” which performs the computer modeling services the town needs; and

WHEREAS, it is in the best interest of the residents of the Town of Fort Myers Beach to execute a Professional Services Contract with Metro Forecasting Models, LLC in the amount not to exceed \$150,000.00 for their services.

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

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

Section 2. The Town Council hereby approves the sole source purchase from Metro Forecasting Models, LLC for their Trademarked and Copyrighted Interactive Growth Model buildout and reporting in the amount not to exceed \$150,000 and authorizes the Town Manager or his designee to execute the related Professional Services Contract and any other documentation related to the contract, which is attached hereto as “Exhibit A.”

Section 3. The resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers (Apr 17, 2025 07:26 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

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

Nancy Stuparich

Nancy Stuparich (Apr 15, 2025 12:16 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the 16th day of April 2025.

Exhibit A: Professional Services Contract

Exhibit B: U.S. Trademark and Copyright

Exhibit C: Scope of Services

Exhibit D: Fee Schedule

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this 7th day of April, 2025 by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 2731 Oak Street, Fort Myers Beach, Florida 33931 ("Town"), and Metro Forecasting Models ("Consultant"), whose address is 9410 Fountain Medical Ct, Suite 103, Bonita Springs, FL 34135.

WHEREAS the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Ongoing Miscellaneous Professional Services, ("Project"); and

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

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

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

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

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

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

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

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

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

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

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

2.03 PERSONNEL

1. QUALIFIED PERSONNEL: The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.
2. CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to prior approval and acceptance by the Town.
3. REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such a request with or without cause.
4. SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of the Town and is subject to the terms of ARTICLE 8 below.
5. SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town and is subject to the terms of ARTICLE 8 below.

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

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

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

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

2.09 Deleted

2.10 Deleted

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

1. **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
2. NOT-TO-EXCEED FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:
 - For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
 - For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
 - For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
 - Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
 - The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
 - When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
 - If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

1. MONTHLY STATEMENTS: The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.
2. PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:
 - a. The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

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

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

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

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

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

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

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

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

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

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

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

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

ARTICLE 6.00 - SECURING AGREEMENT:

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

ARTICLE 7.00 - CONFLICT OF INTEREST:

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

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

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

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

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

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

ARTICLE 9.00 - APPLICABLE LAW:

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

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be in the 20th Judicial Circuit in and for Lee County, Florida. Each party shall be responsible for the payment of any attorney fees and costs incurred by the party due to litigation arising out of this agreement.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

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

ARTICLE 12.00 - WAIVER OF BREACH:

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

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

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

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

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

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

ARTICLE 14.00 - MAINTENANCE OF RECORDS

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

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

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

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.

ARTICLE 15.00 - TERMINATION

TERMINATION FOR CAUSE If, through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the Town of Fort Myers Beach, shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Contractor under this Contract shall become the property of the Town of Fort Myers Beach, and Contractor shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the Town of Fort Myers Beach, in its sole discretion. Notwithstanding the above, Contractor shall not be relieved of liability to the Town of Fort Myers Beach for damages sustained by the Town of Fort Myers Beach by virtue of any intentional and/or negligent act or omission or any breach of the Contract by Contractor, and the Town of Fort Myers Beach may withhold any payment for the purpose of reasonable setoff until such time as the exact amount of damages due the Town of Fort Myers Beach from Contractor is determined. Contractor agrees that the Town of Fort Myers Beach shall have all rights and remedies afforded to it at law to recover any damages sustained by the Town of Fort Myers Beach in connection with the work performed by Contractor under the Contract. In the alternative, the Town of Fort Myers Beach shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice the enforcement of any other right or remedy allowed at law or in equity.

TERMINATION FOR CONVENIENCE The contractor or the Town of Fort Myers Beach may terminate this contract for its convenience at any time by giving at least thirty (30) calendar days' notice in writing to the other party. If the Contract is terminated by the Town of Fort Myers Beach and/or Contractor as 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.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

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.

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.

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.

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.

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.”

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

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.

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.

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.

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.

Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, 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 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.

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.

Additional Terms. Notwithstanding any other provision to the contrary, the parties agree as follows:

- A. None.

ARTICLE 19.00 - ENTIRE AGREEMENT

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

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

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated _____
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated _____
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated _____
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)", dated _____
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated _____
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated _____
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated _____
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit", dated _____
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated _____
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated _____

ARTICLE 20 .00 - NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, Florida 33931

20.02 NOTICES BY TOWN TO CONSULTANT

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

Metro Forecasting Models
9410 Fountain Medical CT, Suite 103
Bonita Springs, FL 34135
Phone 239-913-6949

ATTENTION: David Farmer, MFM Project Director

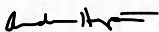
20.03 CHANGE OF ADDRESS OF RECORD

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

ARTICLE 21.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

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

TOWN OF FORT MYERS BEACH

By: 
Andrew Hyatt (Apr 15, 2025 10:54 EDT)
Andrew Hyatt, Town Manager

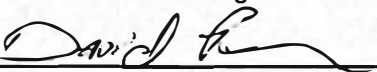
ATTEST:

By: 
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

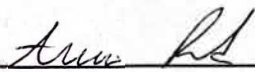
BY: Nancy Stuparich
Nancy Stuparich (Apr 15, 2025 12:16 EDT)
Town Attorney

PROVIDER: Metro Forecasting Models
Printed name of organization

BY: 
Signature

David Farmer
Printed name of person signing

CEO
Title (printed)


Witness Signature

Alvaro Padron
Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

TYPES OF WORK

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Proposed Scope of Services and Work Tasks For the Development an Interactive Growth Model Ver 3 (IGM Ver3)

Metro Forecasting Models uses cutting edge technology to collect and analyze data for the Interactive Growth Model. Our skilled planners evaluate parcels spatially in GIS for their existing and future development characteristics. The GIS attributes are loaded into the IGM that produces superior forecasting data for population, housing, commercial, industrial and government facilities.

Proposed agreement between Metro Forecasting Models, LLC (hereafter referred to as the CONSULTANT) and the Town of Fort Myers Beach, Florida (hereafter referred to as the CLIENT) to provide services with the assistance of CLIENT's Staff for the development of an Interactive Growth Model Ver 3 (hereinafter referred to as the IGM) The key steps in the development of the model include:

- Apply demographics in each of the disaggregated zones with 2020 Census Block Group data.
- Retrieve, review and evaluate Lee County Property Appraiser parcel data to create 2025 Baseline data.
- Interviews with landowners, commercial real estate brokers and town staff to understand future buildout potential of larger vacant land tracts.
- Buildout inventory of development by type and intensity and forecast of demographics by Zone.
- Accurate population forecast (the Population and Housing Forecast Sub Model).
- Aggregate the Zones into clusters for custom planning areas.
- Design and develop criteria and formulas for spatial distribution of development over time.
- Design and develop sub models selected herein.
- Data output by Zone for 5-year increments.
- Graphic interpretation of baseline, buildout and incremental forecast data in a custom GIS web application for use by all departments

Work Task 1.0

The CONSULTANT will develop the current year baseline data for current development with staff assistance that can be updated annually. Individual zones for the total CLIENT's incorporated area will be delineated. Each zone will be inventoried for current development such as housing unit by type, population characteristics, retail space by building area, office/services by building area industrial and wholesale by building area, public parks, fire stations and other data considered relevant. The baseline scenario will be developed for each zone using GIS from the following sources:

- Parcel property attributes from Property Appraiser database
- E911 database
- National Wetland Inventory database
- Building permits, provided by CLIENT
- Entitled projects which are not yet fully developed, provided by CLIENT

Upon completion of the zone data and zone delineation, it will serve as the baseline for the IGM. This will provide an opportunity to test the CLIENT's database to query land use data. The model can be updated annually. It could also be used to provide an annual report to the Council/Board Members about the current population and development.

The CONSULTANT will develop an interactive web application to communicate the baseline scenario data. The purpose of building the interactive web application is to produce a streamlined and data-rich visualization tool for staff, policymakers and stakeholders to use and review. This web application will demonstrate the baseline condition, including housing, population, vacant land, and commercial space. This web application can be enhanced as requested to include various other spatial datasets, including socioeconomic and environmental characteristics.

The CONSULTANT will attend one initial workshop to communicate the data and research methodology for the Interactive Growth Model.

Work Task 2.0

The CONSULTANT will develop a buildout database with staff assistance. Similar to the current year baseline database, each parcel will be inventoried for buildout development such as housing units by type, population characteristics, retail space by building area, office/services by building area, industrial and wholesale by building area, and other data considered relevant. Data will be entered for each zone into the computer program for export to Excel workbooks for analysis. The database can be updated to reflect the changes in zoning or future land uses that add or reduce density/intensity of future development.

The buildout scenario will be developed for each parcel from the following sources:

- Current zoning by land use type and intensity, vested rights and current practices
- Comprehensive Plan, its future land use map overlay, community's vision and current and future trends as well as stakeholder's perceptions
- Approved but not developed planned developments, provided by CLIENT
- Parcel property attributes from CLIENT database
- Simulation models of similar communities

Work Task 3.0

Population and Housing Model: This model produces the forecast for single family and multifamily housing units by parcels per zone including the rate of change for household size and vacancy rates in 5-year increments from the baseline year (i.e. 2025) to buildout (i.e. 2085) for each of the disaggregated zones. This task also includes the inventory and ground-trothing of current housing units by type and the developed acres of housing for each zone. The demographics of the population by zones are analyzed for forecasting. This task requires an estimate of housing development by type and acreage at buildout for each zone (the supply) by estimating the yield according to zoning, the comprehensive plan and other development characteristics. The forecast of household size and vacancy rates to buildout are also included. The CONSULTANT will upload the baseline and buildout data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 4.0

Commercial Sub Model: This sub model determines and forecasts the internal demand for commercial building area and land area by disaggregated zones in 5-year increments to buildout. This task also includes the inventory of current commercial space by type, ground-trothing with aerial photography and the developed acres of commercial use for each zone. This task requires an estimate of commercial development by type and acreage at buildout for each zone by estimating the yield according to zoning, the comprehensive plan and other variables. When the internal supply of commercial development exceeds internal demand for commercial space, analysis will be conducted to determine the external population required to support the internal supply of developed commercial space. The sub model will forecast the internal demand for neighborhood and community commercial centers by zone and year and the supply of commercial land to meet those needs. The data can also be analyzed for the community's economic objectives. This model also provides a land budget for the area required to meet the needs of the CLIENT residents. The CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 5.0

Deliverables:

Interactive Growth Model Summary Report

The CONSULTANT will develop a report to summarize the methodology, results, and key findings of the Interactive Growth Model and selected government Submodels. The report will include a description of the methodology, data inputs/research, and key findings. The report will describe the results of the buildout analysis and forecast(s), including spatial housing and population growth, vacant land by type/category, future demand for specific government services, and key land use policy considerations.

Meetings with Staff/Department Heads

The CONSULTANT will attend meetings as requested subject to the budget allowance.

Presentation to Town Council

The CONSULTANT will attend one public hearing to present the findings from the update to CLIENT Council and accept the Fort Myers Beach Interactive Growth Model and Final Summary Report.

Additional Meetings

The CONSULTANT will attend meetings at the request of the CLIENT subject to the budget allowance.

Work Task 6.0

Alternative Development Scenarios

Alternative IGM scenarios give the CLIENT the ability to test different planning policies and gauge their impact. For example, planning policies can be tested (the Land Development Regulations) for the undeveloped areas near arterials/collectors, etc., to determine which policies are most efficient and reduce traffic in the roadway network. Different scenarios can be tested any time after the population and housing model has been processed.

Work Task 7.0

Park Sub Model: To develop an open space model to determine standards and the needs of the population for developing open spaces (neighborhood, community and regional parks), the timing of facilities and their location as a function of population. This model can be updated every five years for scheduled capital improvement programs. The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), and build out data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output.

Fire Stations Sub Model: To develop a sub-model to determine the need, service area, and spatial distribution of fire stations (pumper and ladder stations). The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), process the data in 5-year increments and provide reports of the output data in Excel format in 5- year increments. The criteria are the ISO standards for a Class 1 insurance rating.

Work Task 9.0 (presented as a package)

Interactive Growth Model Maintenance

The CONSULTANT will store, host, and maintain the Interactive Growth Model for the CLIENT. The CONSULTANT will perform one annual update one year after the model is completed. Intermittent updates will be performed using information provided by the CLIENT to update the forecast including, but not limited to, building permits, proposed projects, redevelopment, and plan and policy changes.

Update Report

After the annual update is performed, the CONSULTANT will provide an Update Summary Report. The Update Summary Report will describe the process and methodology of updating the baseline and buildout data, as well as provide a description of key findings and trends. The Update Report will serve as a benchmark to track spatial growth by area, vacant land by type, development trends, and key land use considerations.

QUALIFICATION FOR TYPE OF WORK

Name of Firm: METRO FORECASTING MODELS

Date: _____

Code: _____ Type of Work: Collect and Analyze Data for Interactive Growth Model

List the personnel employed by your firm and indicate the groups of work that you feel they are qualified to do. Attach supplemental sheets if necessary and attach a resume for each person which supports their ability

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
David Farmer	Collier County	PE 55384	35	Planning, Data Analysis & Forecasting
Victor Soto	Collier County	none	4	GIS & Data Analysis
Alvaro Pedron	Fort Myers	none	3	GIS & Data Analysis
Adele Zelinski	Bonita Springs	none	15	Planning & Technical Writing
Ned Price	Bonita Springs	None	12	Planning, Data Analysis & Forecasting
Dr Paul Van Buskirk	Estero	PE 20592	65	Planning, Data Analysis & Forecasting

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date: _____

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 4.04(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 (Y) for (W.I.P.P.)
1	Develop Baseline Database & Web App	\$25,000	L.S.	Y
2	Developing Buildout Database	\$15,000	L.S.	Y
3	Develop Population and Housing Model	\$10,000	L.S.	Y
4	Develop Commercial Sub Model	\$10,000	L.S.	Y
5	Deliverables	\$20,000	L.S.	Y
		\$15,000	NTE	Y
6	Meetings and Presentations (T&M)	\$15,000	NTE	Y
7	IGM Alternative Scenarios (Budget)			
	Develop Government Sub Models	\$12,500	L.S.	Y
	Park Sub Model	\$ 7,500	L.S.	Y
8	Fire Station Sub Model	\$20,000	L.S.	Y
	2026 Annual Update, Staff Support, Model & Web App Maintenance			
TOTAL		\$150,000	NTE	

(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 EXHIBIT B-1 hereto dated January 1, 2025, entitled "*MFM Rate Schedule as of January 1, 2025*".

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 resulting from work outside of the scope of services. If reimbursable expenses are anticipated by the CONSULTANT, CONSULTANT will provide a written estimate of said costs to the Town's Project Manager prior to requesting said reimbursement.



Exhibit B-1

MFM Rate Schedule as of January 1, 2025

Principal Planner/Ph.D	\$250/hr
Project Manager	\$190/hr
Senior Data Analyst	\$160/hr
Staff Planner	\$140/hr
GIS Data Analyst	\$140/hr
Research Assistant/Model Technician	\$100/hr

ATTACHMENT NO. 1 TO EXHIBIT B

Date: _____

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: _____

(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)
N/A	N/A	N/A	N/A

*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.

ATTACHMENT NO. 2 TO EXHIBIT B

Date: _____

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR CONSULTANT

Consultant Name: _____

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE

Date: _____

This EXHIBIT “C” establishes a total time for completion, detailed by 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
	See Exhibit C-1 (attached)		

Exhibit C-1

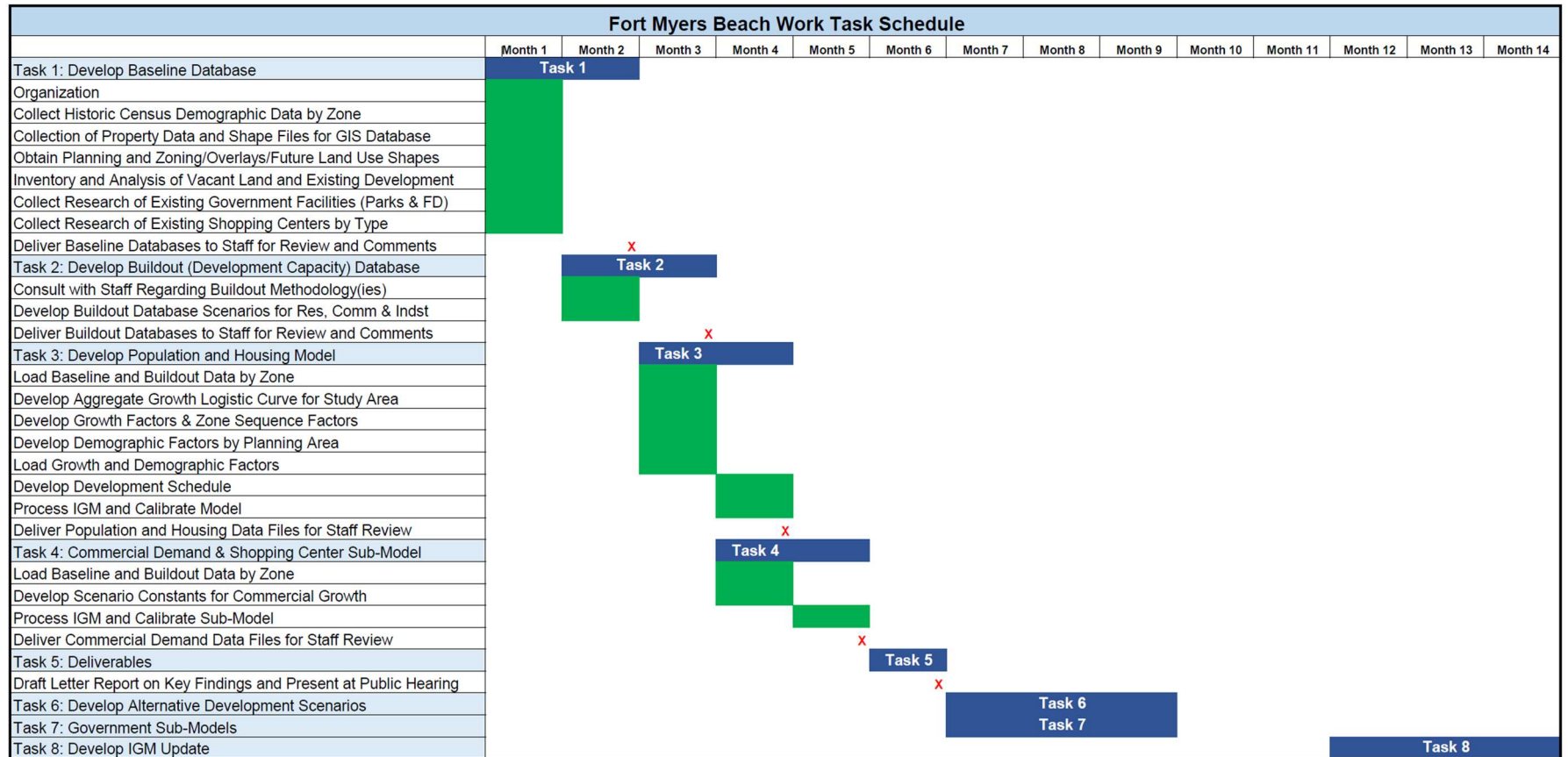


EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)

Date: _____

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

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					

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA

Date: _____

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements. The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:
Ongoing Miscellaneous Professional Services

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

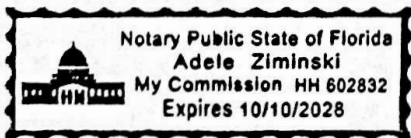
Metro Forecasting Models, LLC
SIGNED: *David Farmer*
BY: David Farmer
TITLE: CEO

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11th day of March, 2025, by David Farmer, by means of ☒ (X) physical presence or ☐ () online notarization, personally appeared before me and ☒ (X) is personally known to me or ☐ () who has produced _____, as identification.

My Commission Expires: -10/10/2028



Adele Ziminski
Signature of Notary Public

Notary Public, State of
Florida

Adele ZIMINSKI
Printed, Typed or Stamped
Name

Commission/Serial No. HH 602832

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)

Section One. Insurance Coverage's to Be Obtained

(1) The Consultant 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) from 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 this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(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.

(2) 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.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant 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 Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or 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) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

None

Service and/or work to be
Provided and/or Performed

Indicate Name of
Individual or Firm

(If none, enter the word "none" in the space above.)

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; and (3) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this 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 Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) 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.

(3) 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.

(4) 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.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) 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

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) 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."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant'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) 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.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant 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 Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant 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 Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(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:

(A) 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.

(B) 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.

(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:

(A) Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

(C) Such additional requirements as are set forth in the Agreement above.

(3) PROFESSIONAL LIABILITY

Coverage must include the following:

(A) A minimum aggregate limit of \$1,000,000.00

(B) Such additional requirements as are set forth in the Agreement above.

(C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)**

Date: _____

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No.____ is hereby amended as follows:

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Town of Fort Myers Beach
(print name of public entity)

by David Farmer, CEO
(print individual's name and title)

for Metro Forecasting Models, LLC
(print name of entity submitting sworn statement)

whose business address is 9410 Fountain Medical Court Suite 103
Bonita Springs, FL 34135

and (if applicable) its Federal Employer Identification Number (FEIN) is 47-3162367

2. I understand that a "public entity crime" as defined in Paragraph 287.233(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, proposal 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 287.233 (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:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those 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. 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.)

X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, **FLORIDA STATUTES** FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

David Farmer CEO

David Farmer, CEO

Sworn to and subscribed before me this

11th day of March, 2025.

Personally known David Farmer

OR Produced Identification _____

Notary Public – State of Florida

My Commission expires 10/10/2028

(Type of Identification)

Adele Ziminski

(Printed typed or stamped commissioned name of notary public)

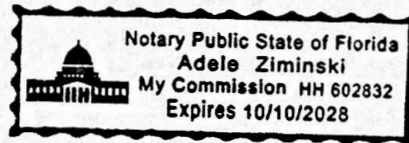


EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

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 LEE COUNTY.**

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Metro Forecasting Models, LLC
David Farmer CEO 3-11-25
(Signature) (Title) (Date)

STATE OF FLORIDA

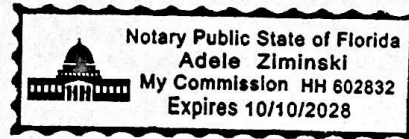
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me this 11 day of March, 2025, by David Farmer who is personally known to me.

Adele Ziminski
Notary Public Signature

Adele ZIMINSKI
Printed Name of Notary Public

HH602832 / 10-10-2028
Notary Commission Number/Expiration



The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. *TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.*

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)**

I, the undersigned, David Farmer, am a principal of Metro Forecasting Models, LLC, the Town's provider of professional services, and serve as a member of the Professional Service team for the Town of Fort Myer Beach.

This is to certify that I have been informed of the Town's policy on disclosure of information, and agree to not use, disclose, or share Town information in any way, except for as directed by the Town Manager or his/her designee. I agree to use my best efforts to prevent and protect information, or any part thereof, from disclosure to any person other than the intended recipient, who is required to receive said information.


Signature

8-11-25
Date

1. **Request:**

Anchorage Advisory Committee (AAC)

Meeting Date: September 11, 2025

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk

Created/Initiated - 8/27/2025
Final Approval - 8/27/2025



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Monday, August 4, 2025

Minutes

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Not recorded.

V. PUBLIC COMMENT

Tom Brady, resident, discussed the town's response regarding the Seagate issue. He brought up the lack of a view corridor, the elevated pool deck that obstructed the view and the concept that one foot of view corridor equaled one foot in height.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked those who inquired about his hip surgery. He welcomed Finance Director Joe Onzick back.

Vice Mayor Atterholt welcomed Director Onzick back.

Council Member Woodson recognized the Mullet Madness event and welcomed Director Onzick back.

Council Member Safford welcomed Director Onzick back and thought the Fourth of July fireworks were great and the Beach Bar opening was fantastic. He thanked Seagate for the fireworks donation.

Mayor Allers welcomed Director Onzick back.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

- A. Town Council - June 16, 2025
Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.
- B. Joint Town Council Session with Local Planning Agency - June 26, 2025
Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.
- C. Management and Planning Session - June 5, 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 Safford.
The motion carried unanimously.

- 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.

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

- 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.

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

- 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.

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

The motion carried unanimously.

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.

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

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

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.

Mayor Allers read the title of the ordinance. Ex parte communications: Council Members Safford and Woodson are familiar with the property and Vice Mayor Atterholt visited the property and spoke to Sue in the office. No disclosures from Council Member King and Mayor Allers.

Brock Petrak from the Edgewater Group reviewed his qualifications as a civil engineer to be qualified as an expert.

Council Member King moved to accept Mr. Petrak as an expert, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

The property owner 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. He noted that Phase Two was no longer relevant because the projects had already been completed.

Mr. Petrak described the slides in his presentation, which are included in the agenda packet. He noted that it was a commercial marina open to the public. He estimated that construction would start on the docks within three months of approval. The upland side would probably take a year and Pinchers was closer to eight or nine months.

No public comment.

The applicant agreed with the conditions of approval in the staff report.

Vice Mayor Atterholt moved to approve the ordinance for a second reading as soon as possible, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King received emails for and against, Vice Mayor Atterholt received emails and toured the property, Council Member Woodson met with the owner twice and received emails, Council Member Safford toured the property and received emails and Mayor Allers toured the property and received emails. Mayor Allers and Council Member Safford also received an email regarding noticing before the LPA (Local Planning Agency) meeting. Town Attorney Stuparich clarified the rules surrounding noticing and stated there were no issues.

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

Community Development Planner Jason Utley reviewed the background of the request as stated on the blue sheet. He noted that staff recommended denial of the new outdoor entertainment due to noise concerns. The LPA voted to recommend approval with 16 conditions. Planner Utley highlighted the conditions.

Patrick Vanasse with the Neighborhood Company noted there were four components to the special exception request. The variances were combined in his presentation and would be addressed. His presentation is included in the agenda packet. Mr. Vanasse reviewed the changes and pointed out that a barrier was constructed to confine consumption on the premises and enhanced buffering around the property was added. A new brick wall would enclose the back of the building and walls were added to the sides. An integrated sound system would be used instead of a PA system to help lessen the impact of noise.

Mr. Vanasse stated the Dolphin Inn site would be used for additional parking for a total of 78 parking spaces. Parking at Golfview Manor and the new Town Hall could be options for the future if needed. Valet service will also be available. The dock will not be available to the public; however, they support a water taxi option. He reviewed the conditions and responded to questions. Public comment:

Christine Madden, resident, said they moved to the neighborhood because it was low-density and family-friendly. She believed that the music and outdoor bar, among other items, would be injurious and detrimental to the neighborhood. She stated that the owners were aware of the lack of parking when they purchased the property, and therefore, the neighborhood should not have to bear the nuisance. She believed there was a viable option for the owner to operate restaurants without outdoor entertainment.

Jon Madden, resident, commented that the owners needed something special to make the business work for them, not the neighborhood. They requested half the required parking, which could result in traffic congestion on Estero and Egret. He questioned their long-term strategy, outdoor entertainment and an outdoor bar. He acknowledged that businesses had to

thrive, but did not think this project was a fit in the neighborhood.
Public comment closed.

Mr. Vanasse responded to questions regarding some conditions and offered changes.

Planner Utley proposed additional language for floodplain regulations. Albert Dambrose from the Neighborhood Company explained that the project received approval to dry flood-proof the ground floor, which will also help mitigate the noise. He did not object to Planner Utley's language. Steve Boge, co-owner, described his vision for the project and agreed to adjust the hours of operation for the downstairs restaurant. Changes to other conditions were discussed and agreed upon. Council Member Safford encouraged Mr. Boge to communicate with the neighbors and address their concerns. Mr. Boge agreed.

Town Attorney Stuparich recommended that the motion be subject to the approval of the variance.

Council Member Woodson moved to approve the resolution, subject to the approval of the variance and to amend item number 3 to include that the hours of outside amplified music will be limited to 11:00 a.m. to 9:00 p.m., as well as all the other conditions that have been discussed, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King received emails for and against, Vice Mayor Atterholt received emails and toured the property, Council Member Woodson met with the owner twice and received emails, Council Member Safford toured the property and received emails and Mayor Allers toured the property and received emails.

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

Vice Mayor Atterholt moved to incorporate the record from the prior hearing into this variance hearing, seconded by Council Member King.

The motion carried unanimously by roll call vote.

Planner Utley reviewed the background of the request as stated on the blue

sheet. Staff recommended denial based on the parking requirements. He noted that the LPA recommended approval of the variance. Council Member Safford asked if his opinion would change on the parking requirements if only the restaurants were included rather than the entire structure. Planner Utley replied that he thought there were ongoing discussions regarding parking requirements.

Mr. Vanasse reviewed the parking slide in the presentation. He indicated that they did not calculate parking based on the entire square footage. Bike and golf cart spaces were provided, along with valet parking and there were extra spaces available at the Dolphin Inn. Council Member Safford asked whether a couple of parking spaces would be available for delivery services. Mr. Vanasse replied affirmatively. Mayor Allers would like the valet service to be available when the establishment is open. Mr. Vanasse replied that the valet would probably be available every day, but requested flexibility for off season. Mayor Allers responded that he wanted it available year-round. Council members felt that valet parking should operate in season. Planner Vanasse suggested valet service would be provided at a minimum from November to the end of April, Thursday to Sunday, from 5:00 p.m. to close. He reiterated that they were only asking for a 32% reduction in parking and they had another lot available.

Public comment:

John Madden, resident, was not confident that they would deliver on anything they said because he did not trust them after they removed the mangroves.

Christine Madden, resident, commented on traffic backing up and obstructing sight lines on Curlew. She was concerned that the Dolphin Inn and Gulfview Manor were for sale.

Public comment closed.

Mr. Vanasse explained that the owners had a DEP (Department of Environmental Protection) permit to remove the mangroves, but not a local permit. He addressed the parking concerns and felt that they had it covered. Mr. Vanasse stated that they would pay any outstanding fees.

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

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

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.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reviewed the background of the request and the changes made.

No public comment.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Town Manager Will McKannay clarified that they were establishing a tentative not-to-exceed millage rate. A location for the September budget hearings will be confirmed before the vote. Finance Director Joe Onzick reviewed the PowerPoint presentation, which is included in the agenda packet. He explained that even though the ad valorem and non-ad valorem revenues were increasing, they were still operating at a deficit. They were allowed to use less of the bridge loan as the revenues increased.

Vice Mayor Atterholt discussed his personal property tax bill, noting that a 26% increase would apply to 6% of his current property tax bill. A 26% increase would not be applied to the total property tax. Mayor Allers added that the town was doing more with less and the increase was not to grow the government; it was to continue to provide the same service. Town Manager McKannay stated that an increase was to cover the budget shortfall. He indicated that they could look at proposing rollbacks in the future.

Director Onzick clarified that the terms of the bridge fund stated they could only use it to make up the difference between their budgeted revenues compared to what they were before Jan. He listed some of the non-ad valorem items that made up \$1.4 million of lost revenue. He explained how they were able to get through the past years without a millage rate increase. Council Member King was concerned about increasing property taxes and

suggested looking at different revenue streams to help property owners. Council Member Woodson noted that revenues from future projects were unknown, but they knew that they would miss in 2026 if they did not raise the millage rate. She felt they should look at fees, but Director Onzick commented that any increases would have to be applied to the bridge loan and would not reduce the deficit. Council Member Safford was surprised that they did not increase the rate over the last three years. He felt they needed to take a hard look at individual silos to save money and assess long-term reserves and necessary projects. Mayor Allers agreed with Council Member Safford.

The budget hearings will take place at Town Hall, 6231 Estero Blvd., on September 11, 2025, and September 24, 2025, at 5:01 p.m.

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

The motion carried 4-1 by roll call vote, with Council Member King dissenting.

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.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Human Resources Director Talissa Oliveira noted that they were originally down three employees, but now Goldman Wolfe was filling two positions.

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

The motion carried unanimously by roll call vote.

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

Mayor Allers read the title of the resolution. Community Development

Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet. The town manager will be appointed to the position.

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

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Community Services Director Jeff Hauge stated this was for the easement to install an outfall on Carlos Circle.

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

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Director Hauge stated that 36 fire hydrants had to be replaced and the water fund balance would be used to pay for them.

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

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Director Hauge reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Director Hauge reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Director Hauge reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the item. Director Kropacek stated that the owner chose not to renew the special exception. He noted that the property had to be restored to its original state. The structure next door will be demolished.

Council Member Woodson moved to approve the do-not-renew, seconded by Council Member King.

The motion carried unanimously by roll call vote.

J. Edward Byrne JAG Grant

Support the distribution plan for the \$167,473 Edward Byrne Memorial Justice Assistance Grant Program Funds (JAG).

Mayor Allers read the title of the item. Town Manager McKannay noted it was a request from the Lee County Sheriff's Office.

Mayor Allers moved to support the plan, seconded by Vice Mayor Atterholt. The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager McKannay stated that the mural in the town hall would be started in the next couple of days. Communications Director Nicole Berzin indicated the mural would be behind the chambers and the same as the one in the old town hall. They were waiting for a part for the elevator, but it would not prevent them from opening. She noted they were discussing a grand opening.

Town Manager McKannay indicated that 252 properties were identified and being reviewed. The August 8, 2025, deadline would be met. Deputy Town Manager Traci Kohler noted that batches of information were sent to FEMA (Federal Emergency Management Agency), but they had technical difficulties and were not able to access photo links. She anticipated feedback from them today or tomorrow regarding the first batch of information. Property owners will be notified once FEMA provides input.

Town Manager McKannay stated that there was no new information regarding the ILA (Interlocal Agreement) with the school district, but they were committed to maintaining the school on the island. He noticed ongoing work at the school, but he had not received an update on the plans. The Church of the Ascension revealed plans to rebuild and they will provide an opportunity for residents to attend a public session.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich stated that 80 Avenue E was still being litigated and a mediation meeting was scheduled, but there was no proposed settlement to share yet. She anticipated appearing before the Special Magistrate in September and

probably would refile litigation on two of the three liens. She noted that the case was complex with a lot of documentation from the past. Mayor Allers indicated that if the Special Magistrate rules in favor of the town for the third lien, the town would proceed.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford noted he may need an excused absence for the M&P meeting on Thursday. He received numerous tax calls regarding the new water software system. He asked that someone provide an update on the system.

Director Hauge will meet with finance to figure out what was going on. Instructions about the new software were provided earlier. Customers should sign up for auto-pay again and billing will go out this week. Water will not be shut off.

Council Member Woodson asked for an update on Seagrape or Key Estero. Town Attorney Stuparich replied that they were waiting for the court to take action on Key Estero and she would research Seagrape.

Council Member King stated that he and the town manager requested a meeting with FDOT (Florida Department of Transportation) to discuss having two lanes exiting the island in the afternoon and two entering the island in the morning. He is now the Vice President of the SWFL League of Cities and will attend the convention in Orlando from the 14th to the 16th. He will also be appointed to the Board of Directors.

Mayor Allers recognized Holly Smith from Sanibel, who will be the President of the League of Cities. He mentioned full inboxes and residents not being called back. Town Manager McKannay was aware of the problem. Mayor Allers met with all but one of the school board members regarding keeping the school on the island and felt they were committed and moving in the right direction. They were meeting tomorrow and he would try to attend. He thanked the board members for meeting with him.

XVII. ADJOURNMENT

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

The meeting was adjourned at 2:57 p.m.



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Monday, August 18, 2025

Minutes

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Allers indicated that Administrative Agenda item D. was pulled. Council Member King moved to approve the amended agenda, seconded by Council Member Safford. The motion carried unanimously.

A.

Town Clerk Baker noted that the Coastal Wave & Surge Mitigation Opportunities Presentation was included in the agenda materials. Elizabeth Franklin from J.R. Evans Engineering reviewed her presentation. She stated that she would need at least six weeks for the initial findings. Town Attorney Stuparich indicated that J.R. Evans had a professional service agreement with the town and a task order with details would be initiated. Council Member Safford asked whether costs could be recouped from future developments. Town Attorney Stuparich replied that the cost was probably a town responsibility, but a developer may agree to contribute to the costs. Ms. Franklin noted the total cost was around \$62,000.00 with an optional continued stakeholder engagement for \$10,000.00. Council Member Woodson supported delegating approval to Town Manager Will McKannay. Ms. Franklin will discuss wave mitigation with condos and others to avoid duplication of resources. Council Member King commented that MERTF (Marine & Environmental Resources Task Force) voted to advise the town council to move forward with the wave mitigation wall. He suggested that the town utilize the Florida League of Cities to explore grants.

Mayor Allers asked whether the Outrigger would be comfortable sharing its plans. Ms. Franklin responded that the town already had the plans. She added that the property across the street would also benefit from the wall.

Council Member Safford moved to direct Town Manager McKannay to move forward with discussions with the firm and seek grant funding, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

V. PUBLIC COMMENT

No public comment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford wished his wife a happy birthday.

Council Member Woodson noted that JobuFest was a huge success since the hurricane was trending north.

Vice Mayor Atterholt wished Jackie Liszak a happy birthday.

Council Member King congratulated the Vice Mayor of Sanibel, Holly Smith, for becoming president of the Florida League of Cities.

Mayor Allers congratulated Council Member King for being on the Board of Directors. He thanked DiamondHead for letting them hold meetings again.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

No minutes.

IX. CONSENT AGENDA

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

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

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

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-14 (Fish Tale Marina). A Second Reading and final adoption hearing has been scheduled for August 18, 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.

Mayor Allers read the title of the ordinance. Ex parte communications: Vice Mayor Atterholt spoke to Ben Freeland regarding language concerning water ferries. No disclosures from other members. 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. He described three changes since the first reading.

Brock Petrak, civil engineer, was available for questions. He confirmed that their marina will be one of the stops for the proposed water ferry and private taxis. He explained the roles of Fish Tale Marina and Pincher's regarding the restaurant's restoration.

No public comment.

Senior Planner Smalley noted that staff recommended approval.

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

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Resolution 25-246; Designation of Emergency Contact

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DESIGNATING AN EMERGENCY CONTACT AND AN ALTERNATE EMERGENCY CONTACT AS REQUIRED BY SECTION 252.38(3)(a), FLORIDA STATUTES; PROVIDING FOR NOTIFICATION OF SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay will be the designated emergency contact and Emergency Services & Compliance Director Thomas Yozzo will be the alternate.

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

The motion carried unanimously by roll call vote.

B. RFP-24-06-AD, Ongoing Miscellaneous Professional Service Agreements

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT

MYERS BEACH, FLORIDA, ACCEPTING/REJECTING OR MODIFYING THE RANKINGS OF THE PROFESSIONAL SERVICE FIRMS BY THE TOWN MANAGER AS RECOMMENDED BY THE SELECTION ADVISORY COMMITTEE BASED ON THE RESPONSES RECEIVED TO RFQ-24-06-AD FOR ONGOING MISCELLANEOUS PROFESSIONAL SERVICES; AUTHORIZE THE TOWN MANAGER OR DESIGNEE TO NEGOTIATE WITH THE TOP RANKED FIRMS FOR EACH CATEGORY OF WORK INCLUDED WITHIN THE REQUEST FOR QUALIFICATIONS, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay recommended approval. Council Member Safford asked whether the SAC (Selection Advisory Committee) disclosed ex parte communications. Community Development Director Frankie Kropacek replied that they took an independent, non-biased approach when vetting companies.

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

The motion carried unanimously by roll call vote.

C. Resolution 25-250; Acceptance of St Peters Drive Deed

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A DEED FROM MANTANZAS POINTE HOMEOWNERS ASSOCIATION, INC. CONVEYING ST. PETERS DRIVE TO THE TOWN FOR USE AS A PUBLIC ROAD; DIRECTING THE TOWN CLERK TO RECORD THE DEED IN THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay recommended approval. Town Attorney Stuparich noted that the association will continue to maintain the two landscaped islands. Jim Boan, Vice President of the Homeowners Association, reviewed the maintenance history of the road. The town will maintain four street lights on the road.

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

The motion carried unanimously by roll call vote.

D. Resolution 25-245, Acceptance of Dibiasi Easement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT AS PROVIDED FOR IN A SETTLEMENT AGREEMENT DATED APRIL 7, 2025; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Pulled from the agenda due to no signed easement.

E. Special Event - Farmer's Markets

Shop Local Productions is requesting to have Farmer's Markets at Santini Plaza from November 2025 through April 2026, and at Moss

Marina from October 2025 through April 2026.

Mayor Allers read the request. Director Kropacek indicated that the company requested that a towable produce trailer be added to Santini Plaza. They asked if the town would allow them to use the transition area at Times Square, as they had done previously.

Council Member Woodson moved to allow the Farmer's Markets, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

F. Special Event: Island Hopper Songwriter's Festival

Approval of the Island Hopper Songwriter's Festival Special Event to be held September 26, 2025 from 4 pm- 10 pm, September 27, 2025 from 3 pm until 10 pm and September 28, 2025 from 1 pm until 4:30 pm at Bayside Park, with alcohol to be served on Town property during the event from tents and a request to waive enforcement of the noise ordinance until 10 pm for this special event and \$150 park rental fee.

Mayor Allers read the request. Jackie Liszak, President of the Fort Myers Beach Chamber of Commerce, represented the responsible parties. She noted it was the same event as in previous years. Nervous Nellie's and Snug Harbor will be responsible for the alcohol and Lee County requested a park fee waiver.

Vice Mayor Atterholt voted to approve the festival, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Barry Frank, a resident, asked whether a new trailer could be set up on a property they do not own, such as La Ola.

Fred Malone from Buffalo Grill commended Deputy Town Manager Kohler, Town Manager McKannay and Council Member Safford for meeting with him and providing a breath of fresh air of sincerity. He was hoping to build back on Times Square. He stated they had to allow more than one trailer on commercial properties so they could operate out of one.

XIV. TOWN MANAGER'S ITEMSA. Emergency Temporary Placement Permits

Update on Expiration of Existing Emergency Temporary Placement Permits

Town Attorney Stuparich reviewed the current resolution in effect, which was adopted in March 2024. The prior permits will be expiring on September 23, 2025; however, additional extensions can be granted under hardship circumstances. There are 51 commercial emergency temporary placement

permits and 158 residential permits pending on file. The draft resolution defined hardship in nine different ways, which are included in the agenda packet. The hardship would have to be proved by documentation and a plan of how they would resolve the hardship situation would have to be submitted to the town manager. Town Attorney Stuparich asked whether there should be an administrative processing fee and how quickly they should move forward. She added that any temporary uses must be compliant with flood regulations. An evacuation plan would be required with the application.

Mayor Allers asked whether someone with a code violation would be allowed to ask for an extension. Town Attorney Stuparich did not believe those particular situations would constitute a hardship warranting an extension of any issued permit. Those permits would not be extended after September 23, 2025. Council Member Safford suggested an expiration date of June 1, 2026, or 2027, with an administrative fee of \$100.00 for residents and \$200.00 for commercial entities. Town Manager McKannay requested a six-month review to comply with FEMA's special flood hazard area regulations and he was comfortable with an expiration date of June 1, 2027. The town council agreed.

Director Thomas Yozzo noted that the building department could revoke permits for those who come out of compliance, even if they have an extension. He stressed that people had to follow the evacuation plan and there would be repercussions if they did not.

Consensus was reached that June 1, 2027, was the deadline for both residential and commercial extensions. Town Attorney Stuparich will add that once the structure has been removed, the emergency temporary placement permit will be revoked and cannot be renewed. The process will start by September 2, 2025, and the application will be available on the town's website. Town Manager McKannay supported the suggested fees to cover staff time. Council Member King would like the town manager to waive fees in certain situations. Vice Mayor Atterholt agreed.

Town Attorney Stuparich filled in the blanks of the resolution and Mayor Allers read the title of Resolution 251.

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

Town Manager McKannay was confident that this action would not put them backwards.

The motion carried unanimously by roll call vote.

A discussion regarding temporary uses in general will be scheduled for a future M&P Session. Mayor Allers suggested that the topic be addressed by the LPA first. Town Attorney Stuparich will draft an ordinance for the LPA to discuss and then bring it back to the town council.

XV. TOWN ATTORNEY'S ITEMS

Town Manager McKannay will implement a new policy regarding presentations immediately. Presentations will have to be submitted to the town staff and the town clerk no later than 24 hours ahead of any meeting. Information will be on the town's website.

The grand opening for the new town hall is scheduled for September 10, 2025, from 9:00 a.m. to 11:00 a.m.

A. Executive Session: Town of Fort Myers Beach vs. White Sand Properties LLC

Announcement of a request for an Executive Session pursuant to Section 286.011(8), Florida Statutes for the purpose of advice and discussion of settlement negotiations related to litigation expenditures in Town of Fort Myers Beach v. White Sand Properties, LLC, Case No. 2025-CA-004261, 20th Judicial Circuit in and for Lee County, Florida and scheduling the Executive Session on September 11, 2025 at 12:00 PM, or shortly thereafter, at 6231 Estero Blvd., Fort Myers Beach, Florida 33931.

Town Attorney Stuparich stated that foreclosure proceedings for code enforcement liens for property located on 80 Avenue E were filed on August 8, 2025. She will offer the property owner an opportunity to offer the town a settlement, which could be discussed at the executive session and the town could offer a counter offer.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked for an update regarding CRAs. Town Manager McKannay noted he and members of staff were meeting with a Lee County representative this afternoon. Council Member Safford asked about the grant funding for Bay Oaks. Director Hauge replied that the deadline was October 31, 2025. Council Member Safford asked when and where the Charter Review group would meet. Town Clerk Baker responded that it was October 7, 2025, at 2:00 p.m. at the new town hall.

Council Member King indicated that he and the town manager will meet with FDOT (Florida Department of Transportation) regarding two lanes on in the morning and two lanes on in the afternoon at the Matanzas Pass bridge. He requested that the December M&P Session be moved to December 3, 2025.

Town council members did not object.

Council Member Woodson requested an excused absence from the October 8, 2025, M&P Session or to change the date. The date was changed to October 15, 2025.

Vice Mayor Atterholt asked for clarification regarding negating the town's ability to utilize the impact fees due to Senate Bill 180. Community Development Planner Jason Green responded that the town was allowed to continue to use the impact fees, but they were required to have updated studies, which they were doing. He noted that no new categories would be added, but the fees would be slightly reduced in most cases. It was his understanding that Senate Bill 180 would not affect taxpayers.

Mayor Allers clarified whether 25% of the impact fees could be used for a project. Planner Green replied that it was about 20% and could only pay for a portion of most projects.

XVII. ADJOURNMENT

Council Member King moved to adjourn, seconded by Council Member Safford.

The motion carried unanimously.

The meeting was adjourned at 11:47 p.m.

DRAFT



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Thursday, August 7, 2025

Minutes

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Discuss FY2026 Budget

A discussion of the FY2026 Budget

Finance Director Joe Onzick reviewed the PowerPoint presentation, which is included in the agenda packet. He explained why there was a deficit of almost \$1.2 million and described the decrease in full-time equivalent positions. The town has employed 18 fewer people over the last two years, which is a decrease of 20.6%.

Human Resources Director Talissa Oliveira described the establishment of a performance-based pay program.

Council Member King hoped that the town would look at a hiring freeze before increasing the millage rate. Director Onzick replied that it could be reassessed depending on the direction of the council. Council Member Woodson noted the need for caution with a freeze, given that they had already cut 18 positions. Director Oliveira will provide an assessment of which positions will be funded by the general fund. Director Onzick highlighted major expense changes in the budget. Community Services Director Jeff Hauge described the special events expenses, which included law enforcement.

Director Onzick reviewed revenues versus expenditures by departments. Community Development Director Frankie Kropacek explained the Mooring Field expenses and Director Hauge explained the Bay Oaks budget. The presentation continued with the repayment of the bridge loan and how lost revenue was calculated. Director Onzick paused the presentation to discuss

the General Fund Forecast through FY30, also included in the agenda packet. He noted that FY27 should be the last year that the town has lost revenue in comparison to Hurricane Ian. A discussion on the emergency fund was held and Director Onzick will provide details at the budget hearing. The presentation continued with the bridge loan and Director Onzick clarified that the 10% interest rate did not kick in on the unpaid principal balance until the loan was due in 2033. Impacts of a potential millage rate increase were explained. Mayor Allers would like a discussion on options for how to offset some costs to tourists. Director Onzick encouraged the council to share suggestions so that he could research.

B. Emergency Temporary Placement Permits

Discussion re: Emergency Temporary Placement Permits

Town Manager Will McKannay indicated that staff drafted a proposed resolution for an emergency temporary placement permit concerning a path beyond the September 23rd date that was compliant with FEMA and floodplain regulations. Details are identified on the green sheet, which is included in the agenda packet. This would consist of a continuation of the standards everyone was familiar with for the temporary structures, trailers and recreational vehicles to either self-deploy or be moved by a light-duty truck with quick disconnects, highway-ready and registered. Although he felt good about the proposed resolution, he could not say that FEMA would approve it. He shared the draft proposal with them and received feedback that made him feel comfortable going forward.

The region four team has provided feedback on the 252 items. The town has fewer than 30 that need to be entered into the FEMA system. Residents were also giving feedback. FEMA has provided responses to 15 of the list sent to them and 13 have been removed from the list. He told FEMA to judge the town based on its policies, procedures and practices that were in compliance with its standards. He summarized the proposed resolution. He indicated that he advised FEMA that many residents were still in a position of hardship, which was a valid reason to extend the permits. Town Manager McKannay listed some of the hardship categories on the green sheet that will be identified and factored into the permit application. He noted that the draft resolution was not yet prepared, but he wanted to bring it forward to the next council meeting.

Mayor Allers suggested adding the definition of a licensed trailer. Town Manager McKannay agreed. He noted that he needed to discuss an appropriate timeline to allow people to reapply with staff and legal counsel. He would continue discussions with FEMA. Council Member Woodson asked whether people who had not done anything would have to provide proof of activity. Town Manager McKannay will add that information.

Town Attorney Stuparich reviewed the current ordinance and questioned the property owner's legal authority to be on their property in an RV or temporary structure after the state of emergency declaration expires. An ordinance was amended to give the town the legal authority to have an RV on a piece of property in an emergency. Council could draft a resolution to authorize

extension of the permits in six-month increments, consistent with the floodplain regulations provided by the town manager. She explained that the resolution would be consistent with the current ordinance and added that an extension of a permit would include possible conditions.

Mayor Allers stated that FEMA changed the definition of non-compliant structures, which was part of the frustration. Town Attorney Stuparich responded that FEMA told them what was compliant. Council Member Safford wanted to remove the approval of a waiver from the council and give it to the town manager. Town Attorney Stuparich was not sure if it was consistent with the ordinance. Town Manager McKannay commented that it was a draft proposal. Temporary use permits allowed right after the hurricane were discussed.

Council Member Safford asked whether they could differentiate between commercial and residential lots. Town Manager McKannay will take a look at it. Mayor Allers asked whether they could extend the temporary use permits to coincide with Milton. Town Attorney Stuparich replied affirmatively and Town Manager McKannay will get clarification. He appreciated the feedback and noted that it would come down to whether the structures were compliant. He advised those with temporary use permits to monitor the website regarding the application process.

IV. AGENDA MANAGEMENT

A. August 2025

Vice Mayor Atterholt suggested adding a floodplain presentation on new systems to mitigate flooding, including permitting questions, common mistakes when filing for permits and basic information to educate people. Mayor Allers read an announcement regarding vacancies on the advisory committee and noted the town was accepting applications. Details can be found on the town's website.

V. ADJOURNMENT

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

The meeting was adjourned at 11:40 a.m.

1. **Request:**

Meeting Date: September 11, 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. 25-252, Extension of Local Emergency - Debby 09.09.25 - 09.15.25
2. 25-253, Extension of Local Emergency - Debby 09.16.25 - 09.22.25
3. 25-254, Extension of Local Emergency - Debby 09.23.25 - 09.29.25
4. 25-255, Extension of Local Emergency - Debby 09.30.25 - 10.06.25

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 - 8/27/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 8/29/2025
Final Approval - 8/29/2025

RESOLUTION NUMBER 25-252

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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-253

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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-254

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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-255

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 ____ day of September 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: _____.

1. **Request:**

Meeting Date: September 11, 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. 25-258, Extension of Local Emergency - Helene 09.09.25 - 09.15.25
2. 25-259, Extension of Local Emergency - Helene 09.16.25 - 09.22.25
3. 25-260, Extension of Local Emergency - Helene 09.23.25 - 09.29.25
4. 25-261, Extension of Local Emergency - Helene 09.30.25 - 10.06.25

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 - 8/27/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 8/29/2025
Final Approval - 8/29/2025

RESOLUTION NUMBER 25-258

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.
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 - Rental of equipment;
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 - 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.
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 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
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Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of September 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:_____.

RESOLUTION NUMBER 25-259

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

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 - 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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-260

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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-261

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 ____ day of September 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: _____.

1. **Request:**

Meeting Date: September 11, 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. 25-265, Extension of Local Emergency - Milton 09.09.25 - 09.15.25
2. 25-266, Extension of Local Emergency - Milton 09.16.25 - 09.22.25
3. 25-267, Extension of Local Emergency - Milton 09.23.25 - 09.29.25
4. 25-268, Extension of Local Emergency - Milton 09.30.25 - 10.06.25

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 - 8/27/2025
Approved - 8/27/2025
Approved - 8/29/2025
Approved - 8/29/2025
Final Approval - 8/29/2025

RESOLUTION NUMBER 25-265

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 ____ day of September 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: _____.

RESOLUTION NUMBER 25-266

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.

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

RESOLUTION NUMBER 25-267

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.

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

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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:

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

RESOLUTION NUMBER 25-268

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.

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

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

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

ADOPTED this ____ day of September 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: _____.

1. **Request:**

Meeting Date: September 11, 2025

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-15. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for October 6, 2025 at 9:00 AM or at another time identified by Town Council.

ORDINANCE TITLE:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council will take into account the recommendations made by the LPA for DCI20250181

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA for DCI20250181, a request to rezone subject property from RC to RPD zoning district to allow the development of a two-story duplex above flood elevation with a Master Concept Plan and one deviation from LDC Section 34-638(d)(2)b to allow porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

Scott and Leslie Fier, the owners of 138/140 Delmar Ave, is requesting rezoning from Residential Conservation (RC) to Residential Planned Development (RPD) to allow development of a two-family residential structure with a Master Concept Plan and one (1) deviation. While the lot would not be eligible for multiple residential dwelling units based on the parcel size, the applicant has shown compelling evidence that there existed 2 dwelling units prior to the destruction caused by Hurricane Ian.

Based on Lee Property Appraiser (LEEPA) data, the pre-storm area of the structure was 884 sq. ft. and contained 2 dwelling units built in 1954. Based on arials available to staff, it appears that the pre-storm structure would have compliant setbacks under today's code. The RC zoning district requires setbacks of:

Street setback: 25 feet

Side: 7.5 feet for 50-foot to 75-foot-wide lots

Rear: 25-feet

Maximum Height: 30-feet above Design Flood Elevation (DFE; BFE+1' freeboard)

The lot in question has an area of 4,400 sq.ft. (0.10 ac) and is located within the Town's Residential Conservation zoning district. It is in the Mixed Residential Future Land Use which allows a density of six dwelling units per acre. The surrounding lots are all residential.

LPA recommended approval with conditions for the Town Council's recommendation.

Attachments:

1. NS Ord 25-XX, RPD20250181 for 138-140 Delmar Ave
2. Exhibit A- Master Concept Plan
3. EXHIBIT B- Conditions of Approval, Schedule of Uses and Deviations
4. 138/140 Delmar Ave Staff Report
5. Exhibit C- survey
6. Exhibit D - Application
7. Exhibit E - waiver form

Financial Impact:

Unknown

6. Alternative Action

Approval/ Denial

7. Management Recommendations:

Staff recommends **APPROVAL WITH CONDITIONS** of DCI20250181.

8. Recommended Approval:

Kendra Rosa, Zoning Coordinator
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/14/2025
Approved - 8/28/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025

ORDINANCE 25-xx

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/REJECTING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION 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, Scott and Leslie Fier ("Applicant"), owners of the property generally located at 138/140 Delmar Ave, Fort Myers Beach, identified as Strap Number 19-46-24-W3-0100B.0150 Fort Myers Beach ("Property"), filed an application to rezone the properties from Residential Conservation (RC) to Residential Planned Development (RPD) inclusive of a corresponding Schedule of Uses and Master Concept Plan (MCP) and a setback deviation from the Land Development Code (LDC); and

WHEREAS, the requested setback deviation is from LDC Section 34-638(d)(2), which will allow a porch and stoop to encroach 15-feet into the required 25-foot street setback, where a maximum encroachment of ten feet is permitted for accessory uses; and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the owners as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on August 12, 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 6 to 0 to recommend approval with conditions of the rezoning request; and

WHEREAS, on September 11, 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 was held on October 6, 2025. The public hearing was advertised in the Fort Myers News-Press on the ____ day of September 2025. A Business Impact Estimate was also posted on the Town's website on the ____ day of _____, which is 10 days prior to the second reading of the Ordinance.; and

WHEREAS, at the October 6, 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 Town Council found the request to rezone the property from Residential Conservation to an RPD with a corresponding Schedule of Uses and MCP and one (1) deviation for a street setback with the Town's Comprehensive Plan and Mixed Residential FLU; and

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezoning as required by Sections 34-85 and 34-216 of the Land Development Code:

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the Applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the Applicant and 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 MCP and by other applicable regulations.

- n. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the one requested deviation from "by-right" requirements as provided in Section 34-216 of the LDC:

- a. The deviation enhances 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. The deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. The deviation is consistent with the Fort Myers Beach Comprehensive Plan.

NOW, THEREFORE, BE IT 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 the Applicant **did/did not** meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested rezoning.

Section 3. Town Ordinance 25-XX is approved and adopted inclusive of the MCP, Schedule of Uses and Conditions of approval as contained in Exhibits A and B.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

The foregoing 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.

ATTEST: **Town of Fort Myers Beach**

Amy Baker, Town Clerk **Dan Allers, Mayor**

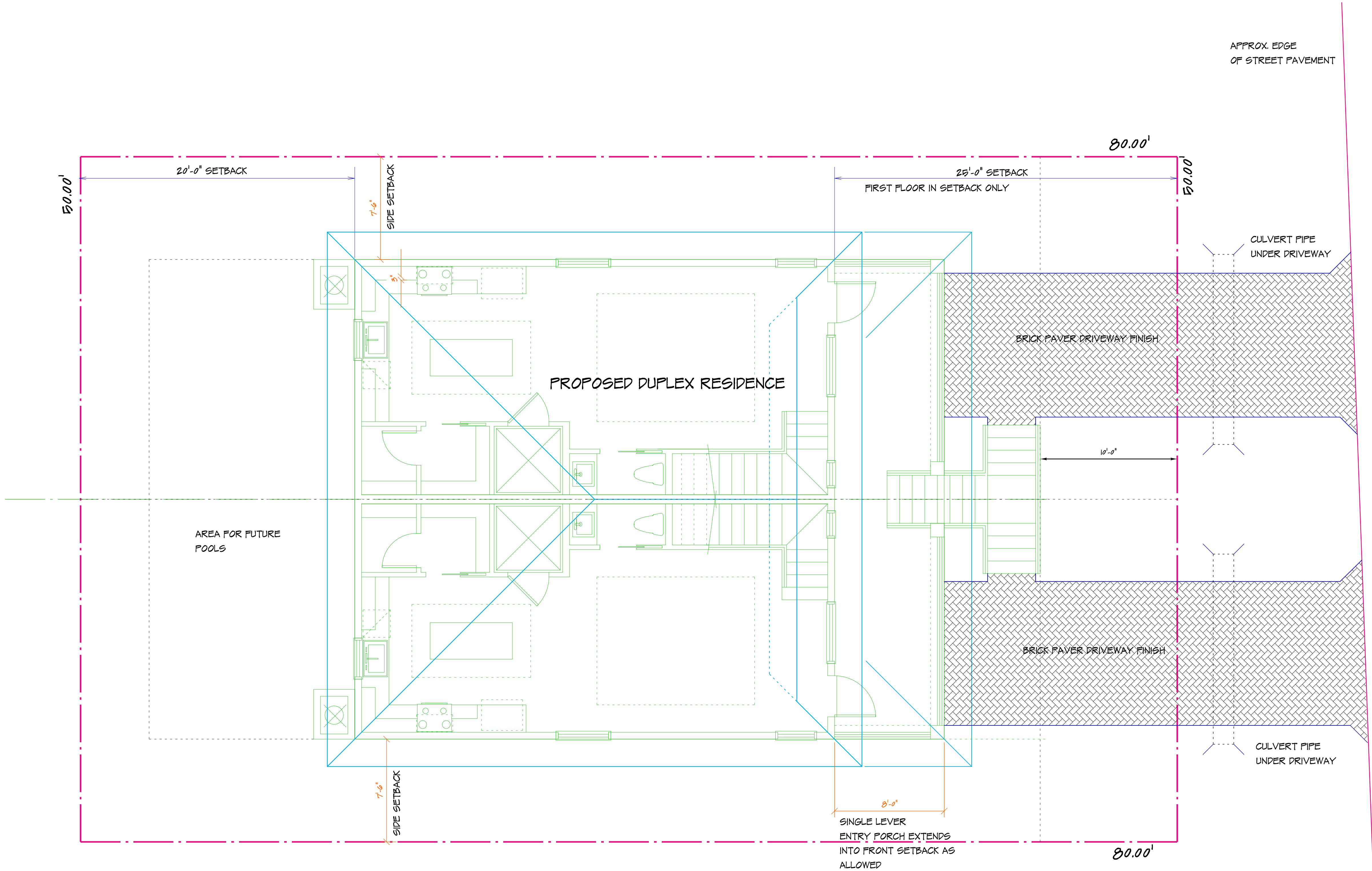
APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day _____ 2025.

Exhibits:

- Exhibit A: Master Concept Plan (MCP)
- Exhibit B: Conditions of Approval, Schedule of Uses and Deviations



DELMAR AVENUE

SITE PLAN FOR DESIGN AND LOCATION ONLY. OWNER TO PROVIDE ENGINEERED SURVEYS AND DRAINAGE PLANS AS REQUIRED FOR PERMITTING.

OWNER SHALL PROVIDE APPROVER TOWN LOT USE SURVEY AS REQUIRED.

SITE DESIGN PLAN

DEVELOPMENT CALCULATIONS

LOT AREA:.....4,000 SQ. FT.
40% AREA ALLOWABLE:.....1,600 SQ.FT.
TOTAL HOME AREA:.....1,505 SQ. FT.

FLOOD ZONE : AE-II

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

Revisions	

Job Number	
Date	12 - 12 - 24
Drawn By	J.C.
Checked By	
Drawing Scale	AS NOTED

STUDIO

one

DESIGN

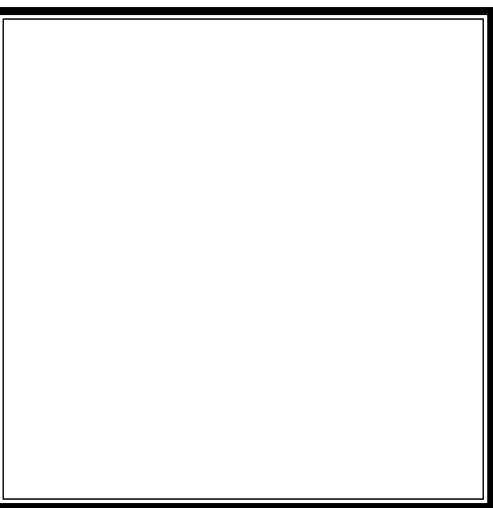
CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

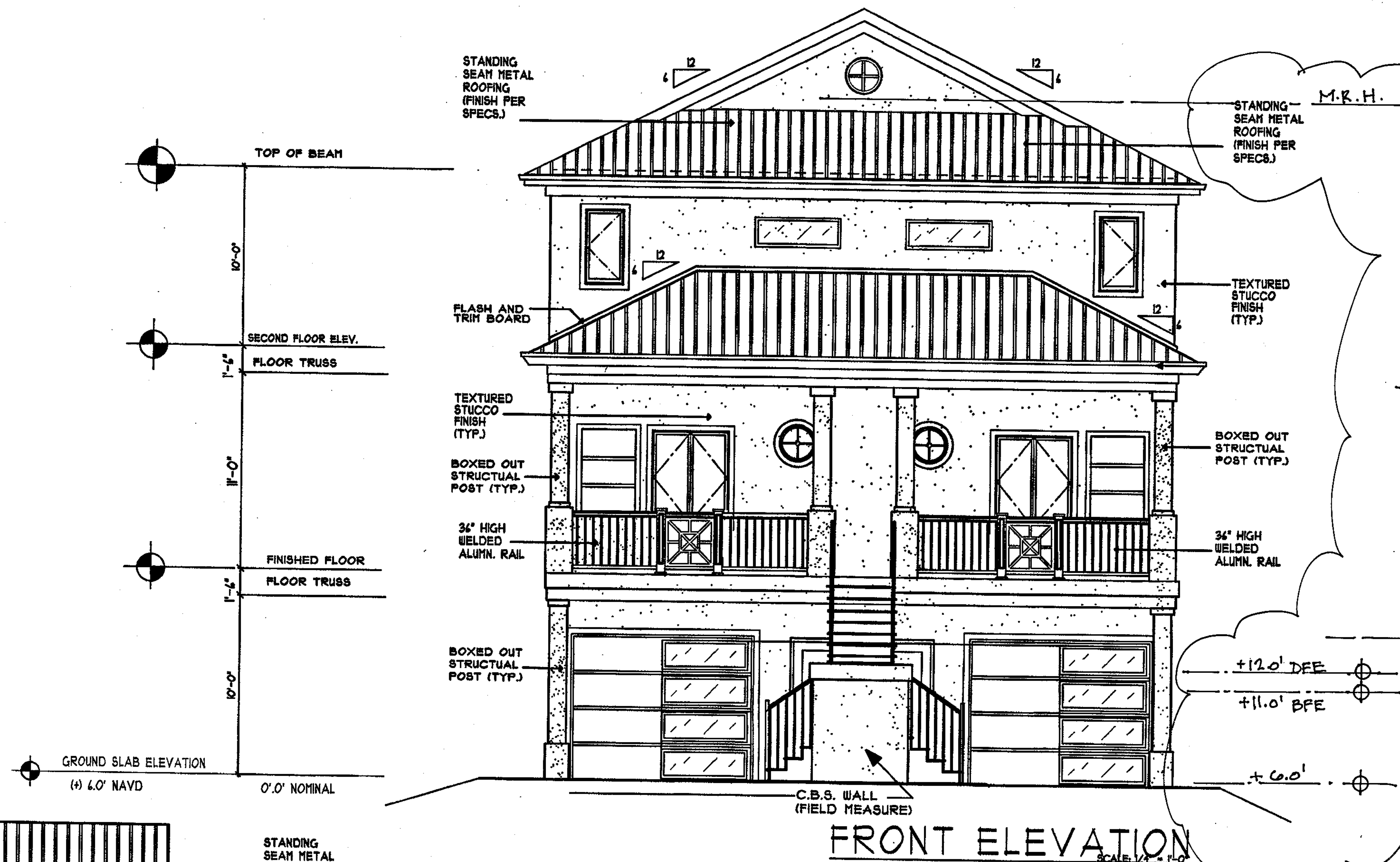
DELMAR AVENUE

FT. MYERS, BEACH FLORIDA

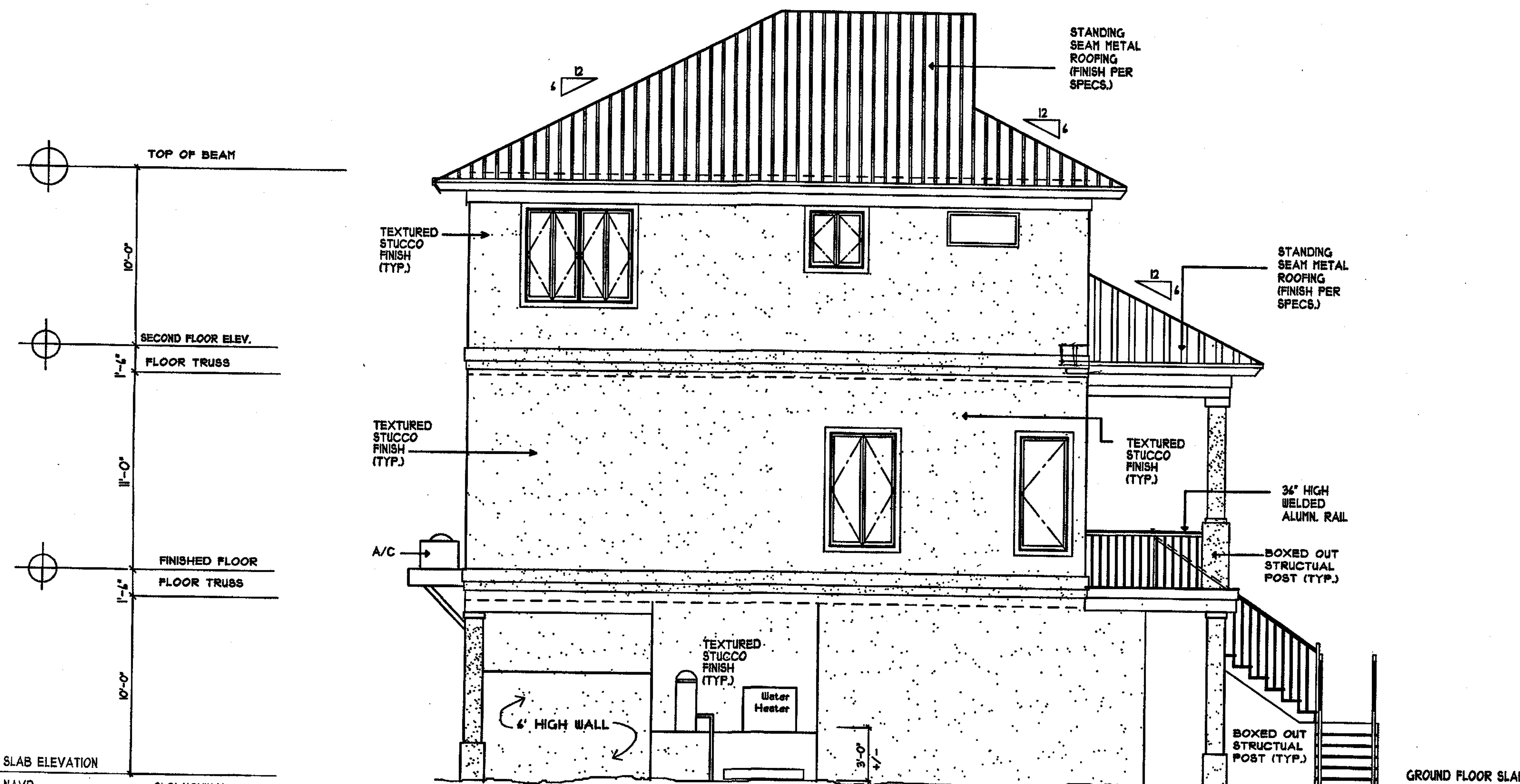


SHEET

SP - 1



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



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"

Revisions

6-30-25

Job Number

Date 12-12-24

Drawn By JC

Checked By

Drawing Scale AS NOTED

STUDIO

one

DESIGN

CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE
138 / 140 DELMAR AVENUE
FT. MYERS, BEACH FLORIDA

SHEET

A-14

Revisions	
1	6-30-25

Job Number
Date 12-12-24
Drawn By J.C.
Checked By
Drawing Scale AS NOTED

STUDIO

one

DESIGN

CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

138 / 140 DELMAR AVENUE

FT. MYERS, BEACH FLORIDA

SHEET

A - 14

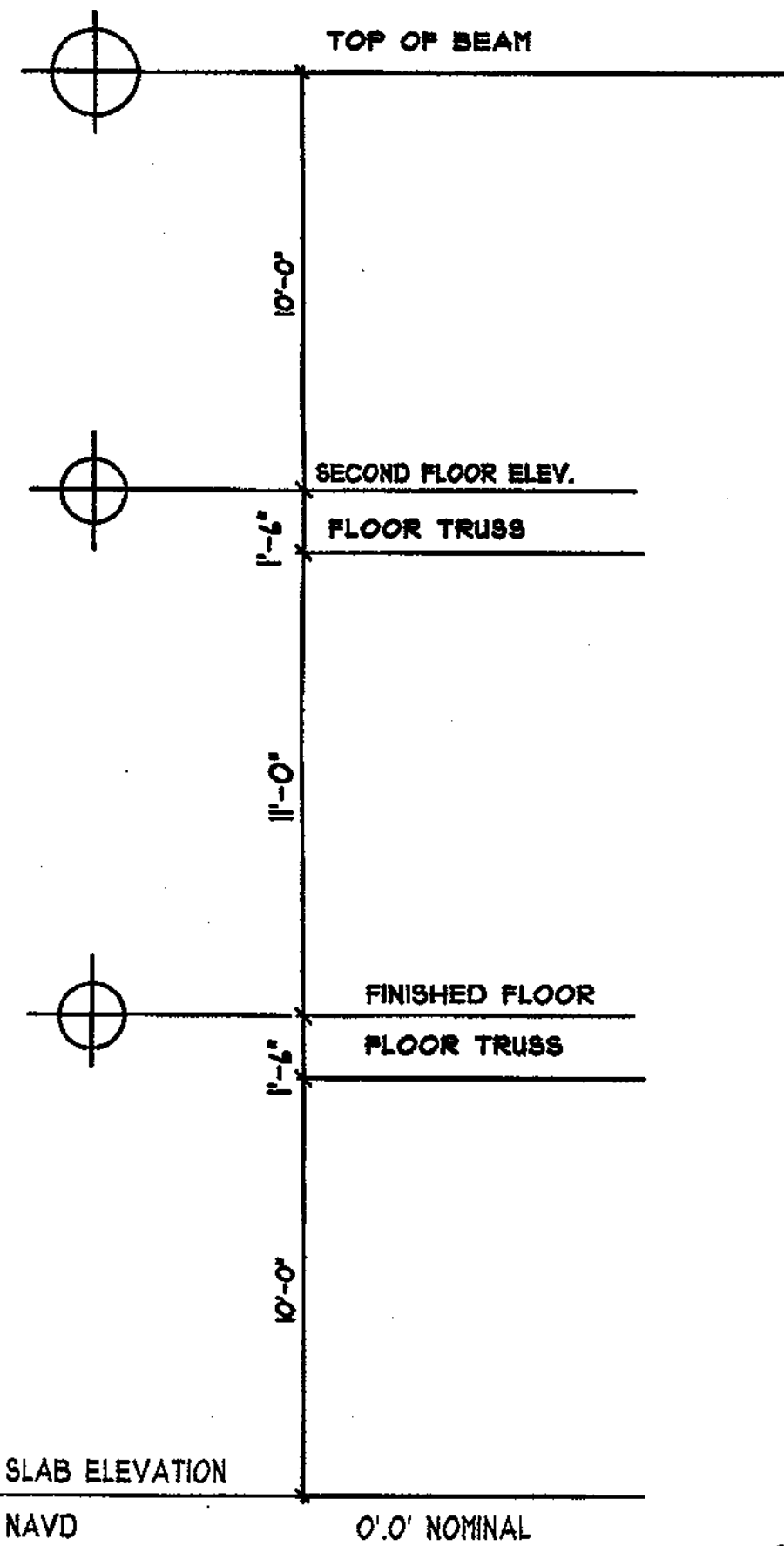
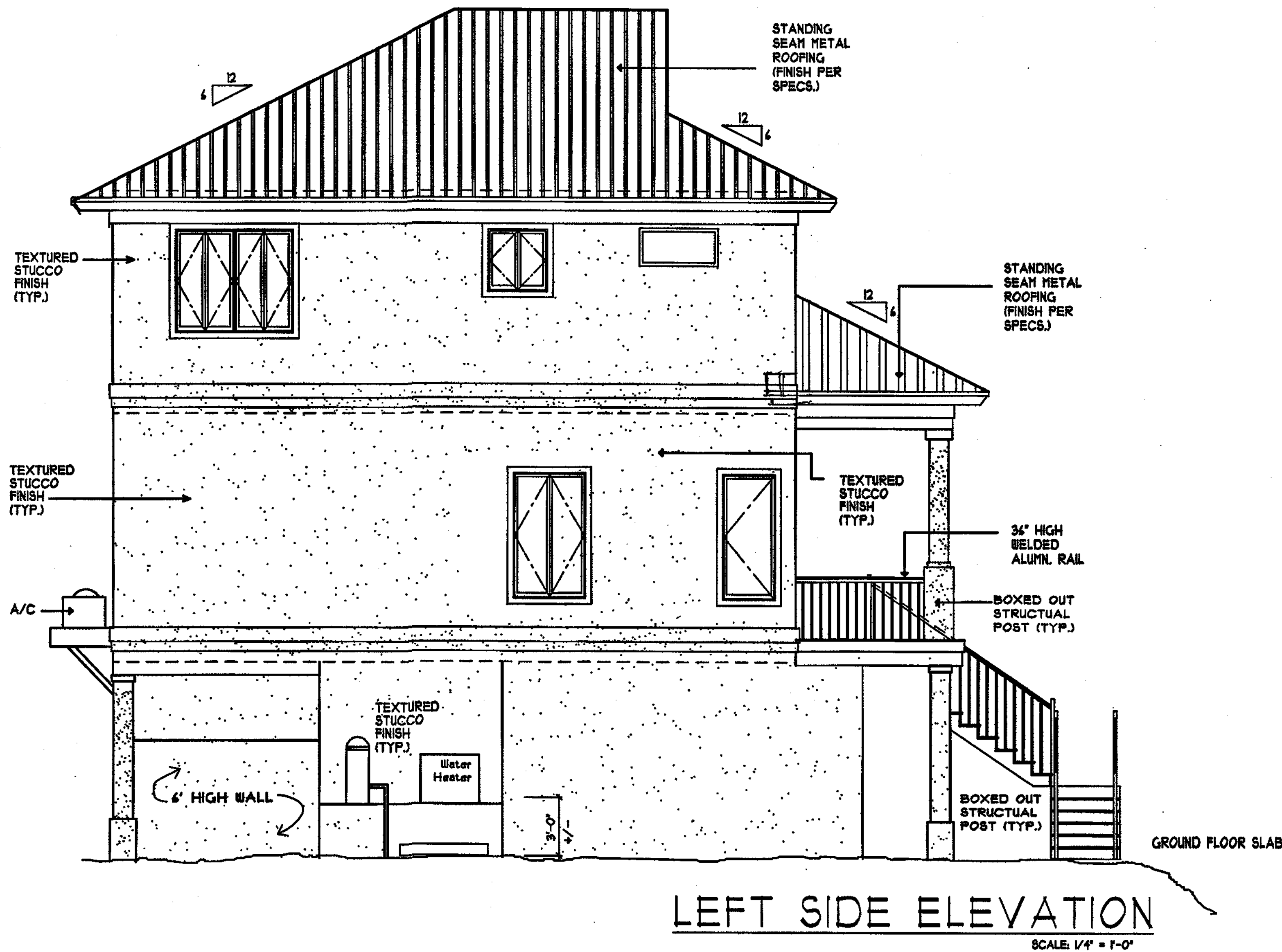
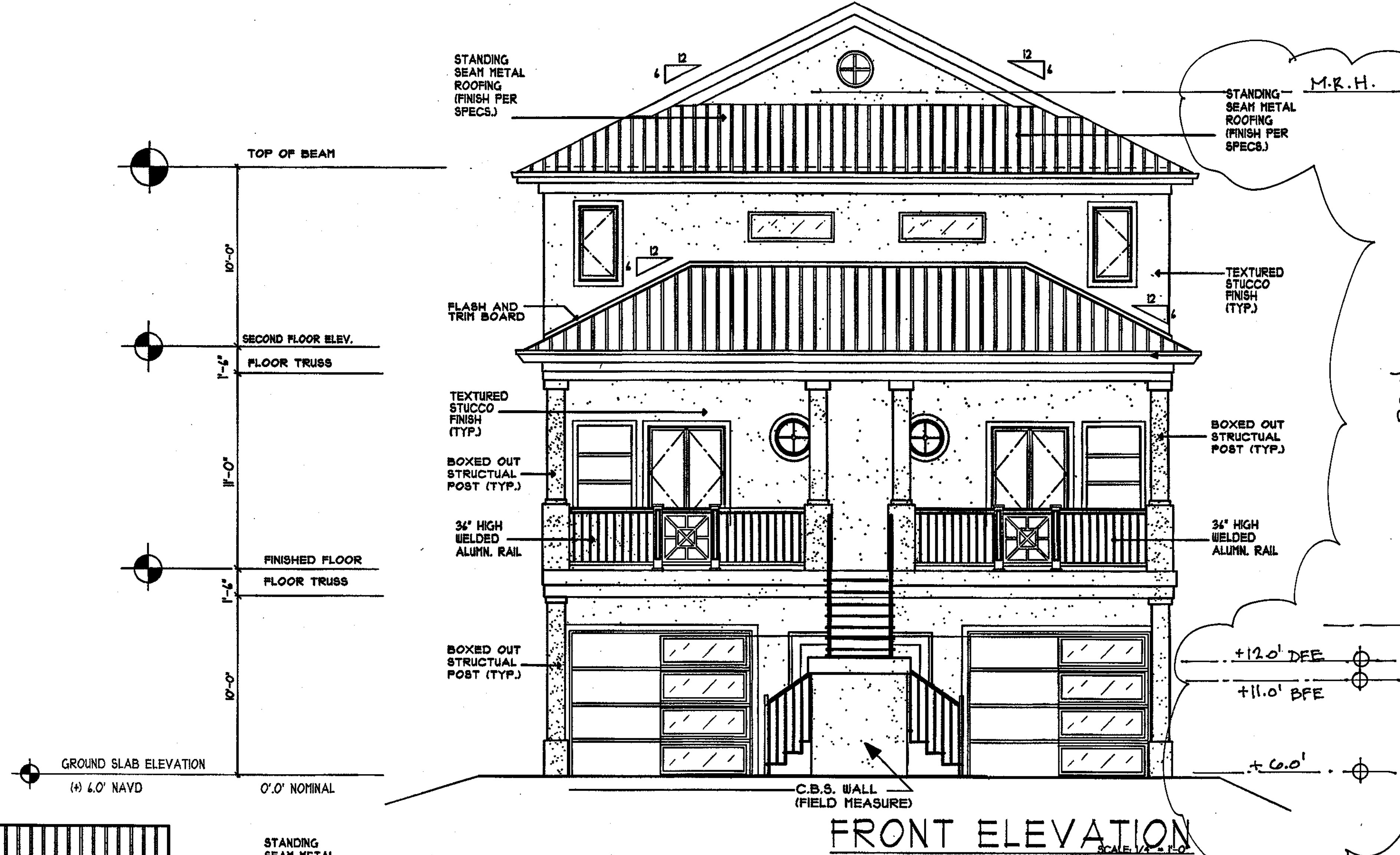


EXHIBIT B: CONDITIONS OF APPROVAL, SCHEDULE OF USES AND REQUESTED DEVIATIONS

B.1 Conditions of Approval

1. A site plan through the building permit process shall be required in lieu of a limited development order, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Failure to comply with any of the above-mentioned conditions of approval for the Rezoning request will render this approval null and void.

B.2 Schedule of Uses

Two-family or duplex

B.3 Deviation

1. Deviation from LDC Section 34-638(d)(2) b. to allow a porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.



Town of Fort Myers Beach
**COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

TYPE OF CASE: Residential Planned Development

CASE NUMBER: DCI Rezoning 20250181

CASE NAME: 138/140 Delmar Ave, rezoning to Residential Planned Development (RPD) to allow a duplex with a front setback encroachment increase from 10 feet to 15 feet.

**LPA
HEARING DATE:** August 12, 2025

**TOWN COUNCIL
HEARING DATE
(FIRST READING):** September 11, 2025

(SECOND READING): October 06, 2025

**STAFF
RECOMMENDATION:** Approval with conditions

**PREPARED/
SUBMITTED BY:** Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Scott and Leslie Fier

Request: Rezone the property at 138/140 Delmar Ave to a Residential Planned Development to allow the development of a two-story duplex above flood elevation and request one deviation from LDC Section 34-638(d)(2)b to allow porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.

Subject property: See Exhibit A

Physical Address: 138/140 Delmar Ave

STRAP #: 19-46-24-W3-0100B.0150

FLU: Mixed Residential
Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: RESIDENTIAL CONSERVATION
Single-Family Home
South: RESIDENTIAL CONSERVATION
Single-Family Home
East: RESIDENTIAL, MULTI-FAMILY
Single-Family Home
West: RESIDENTIAL CONSERVATION
Single-Family Home

II. BACKGROUND AND ANALYSIS

Scott and Leslie Fier, the owner of 138/140 Delmar Ave, is requesting rezoning from Residential Conservation (RC) to Residential Planned Development (RPD) to allow development of a two-family residential structure with a Master Concept Plan and one (1) deviation. While the lot would not be eligible for multiple residential dwelling units based on the parcel size, the applicant has shown compelling evidence that there existed 2 dwelling units prior to the destruction caused by Hurricane Ian.

Based on Lee Property Appraiser (LEEPA) data, the pre-storm area of the structure was 884 sq. ft. and contained 2 dwelling units built in 1954. Based on aerials available to staff it appears that the pre-storm structure would have compliant setbacks under today's code. The RC zoning district requires setbacks of:

Street setback: 25 feet
Side: 7.5 feet for 50 foot to 75 foot wide lots
Rear: 25-feet
Maximum Height: 30-feet above Design Flood Elevation (DFE; BFE+1' freeboard)

The lot in question has an area of 4,400 sq.ft. (0.10 ac) and is located within the Town's Residential Conservation zoning district. It is in the Mixed Residential Future Land Use which allows a density of six dwelling units per acre. The surrounding lots are all residential.

The Town's LPA unanimously voted to recommend approval with conditions for Town Council's consideration.

Analysis:

The subject property is 55 feet wide and 80-foot deep, conforming lot in Residential Conservation zoning district. The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. The site is located in the Mixed Residential land use designation on the Future Land Use (FLU) map. The Mixed Residential land use category permits a maximum of 6 dwelling units per acre or 1 dwelling unit by right for the 4,400 square foot subject property.

The Town's Post Disaster Build Back policy, allows owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan. The property supported a two family or duplex built in 1954 before Hurricane Ian. The duplex was destroyed during the storm and the applicant plans to build back the duplex with additional square footage using the Town's post disaster build back policy.

As per LDC Section 34-3238(2) d. of the post-disaster build back code, *A property owner wishing to exceed the square footage limitations contained within the post-disaster build back regulations, may be eligible to request additional square footage through a commercial planned development or a residential planned development.* The Applicant is therefore applying to rezone the subject property from RC zoning district to the Residential Planned Development (RPD) zoning district with a Master Concept Plan and 1 deviation, to allow construction of a two-family use with additional square footage for the property located at 138-140 Delmar Ave.

The requested deviation is as follows:

1. A request to allow a porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted by LDC Section 34-638(d)(2)b.

Staff response: Staff anticipates no adverse impacts or incompatibilities resulting from the request considering the subject property has supported this use since 1954. The property is part of an old residential neighborhood where several nearby properties appear to be non-compliant with the Town's street setback requirement. The Applicant wants to maximize the buildable area and is proposing to build back a duplex, destroyed during hurricane Ian, with additional square footage. The proposed two-family structure is compliant with the Town's Street, side and rear setback requirements. The Applicant is proposing an 8 foot deep porch and stoop

combination extending 15 feet into the required street setback, where a maximum encroachment of ten feet is permitted by LDC Section 34-638(d)(2)b.

Neighborhood Compatibility:

The subject property is located within an old single-family residential neighborhood zoned RC and has historically supported a two-family (duplex) use since 1954. The original structure was destroyed during the storm. The proposed redevelopment seeks to build back the duplex on the site with additional square footage, which is consistent with the historical use and character of the property.

Based on aerial imagery available from LEEPA, several nearby properties within the neighborhood exhibit non-conforming street setbacks. The request to allow a porch and stoop to encroach 15 feet into the required street setback aligns with this prevailing development pattern and maintains compatibility with the surrounding built environment.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

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

Staff response: The subject property has supported a two-family or a duplex on this location since 1954 which was destroyed during the storm. The Applicants plans to build back a two story duplex with additional square footage.

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

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The request is consistent with the Town of Fort Myers Beach Comprehensive Plan Future Land Use designation of Mixed residential.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas and does not impact open space or preserves.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The proposed density and intensity are compatible with surrounding uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The subject property has supported a two-family or a duplex on this location since 1954 and is compatible with surrounding properties. No additional trips to/ from the property are anticipated.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the RPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes.

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

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;
Staff response: Prior to Hurricane Ian, the property supported a duplex built in 1954. The Applicant is now proposing to build back the duplex with higher square footage. Therefore, the proposed two-family or duplex use has been existing on site for several years and is appropriate for the subject location.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
Staff response: Sufficient safeguards are provided for the public interest through the requirements of the LDC.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
Staff response: No special conditions are requested as part of this application.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: No additional height is requested.

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

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

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

Staff response: There are no anticipated adverse traffic impacts .

V. RECOMMENDATION

Staff finds that the RPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. Staff recommends **APPROVAL WITH CONDITIONS** of DCI20250181.

The Town's LPA unanimously voted to recommend approval with conditions for Town Council's consideration.

VI. CONDITIONS OF APPROVAL

1. A site plan through the building permit process shall be required in lieu of a limited development order, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Failure to comply with any of the above-mentioned conditions of approval for the Rezoning request will render this approval null and void.

ATTACHMENTS

Exhibit A: Master Concept Plan (MCP)

Exhibit B: Conditions of Approval, Schedule of Uses and Deviations

Exhibit C: Survey

Exhibit D: Application packet

Exhibit E: Waiver form

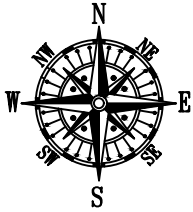


PROPERTY ADDRESS:

138 and 140 Delmar Avenue
Fort Myers Beach, FL 33931

On your behalf, and as a requirement for your transaction, this document has been coordinated with us by the firm shown below. Landtec Surveying, Inc. is a private firm and remains entirely responsible for this document's content.

DHR LAW
Real Estate Attorneys



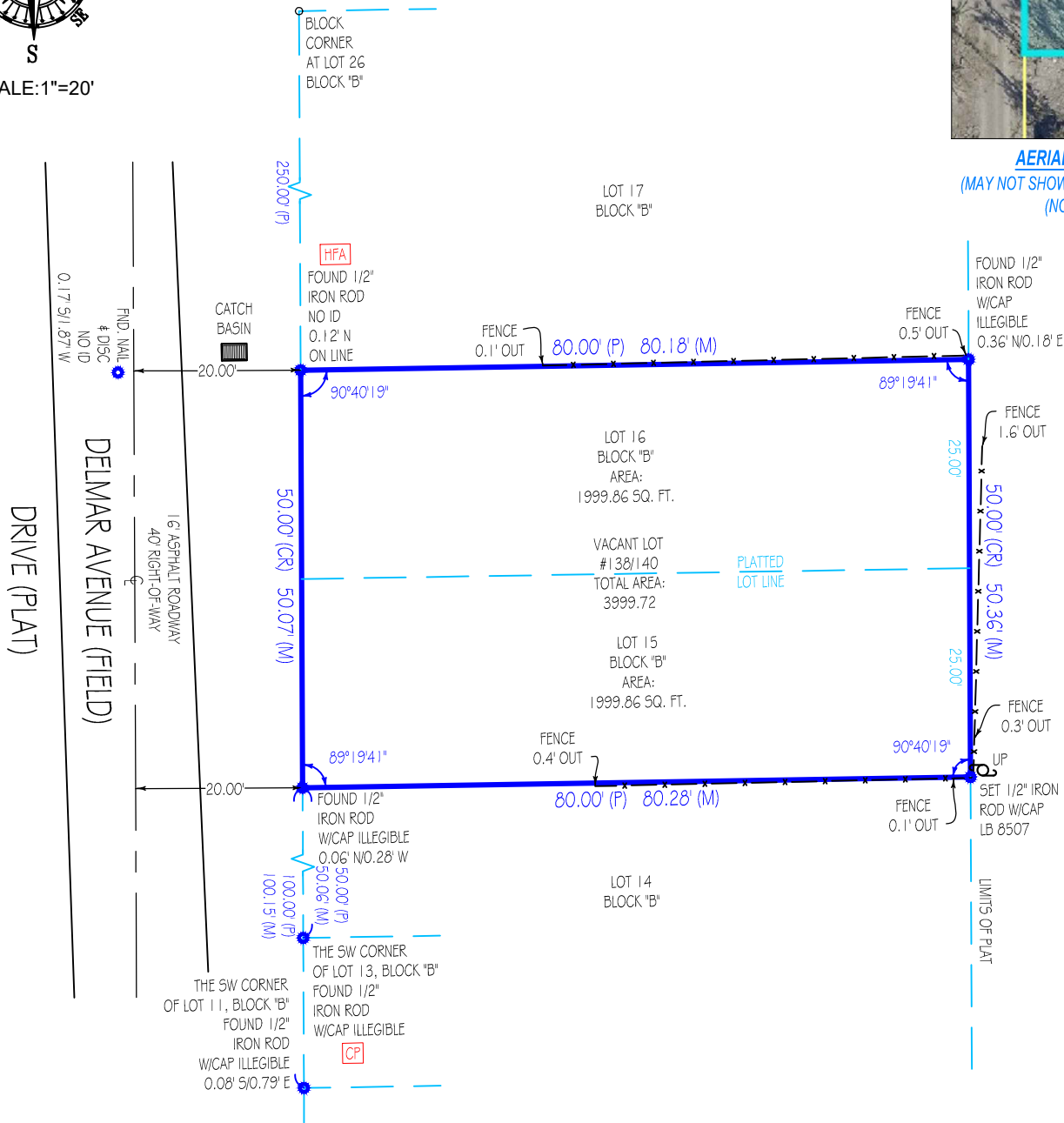
SCALE: 1"=20'

BEARING REFERENCE:

NONE. RECORD INFORMATION RELIANT UPON ANGULAR DATA ONLY.
ALL ANGULAR DATA SHOWN HEREON REFERENCED THERETO.



AERIAL PHOTOGRAPH
(MAY NOT SHOW LATEST IMPROVEMENTS)
(NOT-TO-SCALE)



"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

Platted Easements, Notable or Adverse Conditions (unplatted easements also listed if provided by client): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN HEREON AND THEIR RELATIONSHIP TO THE BOUNDARY LINE
- NO NOTABLE CONDITIONS FOUND.

This survey has been issued by the following
Landtec Surveying office:
700 West Hillsboro Boulevard, Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587
Fax: (561) 465-3145
www.Landtecsurvey.com

Elevations, if shown:
Benchmark: _____
Benchmark Elev.: _____
Benchmark Datum: _____
Elevations on Drawing are in:
N.G.V.D.29 ☐ N.A.V.D.88 ☐

Revisions: _____ Job Nr: 196445-SW Date of Field Work: 02/08/2024 Drawn by: A.K.



TYPE OF SURVEY:

- ☒ BOUNDARY ☐ CONSTRUCTION ☐ CONDOMINIUM
☐ ALTA/NSPS ☐ TOPOGRAPHIC ☐ SPECIAL PURPOSE

PURPOSE OF SURVEY (SEE GENERAL NOTES BELOW):

Purchase/Refinance

LEGAL DESCRIPTION:

LOT (S) 15 AND 16, BLOCK B, W.W. WATSONS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGE(S) 67, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY ADDRESS:

138 AND 140 DELMAR AVENUE
FORT MYERS BEACH, FL 33931

INVOICE NUMBER: 196445-SW

DATE OF FIELD WORK: 02/08/2024

CLIENT FILE: 24-0030-CJH

CERTIFIED TO

DAVID H. ROSENBERG, P.L. DBA DHR LAW
CHICAGO TITLE INSURANCE COMPANY
LAKE MICHIGAN CREDIT UNION ISAOA/ATIMA
SCOTT FIER AND LESLIE FIER

FLOOD ZONE: AE

FLOOD MAP: 12071C

PANEL: 0554

SUFFIX: G

PANEL DATE: 11/17/2022

BASE FLOOD ELEVATION OR DEPTH: 11 NAVD 1988

COMMUNITY NUMBER: 120673

PLATTED EASEMENTS, NOTABLE OR ADVERSE CONDITIONS (UNPLATTED EASEMENTS ALSO LISTED IF PROVIDED BY CLIENT):

IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN HEREON AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- NO NOTABLE CONDITIONS FOUND.

ABBREVIATION LEGEND (SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

A OR AL = ARC LENGTH
 C/O = CLEANOUT
 CA = CENTRAL ANGLE
 CATV = CABLE TV RISER
 CF = CALCULATED FROM FIELD
 CH = CHORD DISTANCE
 CONC. = CONCRETE
 CR = CALCULATED FROM RECORD
 DE = DRAINAGE EASEMENT
 EL OR ELEV = ELEVATION
 EM = ELECTRIC METER
 F.F.E. = FINISHED FLOOR ELEV.
 FIR = FOUND IRON ROD
 FN = FOUND NAIL
 FND = FOUND
 G.F.F.E. = GARAGE FINISHED FLOOR ELEV.
 L = LEGAL DESCRIPTION
 M = MEASURED
 OHC = OVERHEAD CABLE
 P = PLAT
 PC = POINT OF CURVE
 PCC = POINT OF COMPOUND CURVATURE
 PH = POOL HEATER
 PI = POINT OF INTERSECTION
 PK = PARKER KAELOH
 POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 PRC = POINT OF REVERSE CURVATURE
 PT = POINT OF TANGENCY
 R = RADIUS
 RNG = RANGE
 ROW = RIGHT OF WAY
 SEC = SECTION
 TR = TELEPHONE RISER
 TWP = TOWNSHIP
 UE = UTILITY EASEMENT
 UP = UTILITY POLE
 WM = WATER METER
 WV = WATER VALVE

PP = POOL PUMP
 PRC = POINT OF REVERSE CURVATURE
 PT = POINT OF TANGENCY
 R = RADIUS
 RNG = RANGE
 ROW = RIGHT OF WAY
 SEC = SECTION
 TR = TELEPHONE RISER
 TWP = TOWNSHIP
 UE = UTILITY EASEMENT
 UP = UTILITY POLE
 WM = WATER METER
 WV = WATER VALVE

SYMBOLS (SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING - NOT TO SCALE):

⚡ = UTILITY POLE Ⓜ = WELL
 ☆ = LIGHT POLE Ⓢ = CENTER LINE
 🚰 = CATCH BASIN 🚰 = PARTY WALL
 🔥 = FIRE HYDRANT 🚰 = AIR CONDITIONER
 🚰 = MANHOLE 🚰 = SEPTIC LID
 ⚡ = WATER VALVE X = ELEV. SHOT
 ☒ = WATER METER 🚰 = SECTION CORNER

LINETYPES:

BOUNDARY ———
 BUILDING ———
 EASEMENT - - - - -
 CHAIN LINK FENCE — x — x —
 WOOD FENCE — // — // —
 PLASTIC FENCE — o — o —
 OVERHEAD CABLE — i — i —

GENERAL NOTES:

- THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
- ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
- GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
- UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
- ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ON HEREON.
- ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
- ANY CORNERS SHOWN AS "SET" HAVE EITHER BEEN SET ON THE DATE OF FIELD WORK, OR WILL BE SET WITHIN 2 BUSINESS WEEKS OF SAID DATE AND ARE IDENTIFIED WITH A CAP MARKED LB (LICENSED BUSINESS) #8507.

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL (IF AFFIXED) HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062, PURSUANT TO SECTION 472.025, FLORIDA STATUTES.



Digitally signed
by Pablo Alvarez
Date: 2024.02.08
15:55:51 -06'00'

SIGNATURE

DATE: 02/08/2024

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL (IF AFFIXED) OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

PRINTING INSTRUCTIONS:

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. DO NOT USE "FIT".

LANDTEC
SURVEYING
and Lien

LICENSED BUSINESS No. 8507

SCOTT AND LESLIE FIER

PERSONAL STATEMENT (LDC 34-85)

138-140 DELMAR AVENUE, FORT MYERS BEACH,

Dear Lee County Appraisers, Town Council and City Planners

I am writing to respectfully and thoughtfully accept our request for application for the property located at 138-140 Delmar Avenue.

To provide some background to our proposal for consideration. We purchased the lot in February 2024 after spending several months working with Sarah Probst (prior City employee) and John Carsi (our architect) we received written confirmation we would be able to build a 2-story duplex structure with two bedrooms on each side, an elevator (for my wheelchair bound mother) and 3 stories high. With this validation we moved forward with purchasing the lot and engaging John to design it and The Property Medic to build it.

Based on that written confirmation, we sold our primary residence at 261 Delmar, which we loved, to build this duplex so we could live on one side and my mother on the other. My mother is a proud woman and will not live with her children, this solution was perfect for a legally blind, wheelchair bound woman. We never thought we would find the right place, on the beach, until this became available. The design and approval process has taken longer than expected and unfortunately had to move my mother from Amavida assisted living to Life Care Center of Estero skilled nursing facility after a fall until the house was done.

It has been a difficult transition as these facilities are woefully understaffed due to the immigration policies. I currently work full time and spend every other minute at the facility enhancing my mother's care. Without me spending the time I do she could spend hours being soiled and unchanged, alone with no options to be outside her room, or have a walk around the facility.

We are now several months behind schedule and no closer to meeting my mother's wishes to spend her final years at home. Every time I am there, she asks me how much longer. It is heartbreaking and I am confident no one would want that for their parents.

Fast forward. We submitted our permit application request back in March with the expectation that it would be a standard process to get a building permit, based on the commitment from Sarah Probst. This has not been the case. We were asked to submit another LDO application and advised this is all that is needed only to get a response back

that was since noted as incorrect and now needs to be submitted as a RPD (Residential Plan Development). We met with the Judith, Jason, Frankie and Kendra on June 30th and understand this is the path forward with their full support and would like to thank them for their efforts.

This has been extremely stressful with all the different requirements. Between the personal and emotional toll this has put on my family I am hopeful all the parties involved can see this for what it is. A desire to provide proper care for my mother and a house which she can call home in one and us in the other. We are Fort Myers Beach residents, not investors, and plan to stay until our final days.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 138-140 Delmar Avenue

STRAP Number: 19-46-24-W3-0100B.0150

Applicant: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Contact Name: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Email: lesliefier13@gmail.com scottfier21857@gmail.com

Fax: None

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed residential

FLUM Density Range: 10 units per acre

Platted Overlay:

☒ YES

☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☐ Commercial ☒ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

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

Applicant Mailing Address: 18701 San Carlos Blvd, #26, Fort Myers Beach, FL 33931

Email: lesliefier13@gmail.com scottfier21857@gmail.com

Fax: None

Contact Name: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: John Carsi Phone: 239-707-9365

Address: _____

Email: rangfan1@gmail.com Fax: None

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

Name: The Property Medic (Randy Stam) Phone: 239-770-1818

Address: 19050 San Carlos Blvd, Unit 3, Fort Myers Beach, FL 33931

Email: service@theproperty-medic.com Fax: None

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☒ Rezoning from RC to ☐ Commercial PD ☒ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Mailing Address: 18701 San Carlos Blvd, #26, Fort Myers Beach, FL 33931

Email: lesliefier13@gmail.com/scottfier21857@gmail.com Fax: None

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Scott Fier
Signature

Scott Fier

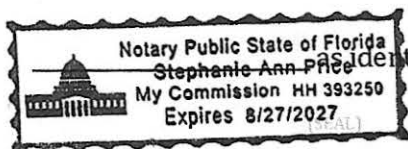
Printed Name

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 2nd day of July, 2025, by

Scott Fier ☒ who is personally known to me OR ☐ who has produced



as identification.

Stephanie Ann Price
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

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

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



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

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

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____ ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0100B.0150

Property Address: See legal description from survey document attached. 196445-SW Survey Package.pdf

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 50 feet

Depth (please provide an average width if irregular in shape) 80 feet

Frontage on street: 50 feet Frontage on waterbody: 0 feet

Total land area: 4000 ☐ acres ☒ square feet

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

Times Square to Delmar Avenue

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☐ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☐ Attach a map showing the surrounding property owners as Exhibit 6-7.

☐ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☒ Mixed Residential

☐ Boulevard

☐ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: 138-140 Delmar Avenue, Fort Myers Beach, FL 33931
Authorized Applicant: Scott and Leslie Fier
STRAP Number(s): 19-46-24-W3-0100B.0150

Current Property Status: Vacant
Current Zoning: RC
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes, ☐ no FLUM Density Range:

Requested Action:

☐	DRI (with rezoning)
☐	Planned Development (also check below)
☒	Rezoning from: RC to: RPD
☐	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

We are proposing a duplex with each side being 3-stories, 2-bedroom, enclosed garage, elevator on each side. We understand from the meeting on 6.30.25 with the planning committee this complies with the Fort Myers Beach comprehensive plan.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

This is not a commercial design.



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

The reason for the request is each side will have an enclosed garage with a door access which requires the stairs to remain in the center of the design plan. Esthetically, and functionally, it is a better design to have them come straight down over a side-to-side which would require us to eliminate the door access at the bottom.
We are respectfully requesting this deviation for functional and esthetics design which will allow for ground floor access via a door to the elevator required for my mother, who is wheelchair bound, to access the building and upper floors.



For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

[illegible]

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

3/30/2021

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

☐ General Requirements
☐ DRI
☒ Planned Development
☐ Conventional Rezoning
☐ Special Exception
☐ Variance
☐ Appeal
☐ Other

Administrative Action

☐ General Requirements
☐ Planned Dev. Amendment
☐ Commercial Antenna
☐ Consumption on Premises
☐ Forced Relocation of a Business
☐ Interpretation of LDC
☐ Minimum Use Determination
☐ Setback Variance
☐ Other

Name of Project: 134/140 Delmar Avenue Duplex
Applicant: Scott and Leslie Fier
Strap Number: 19-46-24-W3-0100B.0150
Street Address: 138-140 Delmar Avenue, Fort Myers Beach, FL 33931
Phone Number: (630)549-5682
Email: leslie.fier@fortive.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
10-286	Traffic Impact Statement (TIS)
34-212(4)e	Landscape Plan
34-212(4)i	Stormwater Management

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

This RPD is for a two-family home. Any traffic impact will be very minor, as the site previously contained a duplex. Landscape Plans are not typically required for single-family and two-family developments. The applicant will be required to provide a drainage plan with stormwater calculations and ground cover materials at the time of permitting.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Signature

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

Frank Kropacsek

Signature

07/11/2025

Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT

1. Request:

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

Jason Green, Community
Development Services

5. Background:

The applicant is requesting a special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of accessory structures like tiki huts, decking, fence, and driveway into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the EC zoning district.

LPA voted 6 for 0 to recommend approval with conditions for SEZ20250149 for Town Council's consideration.

Attachments:

1. ns_Resolution 25-XX , SEZ 20250149 for 4750 Estero Blvd
2. Exhibit A Site Plan
3. Exhibit B List of Property owners
4. Exhibit C Completed Application and Survey
5. NS SEZ20250149 4750 Estero Blvd- Staff report

Financial Impact:

Unknown

6. Alternative Action

Deny Special exception for like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

7. Management Recommendations:

Approval with conditions for special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

8. Recommended Approval:

Kendra Rosa, Zoning Coordinator
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/14/2025
Approved - 8/28/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 8/29/2025
Final Approval - 8/29/2025

RESOLUTION NUMBER 25-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; 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 Brian Campbell on behalf of the property owner, The Shores of Fort Myers Beach Condominium Association Inc, is requesting a special exception to allow like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district seaward of 1978 CCCL; and

WHEREAS, the STRAP number for the subject property is 28-46-24-W4-02500.00CE; and

WHEREAS, the Property is located in the “Medium Residential” and “Recreation” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the “multi-family residential” and the “Environmentally Critical” 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 12, 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 and voted 6 to 0 to recommend approval with conditions of the special exception request; and

WHEREAS, on September 11, 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 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/ is not 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 Applicants did/ did not meet their burden of proof that the requested Special Exception does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicants, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the special exception request to allow like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping in Environmentally Critical zoning district seaward of 1978 CCCL.

Section 3. In approving/ approving with conditions/ denying 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 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; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicants and the Property:

- A. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. The Applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834.
- C. Each time the structure is repaired, the Applicant must request a new special exception approval and permit prior to beginning construction.
- D. Construction may not occur during sea turtle season.
- E. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

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

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

ADOPTED this ____ day of September, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

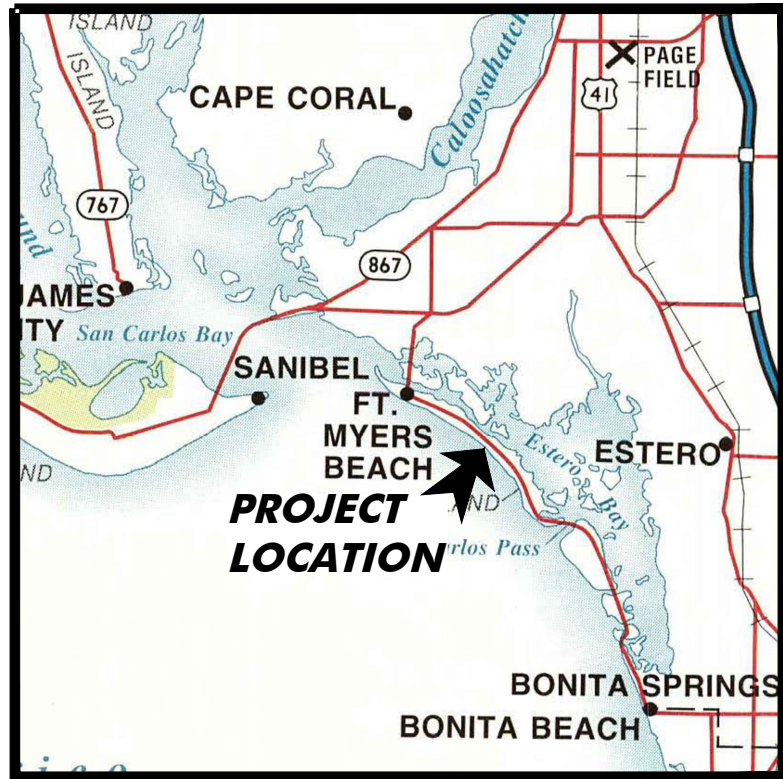
ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of September, 2025.

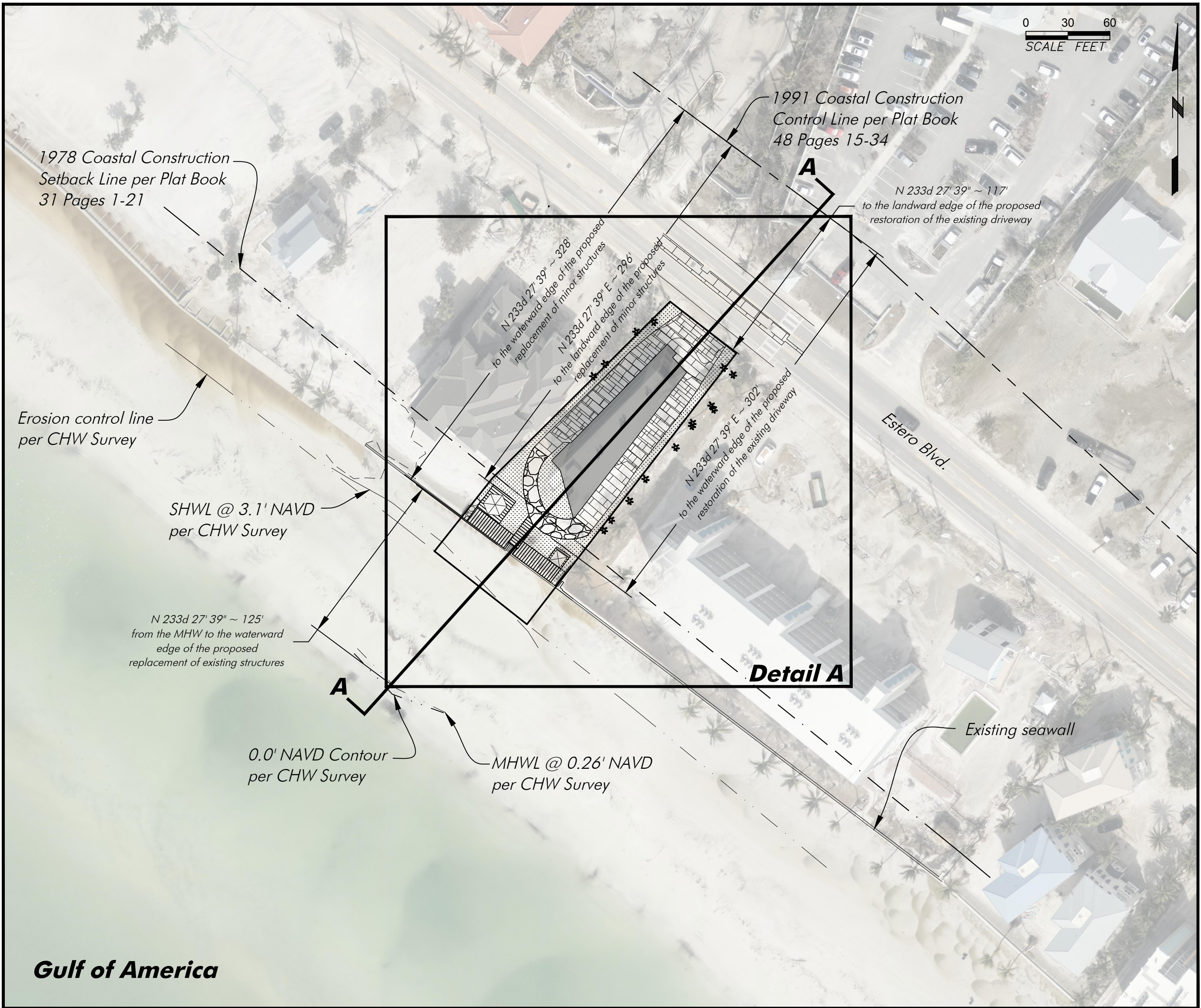


Vicinity Map
SCALE: 1" = 5 Miles



Location Map
SCALE: 1" = 250'

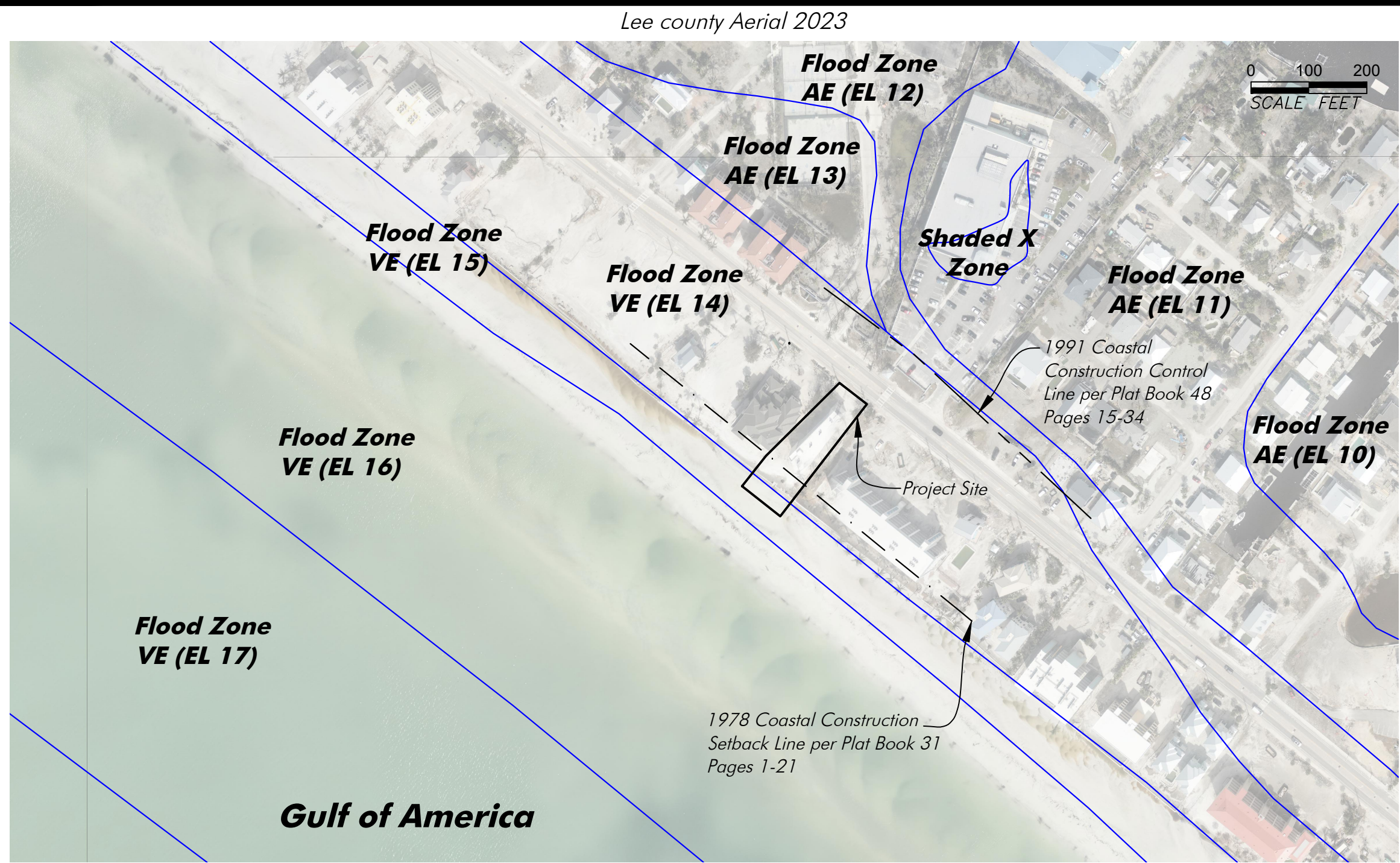
Notes: Property details per survey file Job 240448.01 completed by CHW an NV5 Company on 1-28-25. All elevations reference NAVD. Construction fences will surround the work area.



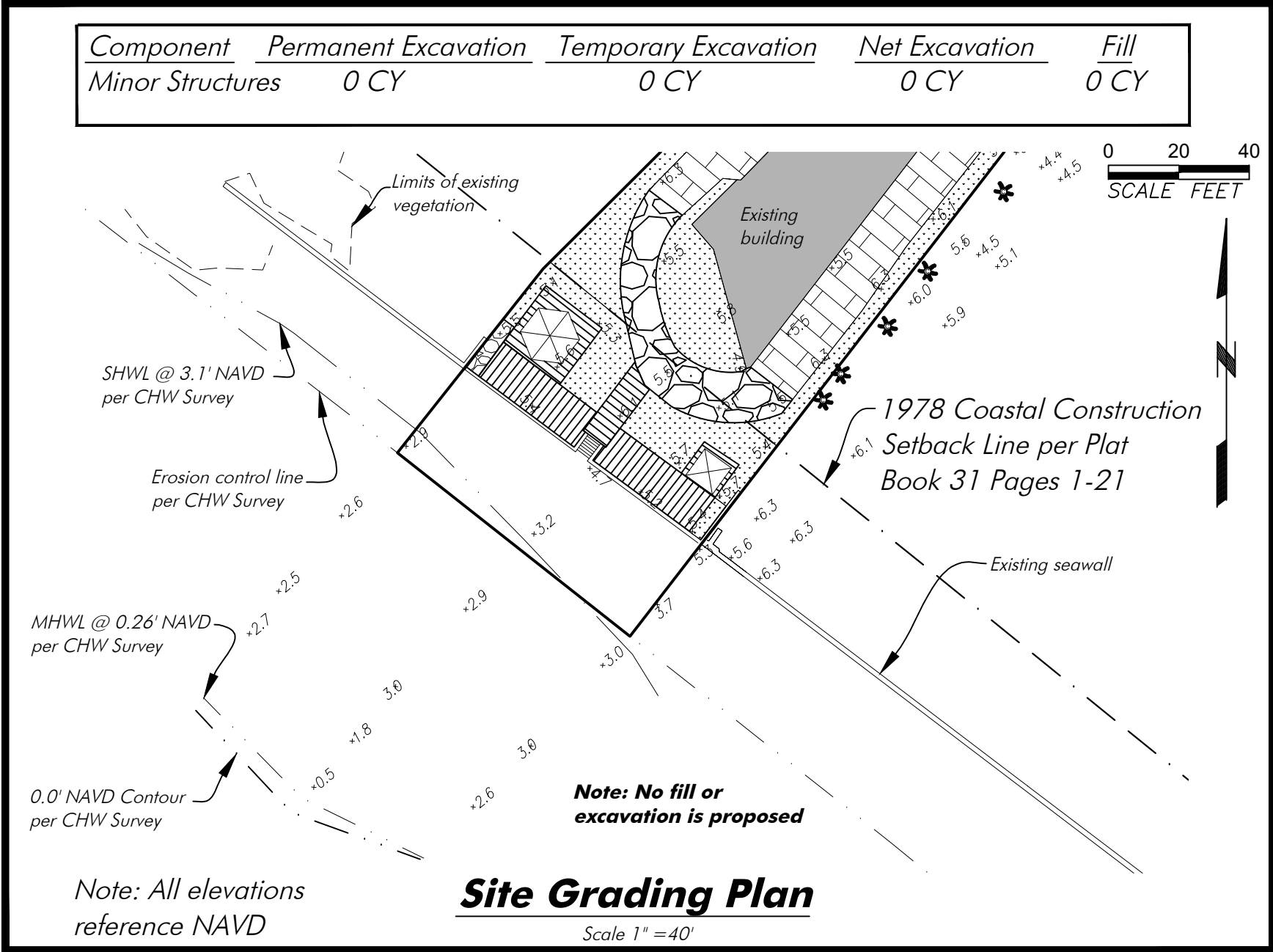
Overall Site Dimension Plan
Scale 1" = 60'



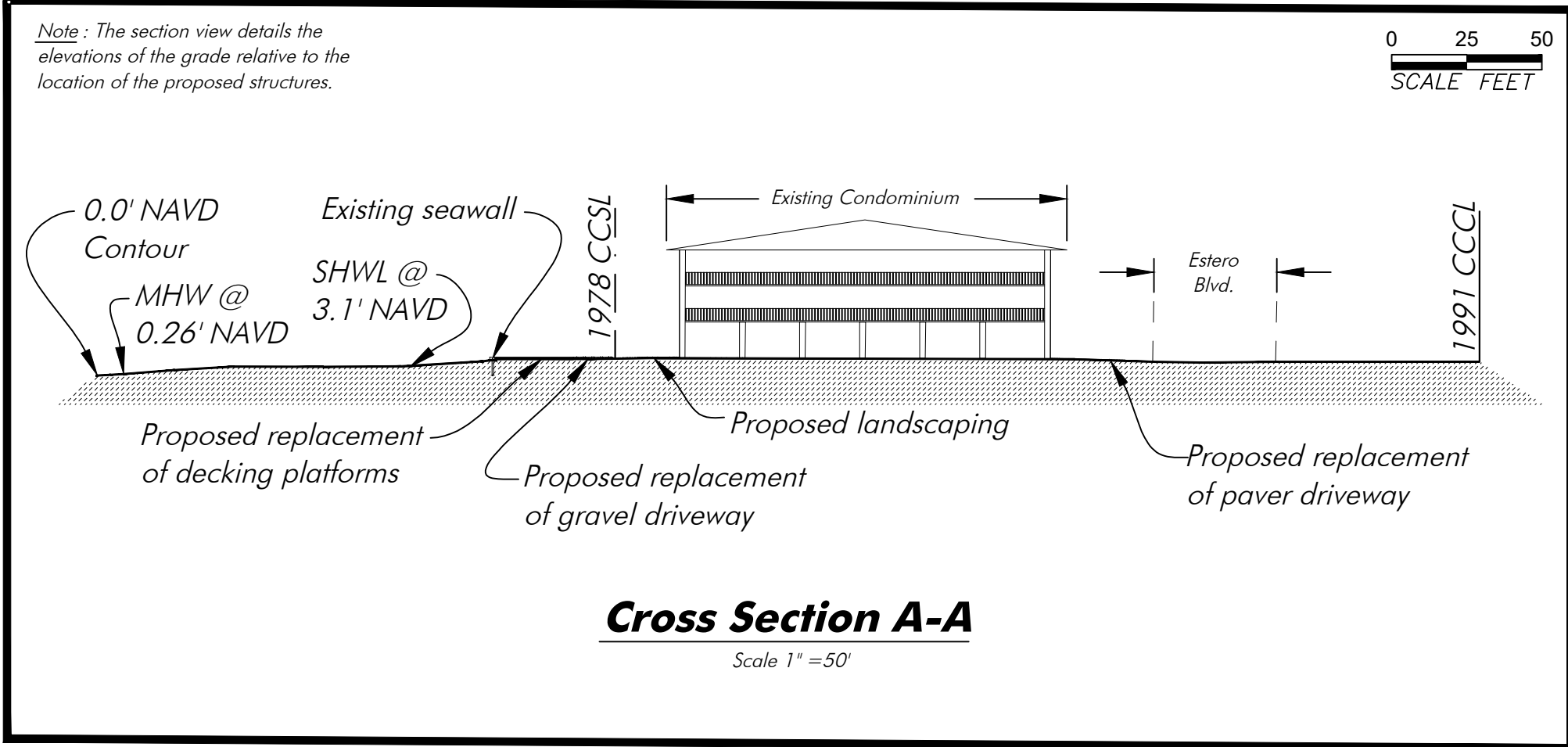
Detail A - Proposed Structures Dimension Plan
Scale 1" = 30'



Overall Site Plan
Scale 1" = 200'



Site Grading Plan
Scale 1" = 40'



Cross Section A-A
Scale 1" = 50'



1938 Hill Avenue, Fort Myers, Florida 33901
Office: 239-334-6870 Fax: 239-334-7810
MARINE and ENVIRONMENTAL CONSULTANTS

**Shores of Fort Myers Beach
Condominium Association**
4750 Estero Blvd., Fort Myers Beach, Florida
STRAP: 28-46-24-W4-02500.00CE

DATE: 5-28-25
FILE: ShoresFmb1 Master
DRAFTER: JWA
DATUM: NAVD88
SCALE: 1" = Varies
SHEET: 1/1

**The Shores of Fort Myers Beach Condominium Association
Property Owner List**

STRAP	OWNER	PROPERTY ADDRESS	MAILING ADDRESS
28-46-24-W4-02500.1010	BML INVESTMENT GROUP LLC	4750 ESTERO BLVD #101, FORT MYERS BEACH FL 33931	5820 SW 93RD PL MIAMI FL 33173
28-46-24-W4-02500.1020	CAMPBELL BRIAN & NANCY	4750 ESTERO BLVD #102, FORT MYERS BEACH FL 33931	221 HILLBROOK DR SHEPHERDSVILLE KY 40165
28-46-24-W4-02500.1030	D & H GERMAN LAUNDRY SERVICE L	4750 ESTERO BLVD #103, FORT MYERS BEACH FL 33931	949 TAMIAMI TRL #208 PORT CHARLOTTE FL 33953
28-46-24-W4-02500.1040	BALDRIDGE KAREN ANN	4750 ESTERO BLVD #104, FORT MYERS BEACH FL 33931	108 RATHFARNUM DR WELDON SPRING MO 63304
28-46-24-W4-02500.2010	SOYKA JOANN M TR FOR JOHN Z + JOANN M SOYKA TRUST	4750 ESTERO BLVD #201, FORT MYERS BEACH FL 33931	6358 SAINT ANDREWS CIRCLE S FORT MYERS FL 33919
28-46-24-W4-02500.2020	SHELLEY MARY J	4750 ESTERO BLVD #202, FORT MYERS BEACH FL 33931	1211 S DUCHESNE DR SAINT CHARLES MO 63301
28-46-24-W4-02500.2030	CLUGH THOMAS ENTERPRISES LLC	4750 ESTERO BLVD #203, FORT MYERS BEACH FL 33931	1623 EAST 430 SOUTH LAFAYETTE IN 47909
28-46-24-W4-02500.2040	OSTENDORF DONALD T & OSTENDORF KAREN S TR FOR 4750 ESTERO BLVD 204 LAND TRUST	4750 ESTERO BLVD #204, FORT MYERS BEACH FL 33931	27530 RICHVIEW CT BONITA SPRINGS FL 34135

2025 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 761928

Entity Name: SHORES OF FORT MYERS BEACH CONDOMINIUM
ASSOCIATION, INC.

Current Principal Place of Business:

4750 ESTERO BLVD
FT MYERS BCH, FL 33931

Current Mailing Address:

221 HILLBROOK DRIVE
SHEPHERDSVILLE, KY 40165 US

FEI Number: 36-3653018

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

CAMPBELL, NANCY C
4750 ESTERO BLVD.
UNIT 102
FT MYERS BEACH , FL 33931 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: NANCY C. CAMPBELL

02/10/2025

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title BOARD OF DIRECTOR

Name THOMAS, PHILIP

Address 1623 E. 430 SOUTH

City-State-Zip: LAFAYETTE IN 47909

Title BOARD OF DIRECTOR

Name CAMPBELL, BRIAN

Address 221 HILLBROOK DRIVE

City-State-Zip: SHEPHERDSVILLE KY 40165

Title BOARD OF DIRECTOR

Name SOYKA, JOANN

Address 6358 SAINT ANDREWS CIRCLE
SOUTH

City-State-Zip: FORT MYERS FL 33919

Title SECRETARY/TREASURER

Name CAMPBELL, NANCY

Address 221 HILLBROOK DRIVE

City-State-Zip: SHEPHERDSVILLE KY 40165

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 617, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: NANCY CAMPBELL

SEC/TREAS

02/10/2025

Electronic Signature of Signing Officer/Director Detail

Date

May 27, 2025

Town of Fort Myers Beach
c/o Fort Myers Beach Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

**RE: The Shores of Fort Myers Beach Condominium Association, Inc.
4750 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Property")**

Dear Sir/Madam,

In accordance with Sec. 34-201 of the Fort Myers Beach Town Ordinances, please accept this correspondence as The Shores of Fort Myers Beach Condominium Association, Inc. formal request for a special exception to replace and reconstruct the deck, chickee huts and landscaping that were destroyed by Hurricane Ian on the Association Property seaward of the 1978 coastal construction control line. A special exception is required in order for the Association to move forward with permitting and construction.

Attached hereto as **Exhibit "A"** is the site plan for the proposed construction and the relevant coastal construction lines.

Based upon my review of the governing documents of The Shores of Fort Myers Beach Condominium Association, Inc. and all other applicable relevant legal documents, I can attest that applying or petitioning for this special exception does not violate any applicable provisions within the documents, and to the best of my knowledge, any federal or state law. Approval by the Town of Fort Myers Beach would not violate any rights based upon the foregoing.

Pursuant to Sec. 34.88 of the Fort Myers Beach Town Ordinances it does not appear that anything within the request is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town.

Sincerely,



Mark R. Wagner, Esq.

MRW/br

Enclosure

F:\LawOffice\Clients\Shores of Fort Myers Beach Condo Assoc\FMB Special Exception\Letter in Support fo Special Exception Request 05.23.25.docx

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

BML INVESTMENT GROUP LLC
MARIA MOSQUERA
4750 ESTERO BLVD., UNIT 101
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1010

Dear Maria:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____



THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

BRIAN and NANCY CAMPBELL
4750 ESTERO BLVD., UNIT 102
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1020

Dear Brian and Nancy:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: Brian Campbell

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

CLUGH THOMAS ENTERPRISES, LLC
PHILLIP and CHRIS THOMAS
4750 ESTERO BLVD., UNIT 203
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2030

Dear Phil and Chris:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

CLC APPROVE

____ DISAPPROVE

Signature:  Authenticity

05/21/25

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

D&H GERMAN LAUNDRY SERVICE
4750 ESTERO BLVD., UNIT 103
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1030

Dear Klaus and Grit:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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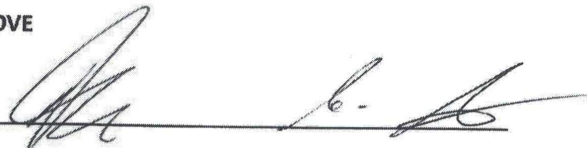
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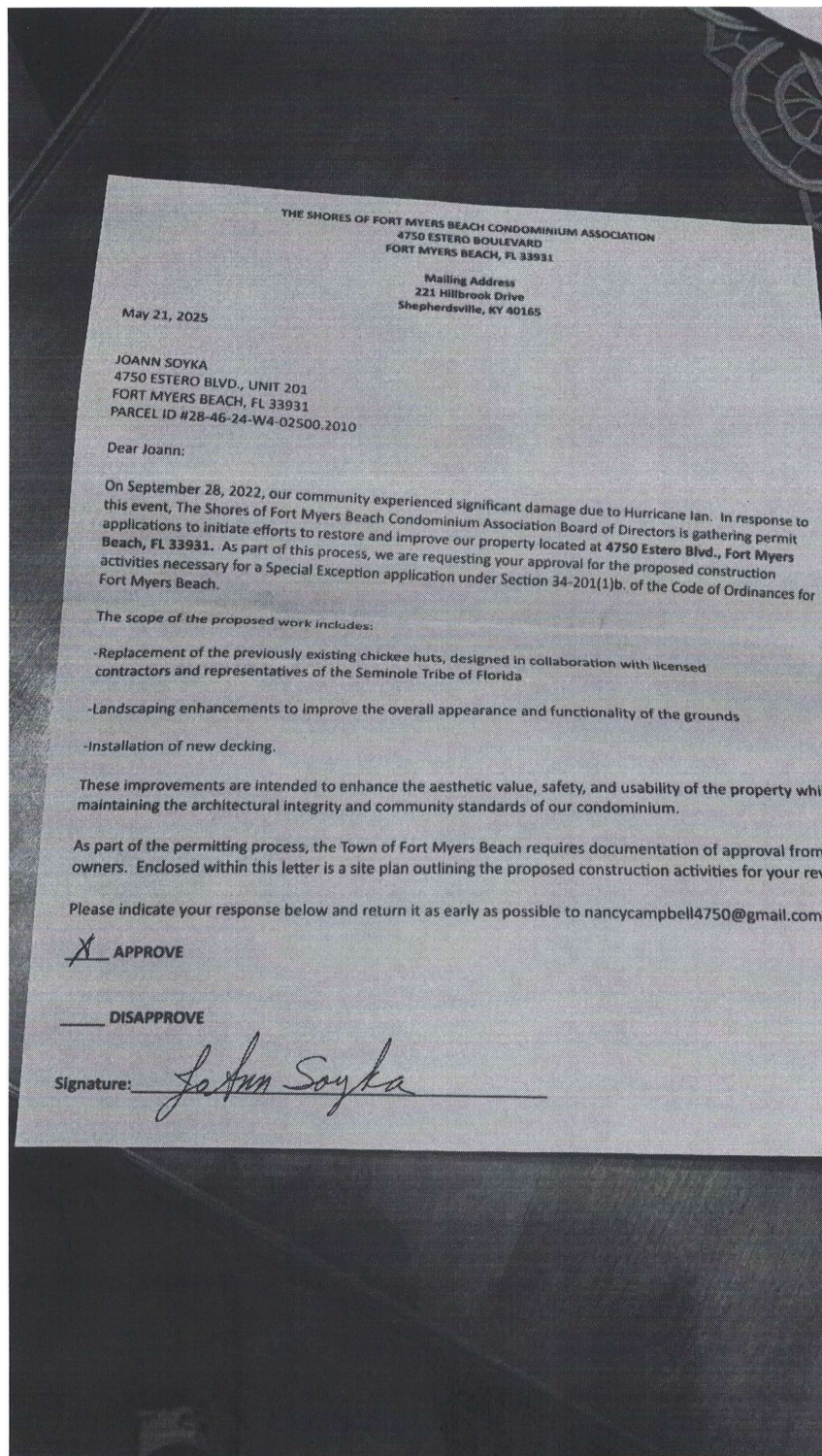
Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____





THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

KAREN BALDRIDGE
4750 ESTERO BLVD., UNIT 104
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1040

Dear Karen:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____

Hans C. Baldrige 5/24/2025

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

DON and KAREN OSTENDORF
4750 ESTERO BLVD., UNIT 204
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2040

Dear Don and Karen:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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- Installation of new decking.

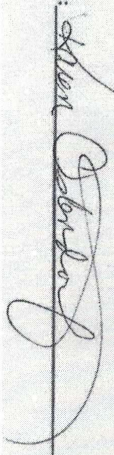
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Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: 

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

RUSTY and MARY JANE SHELLEY
4750 ESTERO BLVD., UNIT 202
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2020

Dear Rusty and Mary:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ APPROVE

☐ DISAPPROVE

Signature: Mary J. Shelley



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 4750 Estero Blvd, Ft Myers Beach, FL 33931

STRAP Number: 28-46-24-W4-02500.00CE

Applicant: The Shores of Fort Myers Beach Condominium Association, Inc. Phone: 502-905-0902

Contact Name: Brian Campbell Phone: _____

Email: briancampbellky@aol.com Fax: _____

Current Zoning District: Residential Medium-Density (RM)

Future Land Use Map (FLUM) Category: Medium Residential

FLUM Density Range: 6-10 Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Brian Campbell Phone: 502-905-0902

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 221 Hillbrooke Drive, Shepherdsville, KY, 40165

Email: briancampbellky@aol.com Fax: _____

Contact Name: _____ Phone: 502-905-0902



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☒ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>Board of Director</u> | |

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

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

Name: Brian Campbell Phone: 502-905-0902
Address: 4750 Estero Blvd Unit 102, Ft Myers Beach, FL 33931
Email: briancampbellky@aol.com Fax: _____

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

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

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

Brian Campbell
Signature

Brian Campbell
Printed Name

STATE OF Kentucky COUNTY OF Ballard

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 22nd day of May, 2025, by

Brian Campbell, ☒ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Nancy Campbell NSAL
Notary Public Signature KYNP 69182
Expires 3-20-27

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☒ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☒ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☒ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage Ownership
_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Brian Campbell (name), as Board of Director (title)
of Shores of Ft Myers Beach Condo Association, Inc. (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

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



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

The Shores of Fort Myers Beach Condo Association, Inc.

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

Brian Campbell
Signature

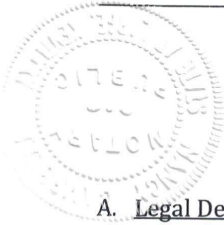
Board of Directors
Title

Brian Campbell
Typed or Printed Name

5-22-2025
Date

STATE OF Ky COUNTY OF Ballitt

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 22nd day of May, 2025, by Brian Campbell ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Seal

Nancy Campbell NSAL
Notary Public Signature
KYNP69182
Expires 3-20-27

PART VI- Property Information

A. Legal Description:

STRAP: 28-46-24-W4-02500.00CE

Property Address: 4750 Estero Blvd, Ft Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 71.5 feet
Depth (please provide an average width if irregular in shape) 202.5 feet
Frontage on street: 59.9 feet. Frontage on waterbody: 82.9 feet
Total land area: 14,479 ☐ acres ☒ square feet

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

The subject property is located northwest of Big Carlos Pass Bridge, at 4750 Estero Blvd, Ft Myers Beach, FL 33931. Go over Big Carlos Pass Bridge and head north on Estero Blvd. In approximately 3.6 miles, the property will be on the gulf side. Refer to Exhibit 6-4.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: The Shores of Fort Myers Beach
Authorized Applicant: Brian Campbell
LEPA STRAP Number(s): 28-46-24-W4-02500.00CE

Current Property Status: Active
Current Zoning: Residential Medium-Density (RM)
Future Land Use Map (FLUM) Category: Medium Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>RM</u> zoning district for:
The proposed impacts consist of the replacement of two (2) tiki huts and decking that were damaged by Hurricane Ian. The tiki huts and decking	
will be built within the previously existing footprint.	

PART I

Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

This request is for approval of a special exception to rebuild/replace two (2)
previously existing tiki huts and decking damaged by Hurricane Ian for the Shores
of Fort Myers Beach Condominium Association located at 4750 Estero Boulevard,
Fort Myers Beach, FL 33931 Lee County, Florida, Section 28, Township 46, Range
24 E. Due to the activities being located within a coastal special flood hazard area
and seaward of the 1978 Coastal Construction Control Line (CCCL), a special
exception to the Town of Fort Myers Beach LDC is required. There are no changes
in configuration, the proposed improvements are to be completed within the
previously existing footprint.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
The property qualifies for a special exception because the proposed
activities are consistent with the goals and objectives of the Fort Myers
Beach Comprehensive Plan, with the future land use map designating
this area a medium residential (RM). Granting this request will not effect
surrounding properties.

Granting the requested Special Exception could impact surrounding properties as follows: Granting this special exception request will benefit the integrity of the condo association and surrounding properties by enhancing the aesthetic value, safety, and usability of the property.

PART 2

Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a 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.

“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide



A completed Public Hearing Application Form.



A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: "Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because..."

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a 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.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

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All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government

- corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line. Exhibit 6-2
 - C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

- ▲ = BENCHMARK, SET PK NAIL AND DISK - "LB 6896"
- = FOUND FLOOD DEPARTMENT OF NATURAL RESOURCES (DNR) RANGE MONUMENT R 193 RESET 1981
- ▲ = SET PK NAIL AND DISK - "CHW INC. LB 5075"
- = FOUND 5/8" REBAR - NO IDENTIFICATION
- = FOUND 1/2" REBAR - NO IDENTIFICATION
- = FOUND 3/4" PIPE - NO IDENTIFICATION
- = SET 5/8" REBAR AND CAP - "CHW INC. LB 5075"
- = FOUND 4" X 4" CONCRETE MONUMENT WITH 1/4" REBAR
- = FOUND FLOOD DEPARTMENT OF NATURAL RESOURCES CONCRETE MONUMENT
- (C) = CALCULATED DATA
- (D) = LEGAL DESCRIPTION DATA
- E = EASTING STATE PLANE COORDINATE (FLORIDA WEST ZONE)
- (M) = FIELD MEASURED DATA
- N = NORTHING STATE PLANE COORDINATE (FLORIDA WEST ZONE)
- (P) = RECORD PLAT DATA
- ▲5 = SPOT ELEVATION, NAD 1988
- = WOOD UTILITY POLE
- = CONCRETE UTILITY POLE
- = GUY ANCHOR
- = ELECTRIC BOX
- = CABLE PEDESTAL
- = WATER METER
- = BACKFLOW PREVENTER
- = WATER VALVE
- = FIRE HYDRANT
- ⊙ = SANITARY SEWER MANHOLE
- = SANITARY SEWER CLEAN-OUT
- = CATCH BASIN WITH GRATE INLET
- = COMBINATION UTILITY BOX
- ★ = COCONUT PALM

LOCATION MAP
NOT TO SCALE

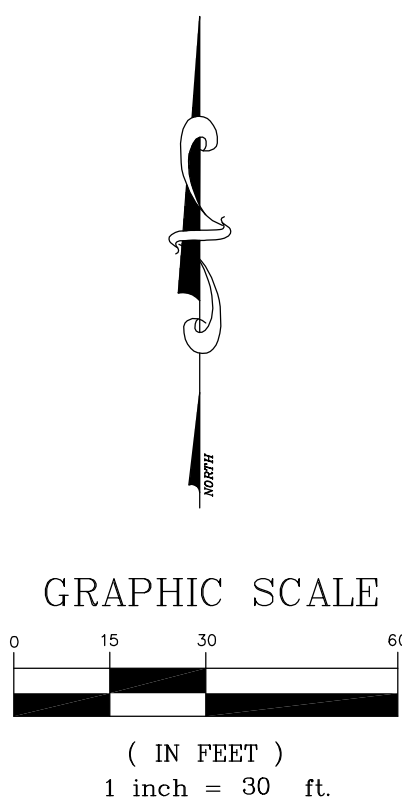
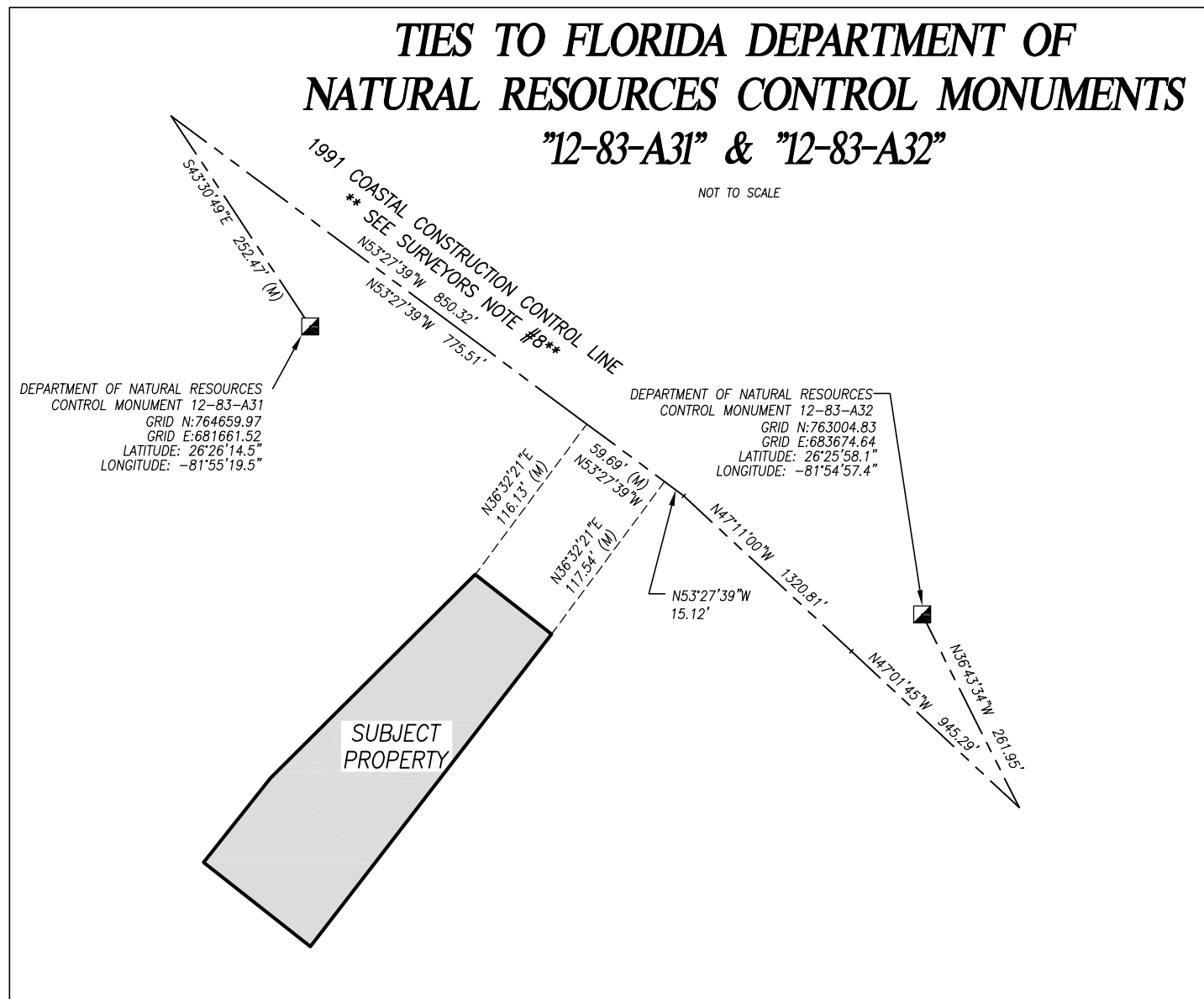
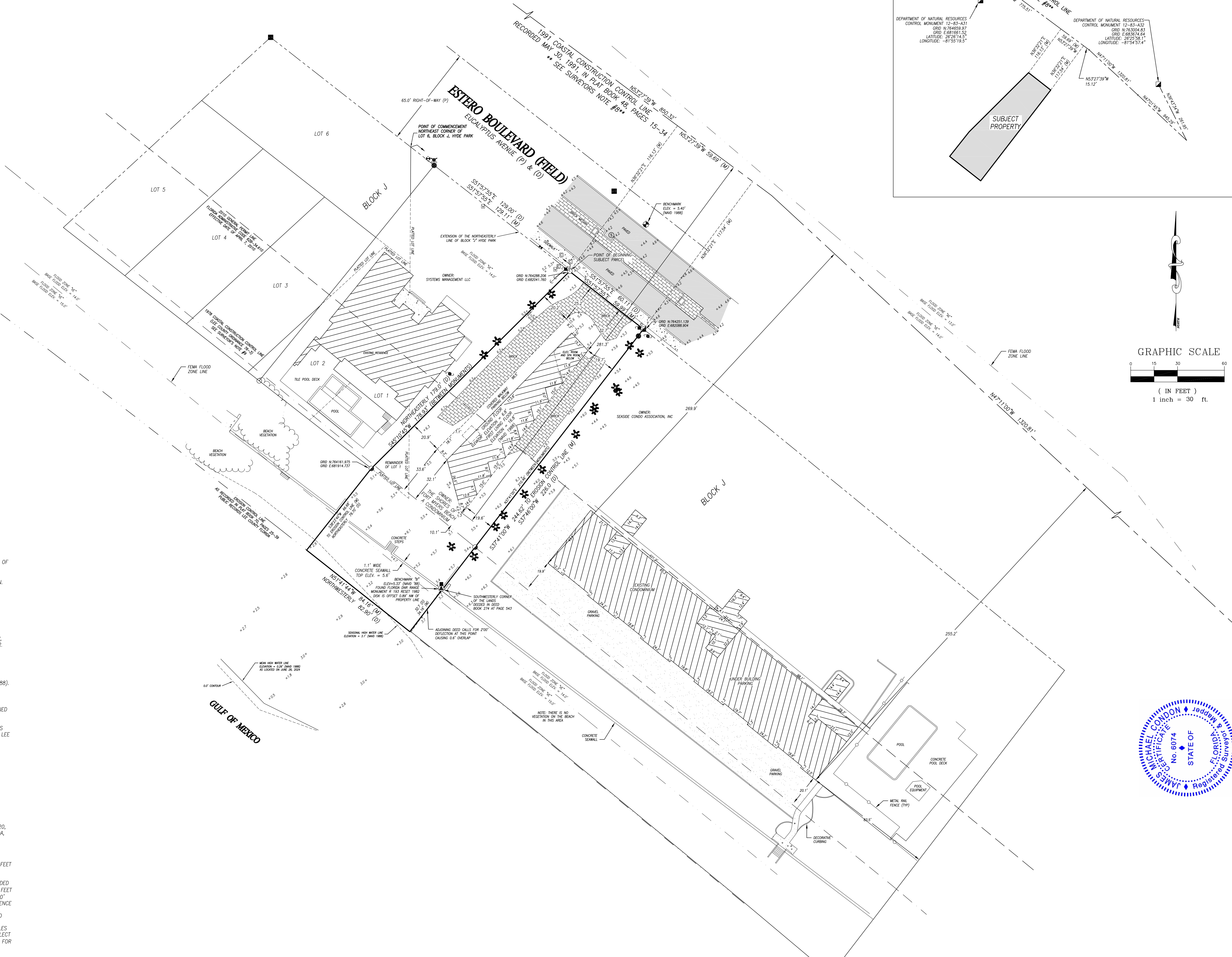
1. BEARINGS AND COORDINATES SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983. 2011 ADJUSTMENT (NAD83/NRSR 2011) FLORIDA WEST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-431 AND 12-83-432 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
2. NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
3. THIS PARCEL LIES IN FLOOD ZONES AS SHOWN BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 120705066B, DATED NOVEMBER 17, 2002. FLOOD ZONE LINES SHOWN HEREON WERE SCALED FROM THE INDICATED F.I.R.M. MAP PANEL.
4. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION, AND RIGHT-OF-WAY CONTROL SURVEY MAP OF ESTERO BOULEVARD, COUNTY ROAD 865 PREPARED BY BEAN, WHITAKER, LUTZ & KAREH, INC., DATED APRIL 16, 2010. NO SEARCH OF THE PUBLIC RECORD WAS MADE BY THIS SURVEYOR.
5. THE STREET ADDRESS IS:
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
6. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE FLORIDA DEPARTMENT OF TRANSPORTATION PERMANENT REFERENCE NETWORK REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
7. MEAN HIGH WATER ELEVATION 0.26'; NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988), WAS DETERMINED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.
8. THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15-34 AND FILED OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LE COUNTY, FLORIDA ON MAY 30, 1991.
9. THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
10. THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.
11. PARCEL SURVEYED CONTAINS 0.421 ACRE (18,323 SQ. FT.), MORE OR LESS.

A PART OF LOT 1, BLOCK J, OF HYDE PARK SUBDIVISION, AS FILED AND RECORDED IN PLAT BOOK 7 AT PAGE 20, AND PART OF SECTION 28 AND 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 6, BLOCK J OF HYDE PARK, ACCORDING TO THE PLAT AS RECORDED IN PLAT BOOK 7, AT PAGE 20, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTHEASTERLY ALONG THE EXTENSION OF THE NORTHEASTERLY LINE OF SAID BLOCK J, HYDE PARK FOR 129.0 FEET TO THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED;

THENCE CONTINUE ON THE E/4 COURSE FOR 60.11 FEET TO THE NORTHEASTLY CORNER OF THE LANDS DEEDED IN DEED BOOK 274 AT PAGE 543 OF PUBLIC RECORDS; THENCE SOUTHWESTLY (S 37°46' W) FOR 226.0 FEET TO THE SOUTHWESTLY CORNER OF THE LANDS DEEDED IN D/4, 274 AT PAGE 543; THENCE DEFLECT RIGHT 200° 00' 00" TO THE SOUTHWESTLY CORNER OF THE LANDS DEEDED IN DEED BOOK 274 AT PAGE 543; THENCE NORTHEASTLY ALONG THE SAID MEAN HIGH TIDE LINE FOR 82.90 FEET TO A POINT THROUGH WHICH A LINE RUNNING AT RIGHT ANGLES TO THE SOUTHEASTELY EXTENSION OF THE NORTHEASTLY LINE OF BLOCK J WOULD INTERSECT THE SOUTHEASTLY CORNER OF THE LANDS DEEDED IN DEED BOOK 274 AT PAGE 543; THENCE SOUTHEASTLY FROM THE WESTERLY CORNER OF SAID LOT 1, BLOCK J; THENCE NORTHEASTLY AT RIGHT ANGLES TO SAID EXTENDED LINE FORM 79.70 FEET TO THE SOUTHWESTLY LINE OF SAID LOT 1, BLOCK J; THENCE DEFLECT LEFT 100° 00' 00" TO THE POINT OF BEGINNING ALONG THE OCCUPIED LINE AS DEEDED IN DEED BOOK 166 AT PAGE 431 FOR 179.0 FEET TO THE POINT OF BEGINNING.

MAP OF BOUNDARY & TIDAL WATER SURVEY
OF A PORTION OF LOTS 1, 2, 3 AND 6, BLOCK "J", HYDE PARK
LYING IN SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



This map prepared by: CERTIFICATE OF AUTHORIZATION LB 5075 NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEOR AND MAPPER	JAMES M. CONDON, PSM  Professional Surveyor & Mapper Lic. License No.6074	COMPUTER FILE: 240/448	DRAWING SCALE: 1" = 30'		DRAWN BY: FA	12631 Westwinding Drive, Unit 56 Fort Myers, FL 33907 (239) 355-6085 www.chi-inc.com	CERTIFIED TO: THE SHORES OF FORT MYERS BEACH	JOB NO.: 240/448
	SURVEY DATE: 07/03/2024	REVISION DATE: 07/03/2024	CHECKED BY: TLR		SHEET NO.: 1 OF 1			

Page 234 of 1243



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250149

CASE NAME: Special Exception for like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in EC zoning district, for the property located at 4750 Estero Blvd.

LPA

HEARING DATE: August 12, 2025

TOWN COUNCIL

HEARING DATE: September 11, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi Goel, LEED AP ND/ Jason Green, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Brian Campbell/ The Shores of Fort Myers Beach Condominium Association, Inc.

Request: To allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

Subject property: See attached site plan

Physical Address: 4750 Estero Boulevard

STRAP #: 28-46-24-W4-02500.00CE

FLU: Medium Residential and Recreational

Zoning: Residential, Multifamily and Environmentally Critical

Adjacent zoning and land uses:

North:	COMMERCIAL PLANNED DEVELOPMENT retail- grocery store
South:	TIDAL WATERS
East:	RESIDENTIAL CONSERVATION AND RECREATIONAL Single family residential
West:	MEDIUM RESIDENTIAL AND RECREATIONAL Multifamily Residential and Environmentally Critical

II. BACKGROUND AND ANALYSIS

Background:

The applicant is requesting a special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of accessory structures like tiki huts, decking, fence, and driveway into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the EC zoning district.

The Town's LPA reviewed the application on August 12, 2025 and unanimously voted to recommend approval with conditions for Town Council's consideration.

Analysis:

The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan. The site's current multi-family residential use has been in place since 1982. The property has supported these tiki huts since 1982 and were destroyed during hurricane Ian in 2022. The Applicant is proposing the reconstruction of the 2 tiki huts, decking, fence, gravel driveway and landscaping which lie partially in the EC district and beyond the 1978 CCCL.

Neighborhood Compatibility:

The Shores of Fort Myers Beach Condo Association has been at this location with this layout since 1982. The proposed replacement of tiki huts, decking, fence, gravel driveway and landscaping are similar to pre-Ian conditions. Granting a special exception for the proposed replacement of the two tiki huts, decking, fence, gravel driveway and landscaping would not impact the character of the neighborhood.

Findings and Conclusions:

Special Exception Findings

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

1. *Any repairs must comply with all relevant local and state floodplain regulations.*
The development will comply with local and state floodplain requirements.
2. *Repairs may not damage existing dunes or dune vegetation.*
The repairs are proposed in conjunctions with Environmental review to ensure that no dunes or native vegetation will be impacted. Any plantings proposed will be required to be Florida friendly, or otherwise acceptable to the Town and Florida DEP.
3. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*
Sea turtle nesting season begins May 1st and ends on October 31st. Construction will be completed outside of nesting season.
4. *A new special exception must be applied for each time the structure is repaired.*
This is included as one of the conditions for approval.

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The existing two tiki huts, decking, fence, gravel driveway and landscaping were damaged during Hurricane Ian.

- 2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

The proposed like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping does not create any new development or change the location from what previously existed on the site. Therefore, staff believes that

this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality, and it will not create a nuisance to adjacent properties.

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

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

6) *Whether a 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.*

The proposed reconstruction of the two tiki huts, decking, fence, gravel driveway and landscaping will all be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

Staff finds that the special exception to replace two tiki huts, decking, fence, gravel driveway and landscaping in EC zoning district are in compliance with LDC Sec. 34-88(b). Therefore, staff recommends **approval with conditions** of SEZ20250149 for

the like-for-like reconstruction of the existing two tiki huts, decking, fence, gravel driveway and landscaping.

The Town's LPA reviewed the application on August 12, 2025 and unanimously voted to recommend approval with conditions for Town Council's consideration.

III. CONDITIONS OF APPROVAL

- 1) Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834.
- 3) Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- 4) Construction shall not occur during sea turtle season.
- 5) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SELECTION OF CIGNA FOR MEDICAL INSURANCE COVERAGE AND THE STANDARD FOR SUPPLEMENTAL INSURANCE COVERAGE FOR THE FISCAL YEAR 2025–2026; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town must renew their insurance plans on an annual basis.

What the action accomplishes:

Secures health insurance plans for employees that maintain a favorable network and plan design

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Talissa Oliveira, Human
Resources Director

5. **Background:**

The Town's current medical coverage is provided through FMIT/UHC, which reflected an 85% renewal increase for FY 25–26. Due to the significant increase, our insurance brokers, Gehring Group, solicited alternative proposals from other carriers. The Town received competitive responses from Cigna and Florida Blue. In addition, multiple carriers submitted proposals for supplemental insurance coverage.

After a comprehensive review, Town staff, through the Town Manager, recommends that the Town transition its medical coverage to Cigna. This recommendation is based on the carrier's strong provider network, competitive plan design, and significant cost savings when compared to the renewal proposal. In addition, staff recommend moving supplemental insurance coverage to The Standard, which provides an overall cost reduction of 16.5% while maintaining comparable benefit offerings. This transition also presents the opportunity to partner with carriers recognized for their excellence in customer service and member support, ensuring continued value and responsiveness to employee needs.

Insurance Renewal Documents are available upon request through Human Resources.

Attachments:

1. 2025-26 Health Insurance Renewal Resolution DRAFT

Financial Impact:

- **Medical:** Cigna renewal came back with an 18% increase, which represents an overall savings of **\$698,935** compared to the FMIT/UHC renewal.
- **Supplemental Insurance:** The Standard represents a decrease of 16.5% or a savings of **\$22,623**.

- Funding to cover premiums is budgeted within the Town's FY 25-26 budget.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Talissa Oliveira, Human Resources Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/27/2025
Approved - 9/2/2025
Approved - 9/3/2025
Approved - 9/3/2025
Final Approval - 9/3/2025

RESOLUTION NUMBER 25-273

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SELECTION OF CIGNA FOR MEDICAL INSURANCE COVERAGE AND THE STANDARD FOR SUPPLEMENTAL INSURANCE COVERAGE FOR THE FISCAL YEAR 2025–2026; 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 resolution as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the “Town”) must renew the insurance plans on an annual basis; and

WHEREAS, the Town’s current medical coverage is provided through FMIT/UHC, which reflected an 85% renewal increase for FY 25–26. Due to the significant increase, our insurance brokers, Gehring Group, solicited alternative proposals from other carriers. The Town received competitive responses from Cigna and Florida Blue. In addition, multiple carriers submitted proposals for supplemental insurance coverage.; and

WHEREAS, after a comprehensive review, Town staff, through the Town Manager, recommends that the Town transition its medical coverage to Cigna. This recommendation is based on the carrier’s strong provider network, competitive plan design, and significant cost savings when compared to the renewal proposal. In addition, staff recommends moving supplemental insurance coverage to The Standard, which provides an overall cost reduction of 16.5% while maintaining comparable benefit offerings. This transition also presents the opportunity to partner with a carrier recognized for its excellence in customer service and member support, ensuring continued value and responsiveness to employee needs; and

WHEREAS, the Town Council desires to authorize the Town Manager or designee to execute and deliver all documents necessary to complete the transitions and carry out the administration of same.

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

Section 1. That above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. That the Town Council hereby authorizes and directs the Town Manager to proceed with all actions necessary to transition the Town's medical insurance coverage to Cigna, effective October 1, 2025, and further approves the transition of the Town's supplemental insurance coverage to The Standard, also effective October 1, 2025.

Section 3. That Town Manager William McKannay or his designee is authorized to execute and deliver any documents necessary to complete the transitions on behalf of the Town.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 11th day of September 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

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND CHANGE THE ADDRESS TO THE NEW TOWN HALL; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Notification to Lee County of Key Employee change is required in accordance with the CDBG-DR Subrecipient Agreement.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Deborah Glavin, Contracts &
Procurement Specialist

5. **Background:**

On November 20, 2023, the Town and Lee County Board of County Commissioners entered into a CDBG-DR Subrecipient Agreement for North Island Water Tower. Under this agreement, if the Town has a key employee change, the Town is required to notify Lee County within 30 days (Exhibit I, CDBG-DR Special Terms and Conditions, under Initial Risk Assessment). Exhibit J - Subrecipient Staff Organization - Will McKannay to be removed as Finance Director and add Joe Onzick as the Finance Director.

Attachments:

1. NS Res 25-247 Second Amendment North Tower Key Official Finance Director and Address DR10262
2. 2nd Amendment to Update Identification of Finance Manager & Address DR10262
3. Exhibit A to 2nd Amendment to Lee County Subrecipient Agreement containing Exhibit J Subrecipient Staff Organization
4. Res 25-204 CDBG-DR DR10262 with attached signed First Amendment
5. Grant Agreement - Fully_Executed_DR10262_-
_Town_of_Fort_Myers_Beach_North_Island_Water_Tower (003)

Financial Impact:

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

6. **Alternative Action**

Do not accept the recommendation and forfeit the agreement.

7. **Management Recommendations:**

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist

Created/Initiated - 8/6/2025

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Approved - 8/6/2025
Approved - 8/11/2025
Approved - 8/22/2025
Approved - 8/27/2025
Final Approval - 8/28/2025

RESOLUTION NUMBER 25-247

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND CHANGE THE ADDRESS TO THE NEW TOWN HALL; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement to allow funds associated with a federal CDBG grant to Lee County to thereafter be further disbursed to the Town as a “Subrecipient” under CDBG-DR Grant Agreement, DR10262 (“the Agreement”); and

WHEREAS, the Agreement contained Exhibit J, which required the Town to identify key personnel in Section XVIII; and

WHEREAS, the Agreement provided that the Town must notify Lee County if there was a substantive change to the organization’s key personnel within 30 days of the change; and

WHEREAS, the parties amended the Agreement on the ____ day of _____ to add William McKannay, as Finance Director to Exhibit J; and

WHEREAS, the parties no desire to further amend Exhibit J of the Agreement to 1) remove William McKannay as Finance Director; 2) add Joe Onzick as Finance Director; and 3) change the address to Town Hall to 6231 Estero Blvd, Fort Myers Beach, FL 33931; and

WHEREAS, the Town desires to complete and execute this Second Amendment as soon as possible to be in compliance with the Agreement, which is in the best interest of the residents of Fort Myers Beach.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Second Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 11th day of September 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of September 2025.

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

THIS SECOND AMENDMENT is made and entered into this 11th day of September, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “County” to that certain CDBG-DR Grant Agreement, dated November 20, 2023 (“Agreement”) DR10262 – Critical Infrastructure North Island Water Tower as amended on June 16, 2025.

WITNESSETH:

WHEREAS, on November 20, 2023, the County and the Town entered into the Agreement, which included Exhibit J intended by the parties as an extension of the notice requirement contained in Section XVIII of the Agreement; and

WHEREAS, Exhibit J requires the Town to update the information concerning key personnel and contact information in Exhibit J within 30 days of a change; and

WHEREAS, on June 16, 2025, the Town provided the County with a 1st Amendment to the Agreement identifying Will McKannay as the Finance Director and included other changes required by Florida law to the Agreement; and

WHEREAS, the Town now desires to further amend Exhibit J of the Agreement as stated in the attached Exhibit A to substitute Joe Onzick as the Finance Director in place of Will McKannay and to update the address for the identified key personnel from 2731 Oak Street, Fort Myers Beach to 6231 Estero Blvd, Fort Myers Beach; and

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

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

2. Exhibit J. The parties agree to the update to Exhibit J as provided in Exhibit A attached to this Amendment.

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

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

Lee County, Florida

By: Glen V. Salyer
Assistant County Manager

EXHIBIT J

SUBRECIPIENT STAFF ORGANIZATION

North Island Water Tower

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

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

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

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

Section 1: Subrecipient Contract Administrator

1. Description

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

2. Contact Information

Name: William McKannay
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: will.mckannay@fmbgov.com

Section 2: Project Manager

3. Description

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

4. Contact Information

Name: Frankie Kropacek
Title: Operations & Compliance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: fkropacek@fmbgov.com

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

1. Description

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

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 4: Section 504 Coordinator

1. Description

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

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach FL, 33931
Telephone: 239-765-0202
Email: amy@fmbgov.com

Section 5: Fair Housing Coordinator

1. Description

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

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

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 6: Financial Manager

1. Description

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

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: joe.onzick@fmbgov.com

Section 7: Certification of Time Allocation

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

RESOLUTION NUMBER 25-204

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10262 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE NORTH ISLAND WATER TOWER PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

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

TOWN OF FORT MYERS BEACH



Dan Allers (Jun 18, 2025 16:23 EDT)

Dan Allers, Mayor

ATTEST:



Jason Freeman, Town Clerk (Acting)

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



Nancy Luparich (Jun 19, 2025 19:45 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 20th day of June 2025.

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

THIS FIRST AMENDMENT is made and entered into this 16th day of June, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10262 – Critical Infrastructure North Island Water Tower.

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Coercion” means:

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

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

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

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

ATTEST:



Jason Freeman, Town Clerk (Acting)

Town of Fort Myers Beach



WB McKannay (Jun 26, 2025 16:23 EDT)

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY



Kathy Huparich (Jun 19, 2025 19:45 EDT)

Vose Law Firm, Town Attorney

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

Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:	B-23-UN-12-0002
Assistance Listing Number (formerly CFDA #):	14.218 Community Development Block Grants/Entitlement Grants
Federal Register Notice & Public Law:	FR-6393-N-01: PL-117-328
Federal Award (HUD Grant Agreement) Date:	11/20/2023
Agreement No.:	DR10262
Responsible Entity (RE):	Lee County
Lead and Responsible Department:	Office of Strategic Resources and Government Affairs
CDBG-DR Funding Source/Program:	US Department of Housing and Urban Development
Subrecipient Name:	Town of Fort Myers Beach
Subrecipient ID (Unique Entity Identifier via SAM.gov):	UKJXK48PKKH2
Subrecipient Period of Performance (Start Date):	1/1/2025
Subrecipient Period of Performance (End Date):	12/30/2028
Total Amount Obligated via Agreement:	\$4,681,844.90
Project/Activity ID(s):	DR10262
Federal Award Program/Project/Activity Description:	CDBG-DR/Critical Infrastructure/Town of Fort Myers Beach/North Island Water Tower
Does the Federal award include an Indirect Cost Rate for Subrecipient?	Yes ☐ No ☒
If Yes, is the Indirect Cost Rate a:	☐ Federally Negotiated Rate % ☐ De Minimis Rate 15%

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

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

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

SECTION I: **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION III: **TERM OF AGREEMENT**

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

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

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

SECTION IV: **AGREEMENT MODIFICATIONS AND AMENDMENTS**

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

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

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

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

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

SECTION V: **COMPENSATION AND ALLOWABLE PAYMENTS**

SUBSECTION V.A. – AGREEMENT PAYMENT: The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$ 4,681,844.90. The **COUNTY’S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

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

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

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$4,447,752.66
Activity Delivery Funds	\$234,092.24
TOTAL	\$4,681,844.90

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VI: **REPORTS AND EXHIBITS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VII: AUDITS, MONITORING, AND RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VIII: CONTRACTOR STATUS

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

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

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

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

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

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

SECTION IX: **CONFLICTS OF INTEREST**

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

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

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

SECTION X: **RISK MANAGEMENT**

SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY: To the fullest extent permitted by applicable

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

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

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

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

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

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

SUBSECTION X.B. – INSURANCE REQUIREMENTS

INSURANCE – NONPROFIT SUBRECIPIENTS

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

Certificate(s) of Insurance **namimg Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (**Exhibit G – Certificate(s) of**

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

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

INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS

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

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

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

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2 CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of

any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

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

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

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

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

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

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

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

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

SUBSECTION XI.D. – TERMINATION BY COUNTY: Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

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

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

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

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

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

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

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

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

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

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

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it

is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

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

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

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

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

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

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

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

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

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

SUBSECTION XIII.C. – NATIONAL OBJECTIVE: All activities funded with CDBG-DR funds must meet

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

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

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

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

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

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable

for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

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

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

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)
- [Guidelines for promoting Fair Housing for individuals with Limited English Proficiency \(LEP\)](#)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative

marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

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

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

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

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

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

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

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website

requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

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

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

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

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

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

SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK: In accordance with 2 CFR 200.1 and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free,

nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements").

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

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

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

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

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who

knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).

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

SECTION XIV: OTHER PROVISIONS AND CONDITIONS

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

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

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

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

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

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

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

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

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

SECTION XV: **CITIZEN COMPLAINTS**

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

SECTION XVI: **LEGAL AUTHORIZATION**

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

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

SECTION XVII: **AGREEMENT DISPUTE RESOLUTION PROCEDURE**

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

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

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

SECTION XVIII: AGREEMENT CLOSEOUT

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

The closeout checklist must include documentation and certification that:

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

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);
2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);

4. *Final Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

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

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

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

SECTION XIX: NOTICES

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

SUBRECIPIENT

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

COUNTY

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

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

Andy Hyatt

Name (printed/typed)

Signed by:

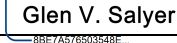
2F8F25CEB4A742D...
Signature

Town Manager

Title

Glen V. Salyer

Name (printed/typed)

Signed by:

8BE7A57650354BE...
Signature

Assistant County Manager

Title

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

SECTION XX: ALL TERMS AND CONDITIONS INCLUDED

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

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

SUBRECIPIENT: TOWN OF FORT MYERS BEACH

Signed by:

BY: Andrew Hyatt

Signature

Andrew Hyatt

Name (print)

1/13/2025 | 10:43 AM EST

Date

ATTEST:
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Signed by:

BY: Melissa Butler

Deputy Clerk

DocuSigned by:

BY: Kevin Ruane

Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

DocuSigned by:

Amanda L. Swindle

County Attorney's Office



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

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

Program/Project Activity Overview

Project Name: North Island Water Tower Complex Rehabilitation

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

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

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

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

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

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

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

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

CDBG-DR storm tie-back and/or Mitigation resilience measure: The Town of Fort Myers Beach was devastated by the unprecedented impacts of Hurricane Ian, and the Town still has many unmet needs today. Prior to Hurricane Ian, two water tanks supplied potable water to the entire island. Since Ian destroyed the North Water Tower Complex, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable

water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable. Reconstruction of the North Water Tower complex with increased resiliency measures will ensure that a critical FEMA lifeline – potable water – is preserved for all residents and businesses in the Town of Fort Myers Beach. Creating a resilient and sustainable network of critical infrastructure is a primary community goal for the Town of Fort Myers Beach, and replacement of the North Island Water Tower and repair / reconstruction of the surrounding complex is foundational for the Town's recovery. The urgency and importance of this project cannot be overstated. Through this project, CDBG-DR funds will be used to address the critical unmet need for a reliable, resilient, and sustainable supply of potable water for all residents and businesses in the Town of Fort Myers Beach. This is a critical infrastructure project that will provide both immediate and long-term impacts for a community that was devastated by Hurricane Ian.

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

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

Project Activity Scope of Work Description ("Work")

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Critical Infrastructure Program to support the critically necessary replacement and repair of the North Island Water Tower Complex. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for a consistent supply of potable water, consistent with the FEMA Water Systems lifeline category.

The North Island Water Tower Complex is one of two potable water facilities on the island; together, the two facilities were responsible for holding and distributing potable water to all residents and businesses in the Town of Fort Myers Beach. Hurricane Ian heavily impacted the North Island Water Tower Complex, damaging the lower level of the pump building and all above-ground valves and pumps. The storage area and grounds were scoured by 15-feet of storm surge. Post-Ian inspection deemed the tank itself unusable; as such, the Town of Fort Myers Beach has operated with a single water tank since Hurricane Ian. With only a single operational water tank, the Town is in a critical situation because it is more susceptible to potential impacts of future emergency events that could decommission the only remaining source of potable water on the island.

The scope of this critical infrastructure project includes (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach. The project will be constructed in accordance with all current building codes and the control building will be hardened. All improvements will be built in compliance with

current FEMA flood elevations, such that components of the facility and structures themselves are elevated above base flood elevation. The scope of work also includes all design, permitting, and construction-phase oversight services that may be necessary to ensure that the project is implemented successfully. Procurement activities will be conducted in accordance with 2 CFR 200.320 and with applicable Florida Statutes.

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, access to a critical resource such as potable water is paramount to the community. With CDBG-DR funding to support this project, the Town can provide residents with a resilient drinking water supply and system and reliable access to potable water for daily activities, such as drinking, cooking, and cleaning. Completion of this project will enable the town to maintain dependable access to clean drinking water for all residents on the island by building a resilient facility that is more likely to withstand future natural and climate-related hazards than pre-Ian potable water infrastructure.

The project proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, will fully restore and secure a critical FEMA lifeline - potable water supply - for the Town of Fort Myers Beach. The completed project will increase the resiliency of the Town's potable water infrastructure by installing a system designed to withstand future natural and climate-related hazardous events.

By constructing resilient and secure potable water infrastructure, this project will create confidence in local residents and businesses that a dependable supply of water will be available for daily activities such as drinking, cleaning, and cooking. Reliable infrastructure is foundational for continued residential and commercial recovery, development, and growth in areas that were completely devastated by Hurricane Ian.

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

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

administration. Mr. Hyatt will perform general oversight of project implementation and completion.

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

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

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

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with

comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Major Project Milestones

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

EXHIBIT C
FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET

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

Financial and Grant Management System Budget Worksheet

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

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$4,447,752.66
Activity Delivery Funds	\$234,092.24
Total	\$4,681,844.90

EXHIBIT D
INDIRECT COST RATE ALLOCATION PLAN

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

Indirect Cost Rate Allocation Plan

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

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

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

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

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

Projected Performance Measures and Outcomes

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

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
Rehabilitation/ reconstruction of public facilities	# of buildings (non-residential)	
	# of Linear feet of green public improvement	
	# of Non-business Organizations benefitting	
	# of public facilities	1
	# of Linear feet of Public Improvement	
	# of Acres wetlands	
	# of Linear miles of Public Improvement	
	# of cable feet of public utility	
	# of Properties	
	# of Elevated Structures	
	# of Businesses	
MIT - Public Facilities and Improvements-Non Covered Projects	# acres of newly added or improved green space	
	# acres of wetlands created	
	# cubic feet of stormwater storage added	
	% decrease in affluent discharged	
	% decrease in area inundated by flooding	
	% decrease in disruption hours to residents and businesses from impacts of storm events	
	% decrease in NFIP CRS score	

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

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

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	# of reduced hours streets are flooded	
	# of residents protected from future flooding	
	# of Section 3 Labor Hours	5,600
	# of small water retention devices/systems installed	
	# of storm water projects implemented	
	# of Targeted Section 3 Labor Hours	280
	# of Total Labor Hours	22,400
	# of vacant lots repurposed	
	# of water control structures repaired/replaced	
	% reduction in emergency maintenance costs	
	% reduction in energy costs	
	% reduction in loss of service	
	% reduction of sanitary sewer overflows	
	% reduction of watershed nitrate loading	
	% reduction of water surface elevation level	
	# of structures harden against future flood events	
	# of Persons	

EXHIBIT F**APPLICATION**

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

Application

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

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



Lee County
Southwest Florida

Critical Infrastructure Program



Organization Information

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

Authorized Organization Representative

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

Contact Person

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

Partner Organization

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



Project Information

Project Information

► Name: North Island Water Tower Complex Rehabilitation

Project Type

- | | |
|---|--|
| ☐ Water/Sewer Line Install | ☐ Water Treatment Plant |
| ☐ Lift Stations | ☐ Drainage Improvements |
| ☐ Pump Stations | ☐ Electrical/Utilities Burial/Replacement |
| ☐ Wastewater Treatment Plant | |
| ☐ Backup Generator: Must be a permanent fix to the structure. No portable generators | |

► Other: Replacement of Potable Water Tank and Related Facilities



Target Service Location

Target Service Location

- | | |
|--|--|
| ☐ City of Cape Coral | ☐ Town of Fort Myers Beach |
| ☒ City of Fort Myers | ☐ Village of Estero |
| ☐ City of Bonita Springs | ☐ Unincorporated Lee County |
| ☐ City of Sanibel | ☐ All of Lee County |



National Objective

► National Objective: Urgent Need

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

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

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

National Objective Descriptions

National Objective	Description
L/M Income Area Benefit	Census block groups that align with the service area maps
L/M Income Limited Clientele	The infrastructure improvements benefit a specific persons who are presumed by HUD to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers)
L/M Income Job Creation or Retention	The project proposes activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons. Must include income certifications or describe method on how LMI job creation will be documented
Urgent Need	Does the narrative description on the application under Urgent Need provide specific examples of needs that have urgency, including how the existing conditions pose a serious and immediate threat to the health and welfare of the community?
Slums and Blight	Does the designated activity area meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law? Additionally, the area must meet one of the two conditions: • Public improvements throughout the area are in a general state of deterioration; or • At least 25 percent of the properties throughout the area exhibit one or more of the following: • Physical deterioration of buildings/improvements; • Abandonment of properties; • Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings; • Significant declines in property values or abnormally low property values relative to other areas in the community; or • Known or suspected environmental contamination



National Objective

The scope of the project

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Critical Infrastructure Program to support the critically necessary replacement and repair of the North Island Water Tower Complex. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for a consistent supply of potable water, consistent with the FEMA Water Systems lifeline category.

The North Island Water Tower Complex is one of two potable water facilities on the island; together, the two facilities were responsible for holding and distributing potable water to all residents and businesses in the Town of Fort Myers Beach. Hurricane Ian heavily impacted the North Island Water Tower Complex, damaging the lower level of the pump building and all above-ground valves and pumps. The storage area and grounds were scoured by 15-feet of storm surge. Post-Ian inspection deemed the tank itself unusable; as such, the Town of Fort Myers Beach has operated with a single water tank since Hurricane Ian. With only a single operational water tank, the Town is in a critical situation because it is more susceptible to potential impacts of future emergency events that could decommission the only remaining source of potable water on the island.

The scope of this critical infrastructure project includes (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach. The project will be constructed in accordance with all current building codes and the control building will be hardened. All improvements will be built in compliance with current FEMA flood elevations, such that components of the facility and structures themselves are elevated above base flood elevation. The scope of work also includes all design, permitting, and construction-phase oversight services that may be necessary to ensure that the project is implemented successfully. Procurement activities will be conducted in accordance with 2 CFR 200.320 and with applicable Florida Statutes.

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, access to a critical resource such as potable water is paramount to the community. With CDBG-DR funding to support this project, the Town can provide residents with a resilient drinking water supply and system and reliable access to potable water for daily activities, such as drinking, cooking, and cleaning. Completion of this project will enable the town to maintain dependable access to clean drinking water for all residents on the island by building a resilient facility that is more likely to withstand future natural and climate-related hazards than pre-Ian potable water infrastructure.

The projected outcome(s) of the project

The project proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, will fully restore and secure a critical FEMA lifeline - potable water supply - for the Town of Fort Myers Beach. The completed project will increase the resiliency of the Town's potable water infrastructure by installing a system designed to withstand future natural and climate-related hazardous events.

By constructing resilient and secure potable water infrastructure, this project will create confidence in local residents and businesses that a dependable supply of water will be available for daily activities such as drinking, cleaning, and cooking. Reliable infrastructure is foundational for continued residential and commercial recovery, development, and growth in areas that were completely devastated by Hurricane Ian.

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

The Town of Fort Myers Beach was devastated by the unprecedented impacts of Hurricane Ian, and the Town still has many unmet needs today. Prior to Hurricane Ian, two water tanks supplied potable water to the entire island. Since Ian destroyed the North Water Tower Complex, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable. Reconstruction of the North Water Tower complex with increased resiliency measures will ensure that a critical FEMA lifeline – potable water – is preserved for all residents and businesses in the Town of Fort Myers Beach.

Creating a resilient and sustainable network of critical infrastructure is a primary community goal for the Town of Fort Myers Beach, and replacement of the North Island Water Tower and repair / reconstruction of the surrounding complex is foundational for the Town's recovery. The urgency and importance of this project cannot be overstated. Through this project, CDBG-DR funds will be used to address the critical unmet need for a reliable, resilient, and sustainable supply of potable water for all residents and businesses in the Town of Fort Myers Beach. This is a critical infrastructure project that will provide both immediate and long-term impacts for a community that was devastated by Hurricane Ian.



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

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

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

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

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

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

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



Project Design and Approach: Applicant/Subrecipient

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

The applicant's plan of executing the Subgrantee Agreement

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

The applicant's plan for Oversight and Monitoring of Subgrantee

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

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

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

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



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

N/A

The partner's plan for Maintenance and Operations

N/A

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

N/A

Describe how the proposed project integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to, reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines

The Town of Fort Myers Beach is acutely aware of the heightened vulnerability its community faces in light of natural and climate-related hazards. In response, our proposed project for rebuilding and updating the Town's North Island Water Tower Complex places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life.

The Town's methodology involves a multi-faceted approach to identifying and addressing natural hazard risks. Initially, the Town's consultants will conduct a thorough review using the ERR checklists provided by HUD to catalog all of the relevant environmental factors including land-use and floodplain management to identify any issues for mitigation. This review will inform the development of mitigation efforts and best management practices required of the hired contractor when constructing the project. The goal is to not only comply with, but exceed current standards for resilience, incorporating the latest science and best practices in disaster risk reduction. Moreover, the Town will instruct the project engineer to incorporate resilient infrastructure designs to the greatest extent practicable, including elevation of project components above base flood elevation, utilization of reinforced construction materials, and the integration of green infrastructure to manage stormwater and reduce flood risk. These measures are aimed at minimizing damage during disasters, ensuring rapid recovery in the aftermath of future disasters, and reducing long-term costs of rebuilding and insurance.

Ultimately, the Town's project will be designed and completed to enhance the long-term resilience of Fort Myers Beach by embedding sustainability and resilience into the community lifeline – potable water. Through the use of mitigation strategies and best management practices throughout project construction, coupled with a commitment to ongoing evaluation and adaptation of those strategies, the Town will further its goal of providing reliable and resilient potable water infrastructure that can more effectively withstand future disasters and climate-related hazards. This forward-thinking approach ensures that the community's recovery and development are built on a foundation of resilience, protecting its people, the economy, and the Town's unique way of life for generations to come.

Identify the risks or hazards being reduced and the impacts that those hazards have on people and property

This project will address critical risks and hazards, primarily those related to natural disasters and climate change, to ensure the resilience and reliability of Fort Myers Beach's water supply system. Risks or hazards that will be mitigated by completion of this project include those further described below. By addressing these risks, the project not only restores essential infrastructure but also enhances the resilience of Fort Myers Beach to future natural hazards and climate-related risks. The improved North Island

Water Tower Complex will provide a reliable and secure potable water supply, protecting the health, safety, and well-being of residents and supporting the community's long-term recovery and resilience. (1) Hurricane and Tropical Storm Damage: Hurricanes and tropical storms, like Hurricane Ian, can cause extensive damage to infrastructure, including water storage tanks, control buildings, and associated equipment.

Impacts of Hurricane and Tropical Storm Damage on People and Property: Damage to any water tower complex can lead to a loss of potable water supply, creating a public health crisis. Lack of access to clean water can result in waterborne diseases, impacting the health and well-being of residents. Property damage can include water contamination and structural damage to homes and businesses reliant on the water supply. Since Ian destroyed the North Water Tower, the Town has relied on a single water tank for potable water, leaving residents and businesses exposed to the risk of potable water loss, should the single remaining tank become damaged, contaminated, or otherwise inoperable.

Mitigation through this Project: The new concrete poly-lined tank will be designed to withstand severe weather conditions, reducing the likelihood of damage during future hurricanes and tropical storms. This resilience will help to ensure a continuous supply of potable water, protecting public health and property.

(2) Flooding and Storm Surge: Flooding and storm surges, often accompanying hurricanes and heavy rain events, pose a significant threat to low-lying areas, including critical infrastructure like water systems.

Impacts of Flooding and Storm Surge on People and Property: Flooding can inundate and damage pumps, valves, and control systems, rendering the water supply inoperable. Elevated pumps and valves mitigate this risk, ensuring continuous operation and reducing the likelihood of water supply disruption. The impact on property includes damage structures and other facilities located in the North Island Water Tower Complex, further compounding the risk of an inoperable water supply system.

Mitigation through Project: Elevating pumps, valves, equipment, and other structures above the base flood elevation will protect them from flood damage, increasing the likelihood that the water system will remain operational during and after storm surges and heavy rainfall events. Elevation of critical components will help to maintain water service continuity and minimizes property damage.

(3) Sea Level Rise: Long-term sea level rise, a result of climate change, increases the risk of chronic flooding and exacerbates storm surge impacts.

Impacts of Sea Level Rise on People and Property: Persistent flooding can lead to regular interruptions in water service, damage to infrastructure, and increased maintenance costs. The elevation of critical components and robust construction of new facilities reduce these risks, safeguarding water quality and availability for residents and businesses.

Mitigation through Project: By constructing elevated and durable infrastructure, the project addresses the challenges posed by sea level rise, ensuring that the water system remains functional and reliable despite changing environmental conditions. (4) Environmental Contamination: Damage to water infrastructure can lead to contamination from debris, chemicals, and pathogens entering the water supply.

Impacts of Environmental Contamination on People and Property: Contaminated water poses severe health risks, including gastrointestinal illnesses and other diseases. The secure and modern design of the new tank, along with enhanced security measures, will

help to prevent contamination, ensuring a safe water supply for the community.

Mitigation through Project: The construction of a modern, secure water storage tank and ancillary structures with robust safety features will prevent environmental contamination, ensuring the water supply remains clean and safe for consumption.

(5) Vandalism and Security Threats: Infrastructure can be vulnerable to vandalism, theft, and other security threats, which can compromise the water supply.

Impact of Vandalism and Security Threats on People and Property: Security breaches can disrupt water services, leading to outages and potential contamination. Enhanced security measures, such as fencing and monitoring systems, mitigate these risks, ensuring uninterrupted and safe water supply.

Mitigation through Project: The project includes significant security upgrades, such as fencing and around-the-clock monitoring systems, which will protect the water infrastructure from vandalism and other security threats, ensuring the reliability and safety of the water supply.

By addressing these risks, the project not only restores essential infrastructure but also enhances the resilience of Fort Myers Beach to future natural hazards and climate-related risks. The improved water tower complex will provide a reliable and secure potable water supply, protecting the health, safety, and well-being of residents and supporting the community's long-term recovery and resilience.

Describe the value of the proposed project to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the project will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data

Replacement of the water tower complex in the Town of Fort Myers Beach will yield significant long-term benefits and positive short-term impacts. In the immediate term, the project will enhance the reliability of the water supply, ensuring that residents and businesses have consistent access to potable water. This reliable water supply is crucial for maintaining public health, supporting local businesses, and sustaining the daily life of the community.

In normal circumstances, rebuilding the water tower complex will, upon completion, immediately restore the Town's potable water system to full functionality, as it has been operating at reduced capacity with only one storage tank since Hurricane Ian. The new infrastructure will improve the overall efficiency of water storage and distribution, reducing the need for frequent maintenance and operational costs. Modern and efficient systems will promote sustainable water management practices, which are essential for addressing challenges such as climate change, population growth, and increased water demand. The enhanced security measures, including fencing and monitoring systems, will protect the water supply from contamination and other threats, further ensuring the health and safety of the community.

In the long term, the benefits of the project extend to increased resilience against natural disasters and climate-related risks. The new water tower complex will be designed to more effectively withstand severe weather conditions, such as hurricanes, floods, and

storm surges, thereby minimizing the risk of water supply disruptions during and after extreme weather events. Elevated pumps and reinforced structures will help Fort Myers Beach maintain a functional and reliable water system, even in the face of future natural disasters. This resilience will significantly contribute to the town's overall disaster preparedness and recovery capabilities.

Furthermore, the project will support the economic stability and growth of Fort Myers Beach. A reliable water infrastructure is critical for the thriving tourism industry and other local businesses. The new water tower complex will help maintain property values and attract new businesses, fostering economic development and prosperity.

By investing in resilient and durable infrastructure, the town will achieve significant long-term cost savings. The reduced risk of damage from natural disasters, combined with lower maintenance requirements and increased efficiency, will lower expenses over time, allowing funds to be allocated to other essential services and projects. This investment will also enhance community confidence in local governance, fostering a sense of security and stability among residents. In conclusion, the replacement of the water tower complex in the Town will provide both immediate and long-term benefits, enhancing the town's resilience, economic prosperity, and environmental sustainability. The project will ensure a reliable and secure potable water supply, protecting the health, safety, and well-being of the community while preparing it for future challenges and extreme events.

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

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

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

Final Deliverable: An executed Subrecipient Agreement for the North Island Water Tower Complex Rehabilitation project.

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

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

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

Final Deliverable: An executed contract for professional engineering services.

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

3. Completion of Project Design and Permitting: Award + 16 Months.

The Florida Certified Engineer selected for this project will complete all project design and permitting activities. Throughout project design, the project engineer will work closely with Town Staff responsible for project oversight. The project engineer will provide comprehensive services for the replacement of the water tower complex in the Town of Fort Myers Beach. These services include conducting developing conceptual and detailed designs for the new infrastructure, with a particular focus on resiliency against natural disasters and climate-related hazards. The engineer will ensure regulatory compliance and assist with permitting, while managing the project from inception to completion, including construction supervision and coordination with contractors. The engineer will provide additional services, as needed, such as surveys, geotechnical assessments, wetlands delineations, etc. The engineer will also work closely with the Town and Tidal Basin to ensure that final contract documents address the federal provisions required by Appendix II to 2 CFR Part 200, mitigation activities required by the final ERR, and applicable terms and conditions of the CDBG-DR Subrecipient Agreement, such as Section 3, Davis-Bacon, utilization of MBE/WBE contractors and subcontractors, registration with SAM.gov, confirmation of debarment and suspension

status for all contractors and subcontractors, etc.

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

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

4. Completion of the Environmental Review Record (ERR): Award + 16 Months.

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

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

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

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

5. Completion of Construction Procurement: Award + 19 Months.

The Town of Fort Myers Beach will competitively solicit bids for renovation and rehabilitation of the North Water Tower Complex, in accordance with 2 CFR 200.320(b)(1) and applicable Florida Statutes. The engineer will compile an Opinion of Probable Construction Costs prior to acceptance of bids. After bids are accepted, the engineer will review all bids received to ensure that bid prices are reasonable and that the low bidder is qualified to complete the scope of work. The Town will take the affirmative steps listed at 2 CFR 200.321(b) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The project engineer will coordinate all pre-bid and pre-construction conferences, in conjunction with the Town and Tidal Basin, during which critical federal compliance requirements will be reviewed in detail (e.g., Davis-Bacon Act Requirements, Section 3 Requirements, MBE/WBE outreach requirements, prohibition on participation of debarred or suspended entities, etc.).

Final Deliverable: An executed construction contract for North Water Tower Complex Rehabilitation activities.

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

6. Completion of Construction Activities: Award + 33 months.

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

Final Deliverable: Completion of North Island Water Tower Complex Rehabilitation construction activities; Delivery of as-builts for the project.

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

7. Project Closeout: Award + 36 Months.

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

Final Deliverable: Lee County acceptance of final closeout documentation.

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

Define project milestones (i.e. Design, Construction, Progress Meetings, Certification of Completion, Closeout, or any other milestones as applicable)

Project milestones include:

1. Execution of a Subrecipient Agreement.
2. Completion of Engineering Procurement.
3. Completion of the Environmental Review Record (ERR).
4. Completion of Project Design and Permitting.

5. Completion of Construction Procurement.
6. Completion of Construction Activities.
7. Completion of Project Closeout.

Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 36-month period of performance for completion of the North Water Tower Complex Rehabilitation project. Estimated project spending and drawdowns total \$5,000,000.00.

Month 1 – Month 4: \$6,944.44 per Month (Through completion of engineering procurement).

Month 5 – Month 16: \$41,736.11 per Month (Through completion of design, permitting, and completion of the environmental review record).

Month 17 – Month 19: \$14,444.44 per Month (Through construction procurement).

Month 20 – Month 33: \$314,801.59 per Month (Through construction completion).

Month 34 – Month 36: \$6,944.44 per Month (Through completion of project closeout).

Proposed reporting for outcomes achieved

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

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

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the North Island Water Tower Complex Rehabilitation project is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the project timeline on track, adaptable, and transparent to all stakeholders involved. Regularly scheduled status meetings with the Town, the Town's consultant team, and the project engineer are a critical component of the Town's approach to project activities. These meetings serve multiple purposes, including providing a forum for continuous progress monitoring and enabling the Town and the teams to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring

that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the project outcomes remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Section VI: Reports of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

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

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

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

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

The Town consulted with two other municipalities that have completed projects of similar size and scope to determine a reasonable budget for construction activities. These consultations were instrumental in gathering valuable insights into the current market rates for construction costs for potable water projects. By soliciting estimates from multiple municipalities, the Town was able to establish a benchmark for anticipated construction costs, ensuring that the budget reflected the true scope and complexity of the work required. At this time, the Town has determined that \$2.1 million budget is appropriate for removal and replacement of the water tower, with an additional \$2.0 million budgeted for all other construction activities necessary to complete the water tower complex.

The Town utilized industry standard percentages to estimate the budget needed for ADC's, engineering design and permitting, additional engineering services, and construction-phase engineering and inspection. The Town acknowledges that the cost-plus-percentage of construction cost method of contracting is strictly prohibited by 2 CFR 200 and affirms that any contract executed will strictly utilize allowable contracting methods appropriate to the specific activities to be performed. The industry standard percentages indicated below have been utilized in this case for budgeting purposes only. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Critical Infrastructure Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. Activities may include project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the North Water Tower Complex Rehabilitation project. The Town has budgeted basic engineering and design services at approximately 11% of construction costs, consistent with FEMA Cost Curve A for a \$4.1 million construction budget (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf).

The Town has included a budget line item for permitting activities and other studies (e.g.,

geotechnical reports, boundary surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.) that may be needed for project completion. Determination of permitting costs and costs for other studies is often unknown until engineering due diligence is underway; as such, the Town has incorporated a budget line item estimated at 2% of construction costs. Once an engineering firm is selected and necessary permits are determined, a more specific estimate for these costs can be established.

The Town has budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf).

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

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

The Town will hold regularly scheduled status meetings with the consultant teams, the project engineer, and the construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

Describe the cost and plan for funding for operations and maintenance.

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

providing a continuous and reliable water supply for the community.

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

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

The commitment to innovation and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to the North Island Water Tower Complex Rehabilitation project, particularly in the context of post-disaster and coastal community resilience. This commitment will be operationalized through the selection process for an engineering firm, ensuring that the chosen firm brings knowledge, experience, and creativity to the project.

The selected engineer will be instructed to design a project that, to the extent feasible, will employ state-of-the-art materials and technology designed to maximize efficiency and minimize environmental impact. The concrete poly-lined tank is specifically chosen for its superior performance in harsh environmental conditions. Advanced pumping and valve systems will be incorporated, designed to be energy-efficient and easy to maintain. Security measures will include high-definition surveillance cameras and secure access controls to ensure comprehensive monitoring and safety of the facility. Other possible best practices may include utilization of LED lighting, low-impact construction practices, and the incorporation of green spaces around the facility to promote biodiversity and aid in natural water filtration.

A description of how you will coordinate with other planning, community development, and/or recovery or resilience projects and initiatives that are underway

The Town of Fort Myers Beach will coordinate the water tower complex replacement project with existing planning, community development, and resilience initiatives to maximize efficiency and ensure comprehensive community benefits. Collaboration with ongoing infrastructure and resilience projects, such as flood mitigation efforts, stormwater management upgrades, and coastal protection initiatives, will be a priority. By aligning the water tower project with these initiatives, the Town can leverage shared resources and expertise.

The Town will engage with local planning and development departments to integrate the water tower project into the broader community development strategy. This integration will ensure that the project supports and enhances other ongoing and planned improvements in the area, such as housing developments, transportation upgrades, and public space enhancements.

By coordinating with other projects and initiatives, the Town of Fort Myers Beach aims to create a cohesive and resilient community infrastructure that not only meets immediate needs but also prepares for future challenges. This collaborative approach will enhance the effectiveness and sustainability of the water tower complex and contribute to the overall resilience and development of the town.

Furthermore, the Town of Fort Myers Beach was awarded funding for Comprehensive and Long-Term Recovery Planning efforts through the Lee County Recovery and Resiliency Planning Program. As reliable availability of potable water is a critical FEMA lifeline, this project will be foundational to resiliency planning recommendations identified through that project.

Describe how you will coordinate with other partners carrying out related activities and/or projects

The Town of Fort Myers Beach will coordinate with various partners to enhance the impact and efficiency of the North Water Tower Complex Rehabilitation project. As needed, the Town may conduct meetings or workshops with neighboring municipalities, regional planning councils, and state and federal agencies to facilitate information sharing and alignment with other infrastructure initiatives. Interdepartmental coordination within the Town's government will ensure cohesive planning. Collaboration with utility providers and contractors will optimize service integration and reduce construction conflicts. The Town will also consider regional resilience initiatives and, as required, work with state and federal agencies to secure permits and technical support. This collaborative approach will ensure the project's success and contribute to the community's long-term resilience and development.

A description of the area of need that will be addressed

Prior to Hurricane Ian, the Town relied on two water towers to store and distribute potable water to its residents and businesses; however, hurricane and storm surge damage to the North Water Tower Complex rendered the North Tower completely unusable. Since that time, the Town has persisted with one operational water tower for the entire island. This reduction in water storage capacity has severely impacted the community. The single remaining water tower is insufficient to meet the demands of both residents and the large number of tourists who visit the area, particularly during peak seasons. This limited capacity compromises the town's ability to ensure a consistent and reliable supply of safe drinking water, which is essential for public health, sanitation, and firefighting capabilities.

The lack of adequate water infrastructure also threatens the local economy. Fort Myers Beach is a popular tourist destination, and the tourism and hospitality industries are crucial to the town's economic well-being. The unreliable water supply can deter tourists, disrupt business operations, and impede economic recovery efforts, prolonging the community's recovery from the hurricane.

Moreover, Fort Myers Beach is vulnerable to natural disasters, including hurricanes, storm surges, and flooding. The destruction of the North Water Tower Complex has highlighted the need for resilient infrastructure that can withstand such events. Replacing the destroyed water tower with a more robust and disaster-resistant system is essential for the town's long-term resilience and sustainability.

Addressing this critical need by restoring and enhancing the water storage capacity will significantly improve the health, safety, and economic stability of Fort Myers Beach. This project will ensure that the town can provide a reliable and secure potable water supply, supporting both current residents and future generations, and bolstering the community's overall resilience against future natural disasters and climate-related hazards.

A description of the intended impact the plan will have on the community and area of high need

Rehabilitation of the North Water Tower Complex in Fort Myers Beach is intended to have profound and far-reaching impacts on the community, addressing several critical areas of high need that have been exacerbated by Hurricane Ian.

Restoration of Reliable Water Supply: The primary impact of the project will be the restoration of a reliable and secure potable water supply for the entire island. With the new water tower in place, the Town will once again have sufficient capacity to meet the water needs of both residents and the influx of tourists. This will ensure that the community has consistent access to safe drinking water, which is vital for public health, hygiene, and sanitation. **Enhanced Public Health and Safety:** By reinstating and improving the water infrastructure, the project will significantly enhance public health and safety. Reliable access to potable water reduces the risk of waterborne diseases and ensures that sanitation systems function effectively. Additionally, the enhanced infrastructure will provide adequate water pressure and volume necessary for firefighting, contributing to the overall safety and emergency preparedness of the community.

Economic Stability and Growth: A reliable water supply will support the economic stability and growth of Fort Myers Beach. The tourism and hospitality industries, which are key drivers of the local economy, depend on a consistent and adequate water supply. The project will help attract and retain visitors, ensuring that businesses can operate smoothly and efficiently. This, in turn, will contribute to the town's economic recovery and long-term prosperity.

Increased Resilience to Natural Disasters: The new water tower complex will be designed with resilient features to withstand future natural disasters and climate-related hazards. Elevated pumps, reinforced structures, and secure facilities will ensure that the water supply remains operational during extreme weather events, minimizing the risk of service interruptions. This increased resilience will enhance the community's overall preparedness and ability to recover quickly from future disasters.

Improved Quality of Life: Overall, the project will improve the quality of life for the residents of Fort Myers Beach. Access to a reliable water supply is fundamental to daily living, and the enhanced infrastructure will provide peace of mind and stability for the community. The project will support the well-being of current residents and future generations, fostering a more resilient and vibrant community.

By addressing these high-need areas, the replacement of the North Water Tower Complex will have a transformative impact on Fort Myers Beach, ensuring that the town can thrive and adapt to future challenges.

A description of the intended beneficiaries of the project, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the project

The intended beneficiaries of the water tower complex replacement project are all residents of Fort Myers Beach, who will experience significant improvements in their daily lives due to a reliable and secure potable water supply. Geographically, this includes all of Census Tracts 601 and 602. All residents of those Tracts are considered intended beneficiaries, including HUD-defined vulnerable populations within those areas. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. While potable water supply is critical to all residents of the island, these two groups are particularly susceptible to disproportionate impacts of inadequate water infrastructure and will greatly benefit from the enhanced resilience and reliability of the new water tower complex.

Additionally, the project will support the local tourism-dependent economy, benefiting business owners and workers who rely on a stable water supply for their livelihoods. By ensuring a consistent and safe water supply, the project will contribute to the overall health, safety, and economic stability of the entire Fort Myers Beach community, fostering an inclusive environment where all residents can thrive.

A project area map and corresponding beneficiary data from the HUD Low and Moderate Income Summary Data (LMISD) dataset and mapping tool is attached.



The applicable census tracts and block groups that are projected to benefit from the project. Census data can be found here: [Low- and Moderate-Income Area Data](#)

	Census Tract	Block Group
1	0601.02	1,2,3,4,5
2	0602.01	1,2,3
3	0602.02 / 0602.03	1,2 / 1,2

The types of entities benefitting from the plan

- ☒ Residents
 ☒ Businesses
- ☒ Local Government
 ☐ Other:

- If “Residents” is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the project

Total Number of Beneficiaries:	6670
Total LMI Beneficiaries:	2055

The target populations from the table below who will benefit from the project

- ☒ Populations presumed by HUD to be LMI persons:
 - Abused children
 - Elderly persons (62 and older)
 - Battered spouses
 - Homeless persons
 - Severely disabled adults (as defined by the Census)
 - Illiterate adults
 - Persons living with AIDS
 - Migrant farm workers
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
 - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
 - Geography
 - Markets
 - Prevalent housing stock and tenure
 - History
 - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
 - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

A description of the method used to identify the intended beneficiaries of the project if it were implemented

A single water system provides potable water to the entire island and Town of Fort Myers Beach. Implementation of this project will enhance the resilience and reliability of the potable water system for all island residents and businesses by restoring two water towers to the system. Given that the North Tower will enhance the single system that serves the entire island, the intended beneficiaries include all residents of the island.

This project will be of particular benefit to the elderly and disabled populations in the Town of Fort Myers Beach. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. While potable water supply is critical to all residents of the island, these two groups are particularly susceptible to disproportionate impacts of inadequate water infrastructure and will greatly benefit from the enhanced resilience and reliability of the new water tower complex.

A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement

The Town of Fort Myers Beach notified the public of its intention to apply for infrastructure funds through the Lee County – CDBG Critical Infrastructure program. Notice was published in a newspaper of local circulation in block/display ad format on Friday, May 17, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person. Interested parties were invited to make public comments at the Town Meeting held on Monday, May 20, 2024; written comments were accepted through Thursday, May 23, 2024.

No comments were received.

A description and justification of the proposed costs

The total project budget for rehabilitation of the North Island Water Tower Complex is estimated at \$5,000,000. Additional information regarding detailed budget line items is provided below:

Construction Activities: \$4,100,000.00. Construction funds will be utilized for (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach.

The Town consulted with two other municipalities that have completed projects of similar size and scope to determine a reasonable budget for construction activities and has determined that \$2.1 million budget is appropriate for removal and replacement of the water tower, with an additional \$2.0 million budgeted for all other construction activities necessary to complete the water tower complex.

Activity Delivery Costs: \$250,000.00. ADC funds will be utilized for project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Critical Infrastructure Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the North Water Tower Complex Rehabilitation project.

Engineering Fees: \$450,000.00. Engineering funds will be utilized for costs associated with basic engineering and design services normally performed by an engineering firm on construction projects. Such services include preliminary engineering analysis, preliminary design, final design, and construction-phase professional services.

Permitting / Studies: \$80,000.00. Funds specific to permitting and studies will be utilized for costs related to permitting activities and other studies that may be necessary throughout the life of the project. Permitting includes all activities necessary for issuance of a required permit, such as initial assessment of permits required, development of permit applications, submission of permit applications, and coordination with permitting agencies from application submission to issuance of a permit. Other studies include any

other studies that may be needed to secure permitting, complete the Environmental Review Record, or ensure that engineering and design of project components; this may include geotechnical reports, topographical surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.

Construction-Phase Engineering & Inspection (CEI): \$120,000.00. Funds for CEI services will be utilized for costs related to basic construction management activities. These may include activities such as daily or weekly site inspections and monitoring of construction methods to meet specified standards; site supervision to ensure safety and efficiency on the construction site, adhering to regulations and best practices; compliance monitoring to verify adherence to local, state, and federal regulations, ensuring all necessary permits are obtained and maintained; and compilation of detailed CEI Reports to track construction progress, including daily logs and inspection reports.

A description of whether the project will be implemented with applicant staff, vendor support and/or other

The project will be implemented by a team comprised of Town staff and vendor support. Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, including Mr. Andrew Hyatt, Mr. Frank Kropacek, and Mr. Joe Onzick. To supplement staff expertise and capacity, the Town has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. Tidal Basin Group is further supported by Gouras & Associates, LLC, whose team members collectively have more than 70 years of combined experience working with state and federal funding, including CDBG-DR funding, and projects of all scopes and sizes.

The Town will competitively procure the services of an engineering firm licensed in the state of Florida to complete all design, permitting, other studies, and construction-phase engineering and inspection. The Town will competitively procure a properly licensed construction contractor to implement all construction activities based upon the plans, specifications, and contract documents developed by the project engineer.

A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services and one contractual agreement for construction services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

Contract A - Contractual Activity Delivery Services:

The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to supplement Town staff in project-specific activity delivery services. An existing

contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for project-specific activity delivery services. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance.

Timeframe associated with Contract A: Award + 1 month through project closeout.

Dependencies associated with Contract A: Issuance of an award for planning funds.

Contract B - Engineering, Permitting, and CEI Services (including other studies):

The Town of Fort Myers Beach will competitively procure a Florida-licensed professional engineering firm to complete all project engineering and design, secure all necessary permitting, perform all construction-phase oversight, and complete other studies that may be required throughout the life of the project. Upon project award, the Town will develop procurement documents and solicit Statements of Qualifications from firms qualified to perform these services. The Town anticipates that funding under this contract will be expended as follows:

- Engineering and Design Services: 75% of Basic Engineering Fee expended consistently throughout project design; 5% of Basic Engineering Fee expended throughout construction bidding; 20% of Basic Engineering Fee expended throughout construction phase activities.
- Permitting and Other Studies: 100% of Permitting/Other Study Fees expended during the project design phase.
- Construction-Phase Engineering and Inspection: 100% of CEI Fees expended consistently throughout the construction phase.

Timeframe associated with Contract B: Award + 4 months to Award + 33 months.

Dependencies associated with Contract B: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract. To address and control for dependencies, the Town will ensure that an RFQ for solicitation of engineering services developed promptly upon award of project funding.

Contract C - Construction Activities:

The Town of Fort Myers Beach will competitively procure a qualified and licensed construction company to construct the project based on the plans, specifications, and contract documents prepared by the project engineer. The Town anticipates that funding under this contract will be expended consistently throughout the project's construction phase.

Timeframe associated with Contract C: Award + 21 months to Award + 33 months.

Dependencies associated with Contract C: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract; Completion of project design and permitting; Completion of the ERR and issuance of AUFG; Completion of Construction Procurement; Execution of a Construction Contract. To address and control for dependencies, the Town will regularly coordinate with the project engineer to ensure that pre-construction activities are progressing on-budget and on-schedule.



Budget Form

Description	CDBG-DR Funds Requested	Leveraged Funds	Project Cost
Activity Delivery Costs			
Environmental Review Costs	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
File Management	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Inspections	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Program Administration	\$250,000.00	\$0.00	\$250,000.00
Source of External Funds	N/A		
Construction			
Bonding/Insurance	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Construction Management	\$120,000.00	\$0.00	\$120,000.00
Source of External Funds	N/A		
Debris Removal	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Demolition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Fixtures/Equipment	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
General Contractor	\$4,100,000.00	\$0.00	\$4,100,000.00
Source of External Funds	N/A		
Landscaping	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Maintenance of Traffic	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Mobilization	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Site Preparation	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Planning/Design			
Development of Bidding Document	\$50,000.00	\$0.00	\$50,000.00
Source of External Funds	N/A		



Drawings/Blueprints	\$400,000.00	\$0.00	\$400,000.00
Source of External Funds	N/A		
Land Acquisition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Permitting	\$80,000.00	\$0.00	\$80,000.00
Source of External Funds	N/A		
Site Plan	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Surveys	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Testing	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		

Funding Summary

CDBG-DR Funds Requested	Leveraged Funds	Project Cost
\$5,000,000.00	\$0	\$5,000,000.00

Duplication of Benefits

Source of Funds	Amount	Status of Funds
FEMA Building Resilient Infrastructure and Communities (BRIC)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Hazard Mitigation Grant Program (HMGP)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Public Assistance (PA)	\$0.00	Identified
Purpose of Funds:	The Town is currently working with FEMA to secure funding that would contribute to the implementation of this project; however, at this time, funding has not been committed. No other leveraged funding sources are currently committed to the organization for this project. Should leveraged funds from any source be committed to this project, the Town of Fort Myers Beach will promptly notify Lee County and adjust CDBG-DR funding awarded to ensure that no Duplication of Benefits exists.	
Local (Municipal) Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Other CDBG-DR Funds (from Florida COM)	\$0.00	N/A
Purpose of Funds:	N/A	
Other State Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Resilient Florida	\$0.00	N/A
Purpose of Funds:	N/A	
US Army Corps of Engineers (USACE)	\$0.00	N/A
Purpose of Funds:	N/A	
US Department of Transportation	\$0.00	N/A
Purpose of Funds:	N/A	
Total	\$0.00	



Capacity to perform financial management and oversight

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

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

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

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

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

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



Applicant Capacity and Experience: Applicant/Subrecipient

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

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

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

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

Internal auditing capability

The Town of Fort Myers Beach will perform internal monitoring and financial compliance oversight in accordance with established financial management policies and procedures.



Applicant Capacity and Experience: Applicant/Subrecipient

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

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

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

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

Administrative staffing

The Town of Fort Myers Beach staff will be available to support the necessary day-to-day administrative functions required for successful project implementation. Administrative staff will be overseen by Mr. Andrew Hyatt and Mr. Frank Kropacek.

To supplement the Town staff's administrative capacity, Fort Myers Beach will utilize the services of Tidal Basin Group. Tidal Basin Group will be further supported by Gouras & Associates, LLC, for CDBG-DR specific administrative staffing needs.

Monitoring and control of timely expenditure of funds



Applicant Capacity and Experience: Applicant/Subrecipient

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

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

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

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

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



Applicant Capacity and Experience: Applicant/Subrecipient

The Town confirms that it will not take any choice limiting actions, including, but not limited to, physical work or construction activities, until environmental clearance is issued and Authority to Use Grant Funds is obtained. The Town understands that the result of committing a choice limiting action could result in the termination of the award and that, in the event of excessive environmental issues, the award of CDBG-DR funds may be cancelled.

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

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

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

The Town of Fort Myers Beach will utilize the State of Florida's minority, women, and veteran owned business directory (<https://vendor.myfloridamarketplace.com/search/vendor>) to solicit minority, women, and veteran owned businesses for participation in each contract procured as a result of this project. All solicitation documents for services to be performed through this project will encourage participation of minority, women, and veteran owned businesses and all contracts and subcontracts issued will require compliance with 2 CFR 200.321, such that subcontracting opportunities must be made



Applicant Capacity and Experience: Applicant/Subrecipient

available, as a priority, to minority, women, or veteran owned businesses when possible. The Town will document all outreach efforts to demonstrate that affirmative steps were taken to ensure good faith effort outreach to minority, women, and veteran-owned businesses.

Subrecipients must provide their procurement policy documents for analysis

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

Subrecipient's ability to Complete Subgrantee Capacity Assessment

N/A

Subrecipient's ability to Complete Subgrantee Risk Assessment

N/A

Subrecipient's Ability to Execute a Subgrantee Agreement

N/A

Please describe Subrecipient's Plans for Subgrantee Oversight and Monitoring

N/A



Applicant Capacity and Experience: Subgrantee

Subgrantee's Capacity to perform financial management and oversight

N/A

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

N/A

Subgrantee's Internal auditing capability

N/A

Subgrantee's Administrative staffing

N/A

Subgrantee's Monitoring and control of timely expenditure of funds

N/A

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

N/A



Applicant Capacity and Experience: Subgrantee

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

N/A

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

N/A

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

N/A

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

N/A



Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 05/24/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 173.165.214.193

EXHIBIT G**CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Critical Infrastructure Program* NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

Certificate(s) of Insurance

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place:

(1) Workers' Compensation Coverage

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(2) Commercial General Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(3) Business Auto Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(4) Directors & Officers Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(5) Fidelity Bonding

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

EXHIBIT H (SIGNATURE REQUIRED)**CERTIFICATIONS**
CDBG-DR COMPLIANCE PROVISIONS
Housing and Infrastructure

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the Agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the Subrecipient certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

1. NATIONAL OBJECTIVES

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

2. DUPLICATION OF BENEFITS

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

- a. CDBG-DR Funds as Match (Infrastructure):** When applicable and approved by the County, Subrecipients may use grant funds to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or U.S. Army Corps of Engineers (USACE). By law, only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Furthermore, Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or which funds are also made available by, FEMA or USACE.

For all match activities, Subrecipients must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

3. EQUAL EMPLOYMENT OPPORTUNITY

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. Title VI of the Civil Rights Act of 1964:** This act provides that no person shall

be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a

qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

5. ENVIRONMENTAL PROTECTION AND ACTS

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, if a subrecipient is a state agency or an agency of a political subdivision of a state, it and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6. **CONSTRUCTION STANDARDS**

While the following Construction Standards requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the *CDBG-DR Construction Standards Procedure* for Housing Programs and applicable program guidelines.

- a. **Green and Resilient Building Standards in Housing:** All new construction or rehabilitation of residential structures must meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC-700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification

from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD

- b. Rehabilitation of Nonsubstantially Damaged Residential Buildings (Housing):** Per Federal Register Notice 88 FR 32046, for rehabilitation other than the rehabilitation of substantially damaged residential buildings described in 6.a. above, the Subrecipient must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

- c. Broadband Infrastructure in Housing:** Per Federal Register Notice 88 FR 32046, any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four units must include installation of broadband infrastructure.

d. Elevation Standards (Housing and Infrastructure):

- i. ***Housing***: All new construction or rehabilitation of residential structures and located in the one percent annual chance (or 100-year) floodplain must be elevated at least two feet above the base flood elevation.
 - ii. ***Mixed-use and Non Residential***: Non-residential structures and infrastructure must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
 - iii. ***Critical Actions***: Structures and services defined at 24 CFR 55.2(b)(3) and within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2-3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
- e. Planning and Design (Infrastructure):** All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the Subrecipient is required to provide resilience performance metrics as identified by the County.

- f. Flood Control Structures (Infrastructure and Non-Residential Structures):**

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining approval from the County, HUD, and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Additional requirements and approval steps are outlined under Federal Register Notice guidance at 88 FR 32046.

7. AFFORDABILITY PERIOD REQUIREMENTS (HOUSING)

While the following minimum affordability period requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the applicable program guidelines regarding affordability period requirements.

- a. **New Construction and Rehabilitation of Affordable Rental Housing:** To meet the LMI housing national objective, a Subrecipient who implements rental housing activities that will result in the new construction or rehabilitation of five or more units, assisted with CDBG-DR funds, must rent to LMI households at affordable rents as described within the *Lee County Action Plan for CDBG-DR Funds*. Furthermore, the minimum timeframes, enforceability, and other related requirements acceptable for compliance can be found under the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the of 24 CFR 92.252(e). The County has adopted these requirements and spells out affordability restriction enforcement and minimum affordability periods within the respective program guidelines, which Subrecipients are required to follow, where applicable.
- b. **New Construction of Homes Built for LMI Households:** For Subrecipients who implement activities where there is a construction of new single-family units (four units or less) for homeownership that will meet the LMI housing national objective criteria, the County has set affordability restrictions, which follow minimum affordability period and enforcements mechanisms of the HOME requirements set at 24 CFR 92.254(a)(4). Subrecipients whose activities are applicable to these requirements must follow the County's respective program guidelines regarding affordability restrictions, resale or recapture requirements, affordability period requirements, and all other requirements prescribed under the applicable guidelines regarding affordability.

8. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, VETERAN OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, veteran owned businesses, and labor

surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses, veteran owned businesses, and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's and veteran's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, veteran owned, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, veteran owned businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

9. POLITICAL ACTIVITY

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

10. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

11. DEBARMENT AND SUSPENSION

A contract award ([2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

By executing this Agreement or contract, the Subrecipient or Contractor verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs and will not enter into contracts with any entity that has been suspended or debarred from federal contract work.

12. CONFLICT OF INTEREST

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

13. DOMESTIC PREFERENCES FOR PROCUREMENTS

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

14. DAVIS-BACON AND RELATED LABOR STANDARD ACTS

- a. **Davis Bacon Act:** Subrecipient or Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 31413148) and 29 CFR Subtitle A, Parts 1, 3 and 5, as applicable, to construction, alteration, and repair contracts over \$2,000.00.
- b. **AntiKickback Act of 1986:** Subrecipient or Contractor shall ensure that all contracts comply with the AntiKickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.
- c. **Contract Work Hours and Safety Standards Act of 1962:** Subrecipient or Contractor shall ensure all contracts comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. § 3702) which requires that workers

receive overtime compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- d. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this agreement or contract. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract").
- e. Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The work to be performed under this contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3), and implementing regulation at [24 CFR, Part 75](#). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The responsibilities outlined in 24 CFR Part 75.19 include:

- a. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- b. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- c. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- d. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (42 U.S.C. 4601 et seq.) – “URA”

The Subrecipient understands that activities and projects it undertakes with CDBG–DR funds may be subject to the URA at 49 CFR Part 24, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in Federal Register Notices 88 FR 3198 and 88 FR 32046. In such Notices, HUD waived or provided alternative requirements for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

Subrecipients are required to adopt the County’s Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to undertaking any activity assisted with CDBG-DR funding which involves relocation. The written policy must be available to the public, describe the relocation assistance that the Subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

In the event of displacement because of a federally funded award, Subrecipients must comply with the URA, for any household, regardless of income, which is involuntarily and permanently displaced, and to comply with Section 104(d). The County also provides notice to Subrecipients that any demolition or disposition of public housing is

subject to Section 18 of United States Housing Act of 1937, as amended, and 24 CFR Part 970.

17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

18. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
- 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
 - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

c. Contractors shall:

- 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

20. PATENTS

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or

his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

21. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

22. DRUG-FREE WORKPLACE ACT OF 1988

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

23. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

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

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
 2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract
- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
 - b. If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

24. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

25. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

26. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

27. ACCESS TO RECORDS – MAINTENANCE OF RECORDS

Lee County, the Department of Housing and Urban Development, the Comptroller

Version 2.0, 10/01/2024

General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County’s final closeout of the grant.

28. INSPECTION

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

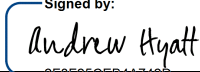
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	Signature	Date
	Andrew Hyatt	
	Name (print)	

EXHIBIT I**CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

1. INITIAL RISK ASSESSMENT

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

2. RISK ASSESSMENT

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

3. SPECIAL CONDITIONS

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

A. ENVIRONMENTAL REVIEW SPECIAL CONDITION

The environmental review for this project is currently classified as "Exempt" under 24 CFR §58.34. However, upon the completion of 30% design, the Subrecipient must initiate the process for an Environmental Assessment (EA) pursuant to 24 CFR Part 58.

The Subrecipient shall adhere to the following requirements upon reaching 30% design completion:

1. **Notification to the County:** The Subrecipient must notify their Grant Manager and Lee County in writing via email or a VistaTRAK note that the project has reached 30% design completion.
2. **Submission of Designs:** The Subrecipient must upload the 30% design documents to VistaTRAK for County review.
3. **Restriction on Activities:** The Subrecipient must not execute any construction contracts, commit funds, or undertake any choice-limiting actions as defined in 24 CFR §58.22, until an Authority to Use Grant Funds (AUGF) has been issued by HUD.
4. **Coordination with Lee County:** The Subrecipient must coordinate closely with Lee County to ensure compliance with all applicable federal, state, and local environmental review requirements.

Failure to comply with these conditions may result in noncompliance findings and the withholding of reimbursement for project expenses until compliance is achieved and documented.

EXHIBIT J
SUBRECIPIENT STAFF ORGANIZATION
North Island Water Tower Complex Rehabilitation

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

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

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

Section 1: Subrecipient Contract Administrator

1. Description

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

2. Contact Information

Name: Andrew Hyatt
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: andyhyatt@fmbgov.com

Section 2: Project Manager

1. Description

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

2. Contact Information

Name: Frank Kropacek
Title: Operations and Compliance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: fkropacek@fmbgov.com

Section 3: Davis Bacon and Labor Standards Coordinator

1. Description

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

2. Contact Information

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

Section 4: Section 504 Coordinator

1. Description

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

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: amy@fmbgov.com

Section 5: Fair Housing Coordinator**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

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

Section 6: Financial Manager

1. Description

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

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: JOnzick@fmbgov.com

Section 7: Certification of Time Allocation

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? If so how many, and list names.

No

EXHIBIT K

CDBG-DR PROGRAM SUBROGATION AGREEMENT

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between Town of Fort Myers Beach (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's application for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

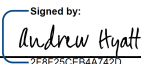
Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

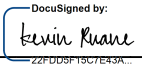
The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

TOWN OF FORT MYERS BEACH

LEE COUNTY

By: Andrew Hyatt
Signature: 
Title: Town Manager
Date: 1/13/2025 | 10:43 AM EST

By: Kevin Ruane
Signature: 
Title: Chair
Date: 1/21/2025 | 3:28 PM EST

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND TO CHANGE THE TOWN HALL ADDRESS TO 6231 ESTERO BLVD., FORT MYERS BEACH IN THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Notification to Lee County of key employee changes is requested in accordance with the CDBG-DR Subrecipient Agreement.

What the action accomplishes:

To stay in compliance with CDBG-DR requirements.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

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

Attachments:

1. NS 25-248 Parks and Rec Key Officials Finance Director and Address Second Amendment DR10263
2. Exhibit A to Resolution 25-248 - 2nd Amendment to Update Signature Finance Director and Address DR10263
3. Exhibit A to 2nd Amendment - Revised PARK & RECREATION - Lee County Subrecipient Agreement Exhibit J Subrecipient Staff Organization
4. Grant Agreement - Fully_Executed_DR10263_-_Town_of_Fort_Myers_Beach_Parks_and_Rec_Revitalization (003)
5. 25-203 First Amendment CDBG-DR DR10263 Signed

Financial Impact:

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

6. **Alternative Action**

Do not accept the recommendation and forfeit the agreement.

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 8/28/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025

RESOLUTION NUMBER 25-248

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND 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 AND CHANGE THE ADDRESS TO THE NEW TOWN HALL; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, on November 20, 2023, the Provider and Contractor entered into a Subrecipient Agreement. Under the Agreement, Exhibit J, the Town named key personnel, outlined within the Agreement, Section XVIII; and

WHEREAS, if there should be a substantive change to the organization, key personnel, the Town shall notify the Provider of said changes within 30 days of the change for the CDBG-DR Grant Agreement, DR10263. Exhibit J Subrecipient Staff Organizational change: remove William McKannay, Finance Director, to be replaced with Joe Onzick and to change the address to the new Town Hall address, 6231 Estero Blvd, Fort Myers Beach, FL 33931; and

WHEREAS, the Town desires to complete and execute the second amendment as soon as possible to be in compliance with the grant agreement and funding.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Second Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 11th day of September 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of September 2025.

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

THIS SECOND AMENDMENT is made and entered into this 11th day of September, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “County” to that certain CDBG-DR Grant Agreement, dated November 20, 2023 (“Agreement”) DR10263 – Parks Facility and Recreation Revitalization as amended on June 16, 2025.

WITNESSETH:

WHEREAS, on November 20, 2023, the County and the Town entered into the Agreement, which included Exhibit J intended by the parties as an extension of the notice requirement contained in Section XVIII of the Agreement; and

WHEREAS, Exhibit J requires the Town to update the information concerning key personnel and contact information in Exhibit J within 30 days of a change; and

WHEREAS, on June 16, 2025, the Town provided the County with a 1st Amendment to the Agreement identifying Will McKannay as the Finance Director and included other changes required by Florida law to the Agreement; and

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

WHEREAS, the Town now desires to further amend Exhibit J of the Agreement as stated in the attached Exhibit A to substitute Joe Onzick as the Finance Director in place of Will McKannay and to update the address for the identified key personnel from 2731 Oak Street, Fort Myers Beach to 6231 Estero Blvd, Fort Myers Beach; and

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

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

2. Exhibit J. The parties agree to the update to Exhibit J as provided in Exhibit A attached to this Amendment.

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

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

Lee County, Florida

By: Glen V. Salyer
Assistant County Manager

EXHIBIT J

SUBRECIPIENT STAFF ORGANIZATION

Parks & Recreation Revitalization

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

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

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

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

Section 1: Subrecipient Contract Administrator

1. Description

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

2. Contact Information

Name: William McKannay
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: will.mckannay@fmbgov.com

Section 2: Project Manager

3. Description

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

4. Contact Information

Name: Frankie Kropacek
Title: Operations & Compliance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: fkropacek@fmbgov.com

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

1. Description

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

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 4: Section 504 Coordinator

1. Description

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

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach FL, 33931
Telephone: 239-765-0202
Email: amy@fmbgov.com

Section 5: Fair Housing Coordinator

1. Description

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

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

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 6: Financial Manager

1. Description

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

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: joe.onzick@fmbgov.com

Section 7: Certification of Time Allocation

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

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

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

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

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

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

SECTION I: **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION III: **TERM OF AGREEMENT**

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

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

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

SECTION IV: **AGREEMENT MODIFICATIONS AND AMENDMENTS**

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

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

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

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

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

SECTION V: COMPENSATION AND ALLOWABLE PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VI: **REPORTS AND EXHIBITS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VII: AUDITS, MONITORING, AND RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VIII: CONTRACTOR STATUS

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

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

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

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

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

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

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

SECTION IX: CONFLICTS OF INTEREST

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

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

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

SECTION X: **RISK MANAGEMENT**

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

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

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

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

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

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

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

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

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

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:
 - \$100,000 per accident
 - \$500,000 disease limit
 - \$100,000 disease limit per employee
2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
 - \$500,000 bodily injury per person (BI)
 - \$1,000,000 bodily injury per occurrence (BI)
 - \$500,000 property damage (PD) or
 - \$1,000,000 combined single limit (CSL) of BI and PD

The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.
3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
 - \$100,000 bodily injury per person (BI)
 - \$300,000 bodily injury per occurrence (BI)
 - \$100,000 property damage (PD) or
 - \$300,000 combined single limit (CSL) of BI and PD
4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XIII: ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional requirement information can be accessed at the following websites:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XIV: OTHER PROVISIONS AND CONDITIONS

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

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

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

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

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

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

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

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

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

SECTION XV: **CITIZEN COMPLAINTS**

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

SECTION XVI: **LEGAL AUTHORIZATION**

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

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

SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE

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

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

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

SECTION XVIII: AGREEMENT CLOSEOUT

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

The closeout checklist must include documentation and certification that:

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

The final closeout reports must include the following:

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

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

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

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

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

SECTION XIX: NOTICES

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

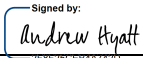
SUBRECIPIENT

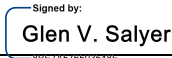
Name: Andy Hyatt
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 2525 Estero Boulevard, Fort Myers
Beach, FL 33931
Telephone: 239-313-0895
Email: AndyHyatt@fmbgov.com

COUNTY

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

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

Andy Hyatt
Name (printed/typed)

Signature
Town Manager
Title

Glen V. Salyer
Name (printed/typed)

Signature
Assistant County Manager
Title

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

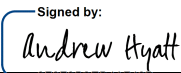
SECTION XX: ALL TERMS AND CONDITIONS INCLUDED

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

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

SUBRECIPIENT: TOWN OF FORT MYERS BEACH

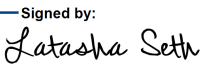
BY:

Signed by:

Signature
Andrew Hyatt
Name (print)

1/13/2025 | 10:43 AM EST
Date

ATTEST:
CLERK OF CIRCUIT COURT

BY:

Signed by:

34140A3DDF374A2...
DSDeputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

DocuSigned by:

22FDD5F15C7E43A...
Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

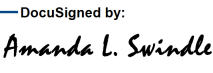
DocuSigned by:

EC0B5A5584DD473...
County Attorney's Office

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

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

Program/Project Activity Overview

Project Name: Parks & Recreation Revitalization

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

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

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

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

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

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

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

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

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

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

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

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

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

Project Activity Scope of Work Description ("Work")

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

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

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

The technical aspects of reconstruction will be carefully planned to ensure both

durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility

Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and

restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

Design and Approach: The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight

and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in

municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

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Major Project Milestones

Milestone	Due Date
Design and Permitting Complete	12/31/2026
Construction Begins	04/30/2027
50% Construction	01/30/2028
Closeout and Final Reimbursement Request	12/30/2028

EXHIBIT C
FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County's financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

Financial and Grant Management System Budget Worksheet

As noted within the Agreement, the Subrecipient's allocation of CDBG-DR funding for this project is broken down in the following manner:

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$7,919,916.00
Activity Delivery Funds	\$416,837.00
Total	\$8,336,753.00

EXHIBIT D
INDIRECT COST RATE ALLOCATION PLAN

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

Indirect Cost Rate Allocation Plan

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: **Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.**

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.

EXHIBIT E**PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and, if applicable, the Subrecipient's approved application in response to the _ NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

Projected Performance Measures and Outcomes

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
Rehabilitation/ reconstruction of public facilities	# of buildings (non-residential)	
	# of Linear feet of green public improvement	
	# of Non-business Organizations benefitting	
	# of public facilities	3
	# of Linear feet of Public Improvement	
	# of Acres wetlands	
	# of Linear miles of Public Improvement	
	# of cable feet of public utility	
	# of Properties	
	# of Elevated Structures	
	# of Businesses	
MIT - Public Facilities and Improvements-Non Covered Projects	# acres of newly added or improved green space	
	# acres of wetlands created	
	# cubic feet of stormwater storage added	
	% decrease in affluent discharged	
	% decrease in area inundated by flooding	
	% decrease in disruption hours to residents and businesses from impacts of storm events	
	% decrease in NFIP CRS score	

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	% decrease in road closures in target area during a flood event	
MIT - Public Facilities and Improvements-Non Covered Projects (cont'd)	% decrease water surface elevation level during a flood with a qualifying event	
	\$ estimated flood loss avoidance	
	\$ Funds allocated for water management/flood mitigation improvements	
	\$ Funds allocated for water-quality improvements	
	% increase in acres of cropland protected from flooding	
	% increase in groundwater infiltration	
	% increase in number of acres converted to open space	
	% increase in pumping capacity	
	# linear feet of streams restored	
	# occupied structures in floodplain	
	# of acres green infrastructure created	
	# of acres green space created	
	# of acres green space preserved	
	# of acres no longer vulnerable to flood events	
	# of acres of native vegetation planted	
	# of acres with improved multiple hazard risk mapping	

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	# of brownfield acres converted to wetland	
	# of buildings (non-residential)	
	# of containment systems constructed	
	# of Elevated Structures	
	# of fewer outages of critical facilities and utilities	
	# of green infrastructure projects constructed	
	# of greenspace users	
	# of Linear feet of Public Improvement	
	# of Linear Feet of Sewer Lines	
MIT - Public Facilities and Improvements-Non Covered Projects (cont'd)	# of linear feet of trails constructed	
	# of Linear Feet of Water Lines	
	# of Linear miles of Public Improvement	
	# of Non-business Organizations benefitting	
	# of non-invasive species trees planted on project sites	
	# of properties protected from future flooding	
	# of properties with access above 100-yr flood level	
	# of public facilities # of pump stations repaired/replaced	

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
	# of reduced hours streets are flooded	
	# of residents protected from future flooding	
	# of Section 3 Labor Hours	7,600
	# of small water retention devices/systems installed	
	# of storm water projects implemented	
	# of Targeted Section 3 Labor Hours	380
	# of Total Labor Hours	30,400
	# of vacant lots repurposed	
	# of water control structures repaired/replaced	
	% reduction in emergency maintenance costs	
	% reduction in energy costs	
	% reduction in loss of service	
	% reduction of sanitary sewer overflows	
	% reduction of watershed nitrate loading	
	% reduction of water surface elevation level	
	# of structures harden against future flood events	
	# of Persons	

EXHIBIT F**APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

Application

Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:

1. *Subrecipient Agreement*
2. *Public Facilities Infrastructure Program NOFA.*
3. *Public Facilities Infrastructure Program Guidelines*
4. *Notice to Proceed*
5. *Subrecipient's application in response to the Notice of Funding Availability*



Public Facilities Infrastructure Program



Organization Information

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2731 Oak Street Fort Myers Beach, FL 33931
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

Authorized Organization Representative

- ▶ Name: Andrew Hyatt
- ▶ Title: Town Manager

Contact Person

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: jasonf@fmbgov.com
- ▶ Telephone: (239) 266-4673

Partner Organization

- ▶ Will your organization be partnering with any other organizations? No



Project Information

► Name: Parks & Recreation Revitalization

Public Facility Description

The Town of Fort Myers Beach seeks CDBG-DR funding to restore and enhance its parks and recreation facilities, all of which were severely impacted by Hurricane Ian. The three key components of this consolidated project are the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility, and the Bay Oaks Pool Complex. Together, these projects aim to address blighted conditions in the Town, revitalize the Town's public spaces, improve public safety, and enhance the quality of life for residents and visitors

Project Type

- | | |
|---|--|
| ☐ Aquisition | ☐ Safe Rooms |
| ☒ New Construction | ☒ Handicapped Accessibility Improvements |
| ☒ Building Hardening | ☒ Energy Efficiency Improvements |
| ☐ Backup Generator: Must be a permanent fix to the structure. No portable generators | |

► Other: Reconstruction and rehabilitation of parks and recreation public facilities



Target Service Location

Target Service Location

- | | |
|--|--|
| ☐ City of Cape Coral | ☐ Town of Fort Myers Beach |
| ☒ City of Fort Myers | ☐ Village of Estero |
| ☐ City of Bonita Springs | ☐ Unincorporated Lee County |
| ☐ City of Sanibel | ☐ All of Lee County |



National Objective

► National Objective: Urgent Need

Provide a description how the proposed project will meet the selected National Objective

As a direct result of Hurricane Ian, the designated activity area meets the definition of a blighted area under 163.340, F.S. The project area includes a substantial number of deteriorated or deteriorating structures leading to economic distress, including both unsafe conditions and deterioration of the project site(s) and improvements.

Additionally, as a direct result of the impacts of Hurricane Ian, public improvements throughout the area are in a general state of deterioration and more than 25% of properties throughout the area exhibit physical deterioration of buildings/improvements due to damage from Hurricane Ian.

The attached Memorandum provides additional detail regarding these findings.

National Objective Descriptions

National Objective	Description
L/M Income Area Benefit	Census block groups that align with the service area maps
L/M Income Limited Clientele	The infrastructure improvements benefit a specific persons who are presumed by HUD to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers)
L/M Income Job Creation or Retention	The project proposes activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons. Must include income certifications or describe method on how LMI job creation will be documented
Urgent Need	Does the narrative description on the application under Urgent Need provide specific examples of needs that have urgency, including how the existing conditions pose a serious and immediate threat to the health and welfare of the community?



Slums and Blight	Does the designated activity area meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law? Additionally, the area must meet one of the two conditions: • Public improvements throughout the area are in a general state of deterioration; or • At least 25 percent of the properties throughout the area exhibit one or more of the following: • Physical deterioration of buildings/improvements; • Abandonment of properties; • Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings; • Significant declines in property values or abnormally low property values relative to other areas in the community; or • Known or suspected environmental contamination
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The scope of the project

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of

accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

The projected outcome(s) of the project

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing

safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

The unmet or mitigation need that is being addressed by the project and how it aligns with community goals

The Town of Fort Myers Beach was devastated by the unprecedented destruction of Hurricane Ian, which left many unmet needs and exposed areas of the community to future storms. The Parks & Recreation Revitalization Program aims to revitalize the community by replacing and updating multiple public facilities and community parks that were severely damaged by the hurricane. These repair and enhancement efforts align with the broader community goals of sustainability, resilience, and community well-being.

The first component is the Bay Oaks Community Pool Project, a critical community hub beloved by both residents and tourists. Hurricane Ian's surge and debris heavily damaged the entire facility, including the pool, hard deck, public restrooms, and staff offices. All mechanical systems were wiped out. This project proposes constructing a new facility to house public restrooms and staff offices, fully replacing the hard deck and slide structure, restoring the pool basins, and improving surrounding drainage, lighting, and landscaping. This comprehensive project will ensure an efficient, durable, and resilient community asset for many years to come. Efficient and timely completion of the pool project is essential not only for restoring services but also for demonstrating effective disaster recovery management, minimizing downtime, and allowing the community to benefit from the renewed resources as soon as possible. The disastrous impacts of Hurricane Ian, including a storm surge of over 15 feet, resulted in the complete loss of the previous community hub, creating an immediate need to restore this essential recreational facility. Restoring the Bay Oaks Community Pool aligns with community goals by providing a safe, inclusive, and engaging space that supports health, wellness, and social interaction.

The second component, the Old San Carlos & Time Square Lighting Project, aims to revitalize the downtown core by replacing and updating the entire street lighting system, which was severely damaged by Hurricane Ian. This area, anchored by two vital community gathering spaces —Bayside on the north side and Time Square on the gulf side—is a critical business district and community hub. Hurricane Ian's surge and debris obliterated nearly all 46 streetlights and light poles, leaving the area dangerously dark. This project proposes installing two new panel/switch boxes, all new wiring and conduit, and poles with turtle-compliant lighting fixtures. This comprehensive upgrade will ensure efficient, durable, and safe lighting for the business district, addressing the immediate need for public safety and supporting the economic recovery of local businesses. The significance of this project is paramount to the town's prosperity in both the short and long term, transforming the area into a functional, energy-efficient, safe, and welcoming environment. Revitalizing the downtown lighting aligns with community goals by enhancing public safety, supporting local businesses, and creating a vibrant, attractive area for residents and visitors. Additionally, this lighting project will serve as the first step in the town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, further enhancing connectivity and the overall aesthetic appeal of the downtown area.

The final component, the Newton Park Beach Facility Project, aims to revitalize a historic landmark in Fort Myers Beach by replacing and updating the "Seven Seas" cottage, which was completely destroyed by Hurricane Ian. This cottage, with nearly 100 years of history, served as an education center for the community. The project proposes constructing a new elevated and resilient education-focused facility to replace the previous building, ensuring ADA compliance and public restrooms for the beachfront park, along with reconstructing the attached parking lot. Designed with future severe weather events in mind, the facility will feature a reinforced foundation and roof, high-impact glass, and sealants offering enhanced resistance to water and wind. Landscaping will include dune restoration with native grasses and shrubs to naturally mitigate erosion and flooding. These features ensure that the facility will endure as a safe, educational, and recreational resource through harsh conditions. The new Newton Park Beach Facility will align with community goals by preserving the town's history, promoting environmental education, and providing a resilient and accessible public space.

The Parks & Recreation Revitalization Program will utilize forward-looking strategies and proven best practices to mitigate future issues the completed projects may face. The town will use LED lighting to reduce energy consumption. Additionally, lighting near the beach will be turtle-compliant to ensure no disruption to natural habitats. These measures align with HUD's green building standards, offering direct economic benefits through reduced energy bills and contributing to the broader community goal of sustainable development. This program will provide a foundation for residential satisfaction, allowing the area to continue recovering from the catastrophic impacts of Hurricane Ian while applying environmentally friendly strategies and resilient building standards to reduce future storm impacts. The Parks & Recreation Revitalization Program is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach, aligning with community goals to create a safe, sustainable, and vibrant environment.



Project Design and Approach: Applicant/Subrecipient

Description of your agency's experience completing projects of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the project and oversee all compliance requirements.

The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in



Project Design and Approach: Applicant/Subrecipient

high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

The applicant's plan of executing the Subgrantee Agreement

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

The applicant's plan for Oversight and Monitoring of Subgrantee

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.



Project Design and Approach: Applicant/Subrecipient

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Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates, LLC has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.



The partner's experience undertaking projects of similar complexity and providing public services

N/A

The partner's plan for Maintenance and Operations

N/A

Please provide a project administration team highlighting roles and responsibilities of each individual participating in program participation and management

N/A



Capacity to perform financial management and oversight

The Town of Fort Myers Beach will manage financial aspects of project implementation in accordance with established financial management policies and procedures. Financial management will be overseen by the Town's Financial Director, Mr. Joe Onzick. Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick oversees fund accounting and financial compliance for the project.

To supplement the Town staff's expertise and capacity for financial management and oversight, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and management of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout.

Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

The Town of Fort Myers Beach staff members listed below will perform respective grant management functions for the project:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a town or city manager. Andy has an associate degree in general business from Cleveland State Community College in Cleveland, Tennessee. From the University of Tennessee at Chattanooga, he has a bachelor's degree in political science and a master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county, and state government administration ranging from contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying geology and geophysics. Mr. Kropacek will be the Town's



Applicant Capacity and Experience: Applicant/Subrecipient

primary day-to-day contact for all project activities and will directly oversee and coordinate project implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the project. To supplement the Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL, overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with the Lee County and the Town of Fort Myers Beach to support HUD compliance efforts, proper reporting, and adherence to the proposed project schedule. Among other grant management functions, Tidal Basin will support procurement efforts in accordance with 2 CFR 200, Davis Bacon Labor Standards Compliance reporting and oversight, HUD Section 3 reporting and oversight, and confirmation that all costs can be tied to the project's eligible activity and national objective.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, DBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Internal auditing capability

The Town of Fort Myers Beach will perform internal monitoring and financial compliance oversight in accordance with established financial management policies and procedures. Internal monitoring will be overseen by the Town's Financial Director, Mr. Joe Onzick.



Applicant Capacity and Experience: Applicant/Subrecipient

Mr. Onzick previously served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and a Bachelor of Science in Mathematics from Wheaton College.

To supplement the Town's staff capacity related to internal monitoring and financial compliance, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the Southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation.

With Mr. Onzick's oversight and supervision of both Town staff and contractual support, the Town has demonstrated capacity to perform internal financial monitoring and experience for compliance with HUD and Lee County requirements.

Administrative staffing

The Town of Fort Myers Beach staff will be available to support the necessary day-to-day administrative functions required for successful project implementation. Administrative staff will be overseen by Mr. Andrew Hyatt and Mr. Frank Kropacek. To supplement the Town staff's administrative capacity, Fort Myers Beach will utilize the services of Tidal Basin Group. Tidal Basin Group will be further supported by Gouras & Associates, LLC, for CDBG-DR specific administrative staffing needs.

Monitoring and control of timely expenditure of funds

The Town of Fort Myers Beach understands that monitoring and control of timely expenditures of funds is paramount to a successful project. These elements will be



Applicant Capacity and Experience: Applicant/Subrecipient

overseen by the Town's Financial Director, Mr. Joe Onzick, in accordance with established financial management policies and procedures. The Town of Fort Myers Beach staff, along with its partners in Tidal Basin Group and Gouras & Associates, LLC, have the capacity and experience to monitor the funding and expenditures of CDBG-DR funds from project award through closeout.

Prior to expenditure of funds, procurement efforts will be conducted in accordance with 2 CFR 200 procurement standards to ensure that project activities are allowable, reasonable, and cost-effective. Additionally, the Town will adhere to cost and/or price analysis requirements, as applicable, to support the proper usage of project funds.

Describe how the subrecipient will implement Construction, Davis Bacon, and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution

The Town will utilize the expertise of Tidal Basin Group and their partner, Gouras & Associates, LLC, (the Town's contractual support) to ensure the proper implementation of the construction related federal requirements of the Davis Bacon and its related acts. Construction solicitation documents and related contract documents will include Form HUD-4010, the appropriate Department of Labor Wage Decision(s), and the requirements of Executive Order 14026, which must be accepted by the contractor prior to contract execution to ensure that prevailing wage rates are met or exceeded. Labor standards requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. Required payroll reporting will be submitted by contractors on a weekly basis and reviewed by Town staff and contractual support to ensure compliance with prevailing wage requirements. Town staff and contractual support will be available to all construction contractors to resolve any issues that may arise throughout construction activities, such as payment and documentation of wage restitution, new job classification requests, and payment and documentation of liquidated damages. Throughout construction, on-site employee interviews will also be conducted and documented via HUD Form-11 to confirm that weekly payroll reports are accurate and consistent with the types of work performed by on-site laborers.

Confirm that the subrecipient will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled

The Town confirms that it will not take any choice limiting actions, including, but not limited to, physical work or construction activities, until environmental clearance is issued and Authority to Use Grant Funds is obtained. The Town understands that the result of



Applicant Capacity and Experience: Applicant/Subrecipient

committing a choice limiting action could result in the termination of the award and that, in the event of excessive environmental issues, the award of CDBG-DR funds may be cancelled.

Explain the applicant/subrecipient's plan to provide OR ensure the subgrantee provides opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be, especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75

The Town of Fort Myers Beach understands that the implementation of Section 3 requirements and striving to meet the quantitative and qualitative goals laid out by the regulations are of paramount importance to the effective recovery of the community. Solicitation documents and related contract documents for Section 3-covered contracts will include HUD-required Section 3 Contract Clauses and require contractors to submit Section 3 reporting throughout the life of the contract. Section 3 documentation, including a Section 3 plan and employee and business certifications, will be required for bid submission and Section 3 terms and conditions must be accepted by the contractor prior to contract execution. The construction contract will also require the prime contractor to incorporate Section 3 terms and conditions into all subcontracts. Section 3 requirements will be communicated at both pre-bid and pre-construction conferences, and Town staff and contractual support will be available to provide contractor assistance as needed. All contractor and subcontractor employees working on the covered contract (existing employees and new hires) will be required to submit an Employee Self-Certification for Section 3 Qualification form. Required Section 3 reporting will be submitted by covered contractors and subcontractors on a weekly, monthly, and quarterly basis and reviewed by Town staff and contractual support to ensure that quantitative and qualitative efforts are effectively implemented. Contractors will be required to complete qualitative efforts along with the Town by utilizing the list provided by HUD in 24 CFR part 75.

Describe how the subrecipient will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities

The Town of Fort Myers Beach will utilize the State of Florida's minority, women, and veteran owned business directory (<https://vendor.myfloridamarketplace.com/search/vendor>) to solicit minority, women, and veteran owned businesses for participation in each contract procured as a result of this project. All solicitation documents for services to be performed through this project will encourage participation of minority, women, and veteran owned businesses and all contracts and subcontracts issued will require compliance with 2 CFR 200.321, such that subcontracting opportunities must be made available, as a priority, to minority, women, or veteran owned businesses when possible. The Town will document all outreach efforts to demonstrate that affirmative steps were taken to ensure good faith effort outreach to minority, women, and veteran-owned



Applicant Capacity and Experience: Applicant/Subrecipient

businesses.

Subrecipients must provide their procurement policy documents for analysis

The Town of Fort Myers Beach will provide all procurement policy documentation to Lee County for analysis.

Subrecipient's ability to Complete Subgrantee Capacity Assessment

N/A

Subrecipient's ability to Complete Subgrantee Risk Assessment

N/A

Subrecipient's Ability to Execute a Subgrantee Agreement

N/A

Please describe Subrecipient's Plans for Subgrantee Oversight and Monitoring

N/A



Subgrantee’s Capacity to perform financial management and oversight

N/A

Subgrantee’s Capacity to perform grant management functions as demonstrated through prior experience managing grants with in-house staff or with a grant management consultant

N/A

Subgrantee’s Internal auditing capability

N/A

Subgrantee’s Administrative staffing

N/A

Subgrantee’s Monitoring and control of timely expenditure of funds

N/A

Describe how the subgrantee will implement Construction, Davis Bacon and Related Acts and understand project costs must be based on paying laborers and mechanics federal prevailing wages, as published by DOL. The then-current wage rates must be attached to the construction contract and accepted by the general contractor prior to contract execution

N/A



Applicant Capacity and Experience: Subgrantee

Confirm that the subgrantee will not take any choice limiting actions, including, but not limited to, physical work or activity, may start until environmental clearance is obtained. All prohibitions regarding 'choice limiting actions will apply, rendering the award void and applicant ineligible for award. Activities with multiple environmental issues which cannot be addressed timely and cost-effectively will cause the award of CDBG-DR Funds to be canceled

N/A

Explain the subgrantee's plan to provide opportunities and training to low and very low-income persons to the greatest extent feasible. These efforts should be , especially focused on recipients of government assistance for housing and to businesses that provide economic opportunities to low and very low-income persons. The applicant/subrecipient should explain how they will comply with Section 3 requirements set forth in 24 CFR Part 75

N/A

Describe how the subgrantee will take affirmative steps to ensure good faith effort outreach to small, minority, women and veteran-owned business to be included in all solicitation opportunities (procurement of services and goods) and documenting efforts and procurement opportunities

N/A

Subgrantee's must comply with 2 CFR Part 200 requirements for procurement

N/A

Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities

1. Execution of a Subrecipient Agreement: Award + 1 month.

The Town, upon receiving notification of award, will submit required policies and other documentation to Lee County for review and comment. After thorough review, the Subrecipient Agreement will be presented to the Town Council for approval. Once executed the Subrecipient Agreement will be submitted to Lee County for final execution.

Final Deliverable: An executed Subrecipient Agreement for the Parks and Recreation Revitalization project.

Prerequisite Dependencies or Actions: Receipt of a Subrecipient Agreement from Lee County.

2. Completion of Engineering Procurement: Award + 4 months.

The Town of Fort Myers Beach will solicit Statements of Qualifications from Florida Certified Engineering firms to complete the design and permitting activities necessary for project completion. Procurement activities will be conducted in accordance with 2 CFR 200 Procurement Standards (2 CFR 200.317-327) and Florida Statute 287.055. In compliance with these requirements, the Town will ensure that professional services are competitively solicited and a price for the contract is negotiated prior to contract execution. This process will be documented, along with the Town's determination for use of an RFQ, rather than Invitation to Bid (ITB) or a Request for Proposals (RFP).

Final Deliverable: An executed contract for professional engineering services.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement, Lee County review of procurement documentation, Lee County authorization to execute a contract for Engineering Services.

3. Completion of Project Design and Permitting: Award + 22 Months.

The Florida Certified Engineer selected for this project will complete all project design and permitting activities. Throughout project design, the project engineer will work closely with Town Staff responsible for project oversight. The project engineer will provide comprehensive services for the Parks and Recreation Revitalization project in Fort Myers Beach, while utilizing existing plans and project documentation to ensure efficient and cost-effective delivery of services. These services include conducting developing conceptual and detailed designs for the revitalization projects, with a particular focus on resiliency against natural disasters and climate-related hazards. For projects with existing plans, specifications, or contract documents, the project engineer will review those documents to ensure accuracy and completeness, while evaluating the requirements for resilient construction methods. The engineer will ensure regulatory compliance and assist with permitting, while managing the project from inception to completion, including construction supervision and coordination with contractors. The engineer will provide additional services, as needed, such as surveys, geotechnical assessments, wetlands delineations, etc. The engineer will also work closely with the Town and Tidal Basin to ensure that all final contract documents address the federal provisions required by

Appendix II to 2 CFR Part 200, mitigation activities required by the final ERR, and applicable terms and conditions of the CDBG-DR Subrecipient Agreement, such as Section 3, Davis-Bacon, utilization of MBE/WBE contractors and subcontractors, registration with SAM.gov, confirmation of debarment and suspension status for all contractors and subcontractors, etc.

Final Deliverable: Permit documents for project construction; plans, specifications, and contract documents for solicitation of construction bids.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services.

4. Completion of the Environmental Review Record (ERR): Award + 22 Months.

Concurrently with project design and permitting efforts, the Town will work with Tidal Basin and Gouras & Associates to compile the HUD-required environmental review record. Activities for compilation of the ERR may include, but are not limited to: compilation of project information for distribution to interested federal, state, local, and tribal stakeholders; coordination of stakeholder feedback related to project information; compilation of an 8-Step Process (if required); completion of HUD-issued environmental worksheets to assess possible areas of impact; analysis of publicly available environmental resources such as EPA's NEPAAssist Tool, USFWS's iPac Tool, the National Wetlands Inventory, and others, to assess potential environmental impacts; publication of required public notices for floodplain and/or wetlands impacts (when applicable), Findings of No Significant Impact (FONSIs), and Notices of Intent to Request Release of Funds (RROFs). Should interested stakeholders request or require additional studies or reports of a technical nature (e.g., wetlands delineations, ESA's, Cultural Resources Surveys, etc.), the Town will task the project engineer with completion of said studies or reports and will coordinate ensure that interested stakeholders are able to review requested documentation.

Upon certification of the ERR, the Town will publish required public notices, consider comments received, and submit the final ERR package, including HUD Form 7015.15, to Lee County for review and issuance of Authority to Use Grant Funds (AUGF). The Town will ensure that no choice-limiting actions are taken prior to issuance of AUGF.

Final Deliverable: A certified Environmental Review Record and receipt of AUGF from Lee County

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; execution of a project-specific Task Order with Tidal Basin, which will include compilation of the ERR.

5. Completion of Construction Procurement: Award + 26 Months.

The Town of Fort Myers Beach will competitively solicit bids for each component of the Parks and Recreation revitalization project in accordance with 2 CFR 200.320(b)(1) and applicable Florida Statutes. Based on guidance from the project engineer, the Town may choose to separately solicit bids for each component of the project or combine solicitation documents to capture economies of scale. The engineer will compile Opinions of Probable Construction Costs for each bid package prior to acceptance of bids. After bids are accepted, the engineer will review all bids received to ensure that bid prices are reasonable and that the low bidder is qualified to complete the scope of work. The Town will take the affirmative steps listed at 2 CFR 200.321(b) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when

possible. The project engineer will coordinate all pre-bid and pre-construction conferences, in conjunction with the Town and Tidal Basin, during which critical federal compliance requirements will be reviewed in detail (e.g., Davis-Bacon Act Requirements, Section 3 Requirements, MBE/WBE outreach requirements, prohibition on participation of debarred or suspended entities, etc.).

Final Deliverable: One or more executed construction contract(s) for Parks and Recreation Revitalization projects.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF.

6. Completion of Construction Activities: Award + 45 months.

The construction contractor(s) procured by the Town of Fort Myers Beach will construct each component of the project in accordance with the plans, specifications, and contract documents issued by the project engineer and the Town of Fort Myers Beach. The project engineer will closely oversee construction activities to ensure quality of work, and the Town, with support from Tidal Basin, will oversee and document compliance with applicable labor standards and Section 3 requirements. Throughout this phase, the general contractor will submit weekly Certified Payroll Reports to ensure that workers are paid in accordance applicable wage rates. The general contractor will also submit documentation of Section 3 compliance on a weekly, monthly and quarterly basis to ensure adherence to quantitative benchmarks and qualitative efforts.

Final Deliverable: Completion of Parks and Recreation Revitalization project construction activities; Delivery of as-builts for each component of the project.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities.

7. Project Closeout: Award + 48 Months.

Upon completion of construction activities, the Town and Tidal Basin will work with Lee County to submit all documentation required for closeout of the Subrecipient Agreement.

Final Deliverable: Lee County acceptance of final closeout documentation.

Prerequisite Dependencies or Actions: Execution of a Subrecipient Agreement for project funding; Execution of a contract for engineering services; Completion of plans, specifications, and contract documents necessary for solicitation of bids; Completion of the ERR and issuance of AUGF; Execution of a contract for construction activities; Completion of Construction Activities.

Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 48-month period of performance for completion of the Parks and Recreation Revitalization project. Estimated project spending and drawdowns total \$9,961,000.00.

Month 1 – Month 4: \$10,375.00 per Month (Through completion of engineering procurement).

Month 5 – Month 22: \$38,784.72 per Month (Through completion of design, permitting, and completion of the environmental review record).

Month 23 – Month 26: \$18,231.25 per Month (Through construction procurement).

Month 27 – Month 45: \$479,859.21 per Month (Through construction completion).

Month 46 – Month 48: \$10,375.00 per Month (Through completion of project closeout).

Proposed reporting for outcomes achieved

The Town will hold regularly scheduled status meetings with the consultant team as well as the hired engineer and construction contractor(s) to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Section VI: Reports of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Section VI: Reports.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the Parks and Recreation Revitalization project is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the project timeline on track, adaptable, and transparent to all stakeholders involved. Regularly scheduled status meetings with the Town, the Town's consultant team, and the project engineer are a critical component of the Town's approach to project activities. These meetings serve multiple purposes, including providing a forum for continuous progress monitoring and enabling the Town and the teams to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the project outcomes remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Section VI: Reports of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The

variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the consultants and engineering teams are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the project continues to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a completed project on schedule that will benefit the Town for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the project is conducted with the highest levels of efficiency, transparency, and accountability.

Subrecipients plan to ensure the project is timely, draws are completed on time, and reports are complete and accurate

The Town of Fort Myers Beach will ensure that the project is completed in a timely manner by establishing detailed project timelines, including milestones and deliverables for each phase of project activities. Regular update meetings will be held with project professionals and construction contractors to monitor progress in accomplishing milestones and deliverables, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges. Regular reporting will be compiled based on feedback from the project engineer and reviewed by Town staff to ensure accuracy and consistency with known project milestones and deliverables statuses. Actual drawdown of project funds will be based on contract amounts and the payment terms and conditions contained therein; as such, the drawdown schedule established in this project application may be modified once contractual obligations are known. Throughout the life of the project, Town staff will review invoices submitted by project professionals and construction contractors to ensure that the invoices are accurate based on both the payment provisions of contract documents and completed project milestones and deliverables, thereby ensuring that funding draws are consistent with work performed.

Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its Parks & Recreation Revitalization Program prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed project activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

For the Newton Park Beach Facility, the Town utilized preliminary engineering estimates for construction of the Seven Seas Cottage. This estimate included engineering fees of approximately 9% of construction costs. For construction of ADA compliant restaurants, native plantings, and beach-friendly parking areas, the Town estimated construction costs based on experience with other revitalization projects of similar size and scope. A 9% fee for engineering services was budgeted, consistent with the engineering fees included in the preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

For the Old San Carlos & Time Square Lighting Project construction activities, Town staff utilized estimates from local contractors as a basis for preliminary costs of replacement of all wiring, poles, and fixtures. Engineering fees were estimated at 9% consistent with the engineering fees included in preliminary engineering estimates for construction of the Seven Seas Cottage. The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf).

For the Bay Oaks Community Pool Project, Town staff utilized estimates provided by a regional contractor that is qualified to implement a project of this size and scope as a basis for preliminary construction costs. The Town budgeted basic engineering and design services at approximately 11% of construction costs, consistent with FEMA Cost Curve A for a \$4.25 million construction budget (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf). The Town budgeted construction-phase engineering and inspection (CEI) costs at 3% of construction costs, consistent with FEMA's Cost Estimating Tool for Engineering and Design Services (https://www.fema.gov/sites/default/files/2020-03/public-assistance-cost-estimating-tool-for-engineering-and-design-services_12-21-2015.pdf). Funds have also been budgeted for permitting activities and other studies that may be required, but may not be identified until preliminary engineering and design due diligence begins.

The Town budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Programs limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. Activities may include project specific management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings,

strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of a construction contractor and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization project.

Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the project is completed on time and within budget

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of construction activities, engineering design and permitting, and ADCs. Should the firm fixed price, lump sum method of contracting not be appropriate for any category of required services, the Town may use a time-and-materials type contract that includes a ceiling price; however this method of contracting will only be used after a determination that no other contract type is suitable, consistent with 2 CFR 200.318(j). Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary. The Town will hold regularly scheduled status meetings with the consultant teams, the project engineer, and the construction contractor to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

Describe the actions that will be taken to implement the project after construction completion. Describe how the finished project will be maintained and updated

Upon completion of each component of the Parks and Recreation Revitalization project, the Town of Fort Myers Beach will implement a detailed operations and maintenance (O&M;) plan to ensure the long-term functionality of that component. The estimated annual cost for O&M; includes routine inspections, preventive maintenance, repairs, and upgrades to address wear and tear. These tasks will be performed by trained Town staff, ensuring familiarity with the project improvements and prompt attention to any issues. The costs will be covered through a combination of municipal budget allocations and potential grants or subsidies (when available) aimed at supporting resilience of public facilities. This proactive approach to funding O&M; will help safeguard the investment in

the public facilities.

Describe how the project is innovative, based on national best practices, and designed in accordance with an existing evidence-based program

During proposal scoring, consideration will be given to the selection of an engineering firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to projects in post-disaster coastal communities. Incorporation of this as a selection metric in the RFQ and ITB will ensure that the selected engineering firm and construction contractor is experienced, forward-thinking, and innovative as well as being capable of providing actionable designs that can be of function and utility in both short- and long-term Town development.

The commitment to innovation, eco-friendly design, and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to the Parks & Recreation Revitalization Program, particularly in the context of post-disaster and coastal community resilience. This commitment is operationalized through the selection process for an engineering firm, ensuring that the chosen firm brings knowledge, experience, and creativity to the project.

Understanding the vulnerability of Fort Myers Beach to extreme weather events, the projects will be reconstructed to better withstand future storms and environmental stressors. This involves not only the selection of robust building materials, but also the integration of advanced drainage systems to manage stormwater effectively and prevent flooding—a critical improvement over the previous infrastructure.

Furthermore, each project designed and implemented through the Parks & Recreation Revitalization Program will prioritize sustainability as a core principle. The new facilities, parks, and lighting grids will use materials and technologies that minimize environmental impact while enhancing operational efficiency. Examples of these types of materials and technologies include LED lighting, low-impact construction practices and traffic management, water management, and well-trained staff to reduce maintenance costs and upkeep.

Subrecipients plan to oversee cost effectiveness and internal controls of the subgrantee

Not Applicable. This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

A description of how the subgrantee will coordinate with other planning, community development, and/or recovery or resilience projects and initiatives that are underway

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other planning, community development, and/or recovery or resilience projects and initiatives that are underway.

As such, The Town of Fort Myers Beach will coordinate Parks and Recreation Revitalization project activities with existing planning, community development, and resilience initiatives to maximize efficiency and ensure comprehensive community benefits. Collaboration with ongoing public facility and resilience projects will be a priority. By aligning components of the parks and recreation revitalization project with these initiatives, the Town can leverage shared resources and expertise.

The Town will engage with local planning and development departments to integrate the parks and recreation revitalization project into the broader community development strategy. This integration will ensure that the project supports and enhances other ongoing and planned improvements in the area, such as housing developments, transportation upgrades, and public space enhancements.

By coordinating with other projects and initiatives, the Town of Fort Myers Beach aims to create cohesive and resilient public facilities that not only meet immediate needs, but also prepare the Town's public facilities for future challenges. This collaborative approach will enhance the effectiveness and sustainability of parks and recreation improvements and contribute to the overall resilience and development of the town.

Furthermore, the Town of Fort Myers Beach was awarded for a Comprehensive and Long-Term Recovery Plan through the Lee County Recovery and Resiliency Planning Program. As the projects included in the Town's parks and recreation revitalization project are important to the elimination of blight and the recovery and future growth of the island, this project will be foundational to future parks and recreation planning recommendations identified in that plan.

Describe how the subgrantee will coordinate with other partners carrying out related activities and/or projects

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee; however, the Town of Fort Myers Beach recognizes the importance of coordination with other partners carrying out related activities and/or projects.

The Town of Fort Myers Beach will coordinate with various partners to enhance the impact of the Parks and Recreation Revitalization project to the Town of Fort Myers Beach. As needed, the Town may conduct meetings or workshops with neighboring municipalities and interested local stakeholder organizations to share information regarding this project and promote alignment with other parks and recreation initiatives. Interdepartmental coordination within the Town's government will ensure cohesive planning. Collaboration with utility providers and contractors will optimize service

integration and reduce construction conflicts. This collaborative approach will ensure the project's success and contribute to the community's long-term resilience and development.

A description of the area of the need that will be addressed

The Parks and Recreation Revitalization Project aims to address critical needs in Fort Myers Beach following the unprecedented destruction caused by Hurricane Ian. This project will address blight caused by the hurricane and significantly improve infrastructure and safety by replacing and updating the entire street lighting system in the downtown area, particularly Old San Carlos and Time Square, which were left dangerously dark after the hurricane. This enhancement will improve public safety, reduce crime, and create a more inviting environment for residents and visitors; this is also the first step toward the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south. The project will also reconstruct essential facilities such as the Bay Oaks Community Pool and Newton Park Beach Facility, restoring vital recreational and educational resources crucial for community wellness. These facilities will offer safe spaces for physical activity, social interaction, and educational programs.

Environmental resilience is another key focus. New structures will be built above base flood elevations with reinforced foundations, roofs, and high-impact glass to ensure they withstand future storms and environmental challenges. The project will incorporate sustainable practices, including energy-efficient systems like LED lighting and solar panels, and eco-friendly materials for construction and landscaping. Turtle-compliant lighting will be installed near the beach to protect local wildlife. The project also prioritizes historical and cultural preservation by rebuilding the historical "Seven Seas" cottage at Newton Park, transforming it into an elevated and resilient education center that honors the area's history and provides a space for learning about local heritage and environmental conservation.

The project will enhance community well-being by addressing blight caused by the hurricane, restoring the Bay Oaks Community Pool and other parks, providing essential recreational spaces that contribute to physical and mental health. These spaces will foster community bonding and offer places for residents and visitors to gather, play, and relax. Ensuring all new buildings and facilities are ADA-compliant will make the parks and recreational areas accessible to all community members, including those with disabilities.

Economic recovery is more likely when blighted areas are made safe, useful and accessible, and this recovery is a crucial aspect of the project. Revitalizing downtown lighting and improving public spaces will attract more visitors, supporting local businesses and contributing to the economic recovery of Fort Myers Beach. Enhancing the aesthetic appeal and safety of the area will help restore the town's vibrant tourism sector. The construction and ongoing maintenance of these facilities will create job opportunities, further aiding in the town's economic revitalization.

By addressing these critical needs, the Parks and Recreation Revitalization Project will play a pivotal role in the comprehensive recovery of Fort Myers Beach, ensuring it becomes a safer, more resilient, and vibrant community.

A description of the intended impact the plan will have on the community and area of high need



The Parks and Recreation Revitalization Project is expected to have a profound impact on the community of Fort Myers Beach, particularly in areas of high need. By addressing blight caused by Hurricane Ian through restoring and enhancing key public facilities and parks, the project will significantly improve the quality of life for residents and visitors. The reconstruction of the Bay Oaks Community Pool and the Newton Park Beach Facility will provide essential recreational and educational resources, promoting physical health, mental well-being, and community engagement. The updated and expanded facilities will also serve as safe, inclusive spaces for people of all ages and abilities, fostering a sense of unity and belonging. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," connecting Bayside to the north and Time Square to the south, enhancing connectivity and the overall aesthetic appeal of the downtown area.

Moreover, the installation of a modern, energy-efficient lighting system in the downtown area will enhance public safety, reduce crime, and support local businesses by making the area more attractive and accessible. This improvement will boost the local economy by drawing more visitors and encouraging tourism. The project's emphasis on sustainability and resilience, including the use of eco-friendly materials and construction practices, will not only protect the environment but also ensure that the community is better prepared for future storms and environmental challenges.

By addressing these high-need areas, the Parks and Recreation Revitalization Project will help Fort Myers Beach recover from the devastating impacts of Hurricane Ian, rebuild its infrastructure, and strengthen its social and economic fabric. The project aims to create a vibrant, resilient, and sustainable community where residents can thrive and visitors are welcomed, thereby restoring the town's charm and vitality.

A description of the intended beneficiaries of the project, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the project

The intended beneficiaries of the Parks and Recreation Revitalization Project in Fort Myers Beach encompass a diverse cross-section of the community, including residents, visitors, and particularly vulnerable populations as defined by HUD. Geographically, this includes all of Census Tracts 601 and 602. All residents of those Tracts are considered intended beneficiaries, including HUD-defined vulnerable populations within those areas. According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%.

While this project will benefit all residents of the island, this project will significantly benefit the elderly and disabled by ensuring that all new facilities, such as the Bay Oaks Community Pool and Newton Park Beach Facility, are fully ADA-compliant, providing accessible and safe spaces for recreation and social engagement. Additionally, the project will support the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

Once this project is implemented, families with children will benefit from enhanced recreational opportunities and educational programs that promote physical activity and



learning. Local businesses will also see a positive impact as improved infrastructure and increased tourism will drive economic recovery and growth. The project is designed to foster inclusivity and support for all community members, including low- and moderate-income families, by creating public spaces that are welcoming and accessible to everyone.

By prioritizing the needs of vulnerable populations throughout the Town, the project aims to enhance the quality of life for all residents, ensuring a more resilient, vibrant, and inclusive community.

A project area map and corresponding beneficiary data from the HUD Low and Moderate Income Summary Data (LMISD) dataset and mapping tool is attached.

The applicable census tracts and block groups that are projected to benefit from the project. Census data can be found here: [Low- and Moderate-Income Area Data](#)

	Census Tract	Block Group
1	0601.02	1,2,3,4,5
2	0602.01	1,2,3
3	0602.02 / 0602.03	1,2 / 1,2

The types of entities benefitting from the plan

- ☒ Residents
 ☒ Businesses
- ☒ Local Government
 ☐ Other:

- If "Residents" is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the project

Total Number of Beneficiaries:	6670
Total LMI Beneficiaries:	2055

The target populations from the table below who will benefit from the project

- ☒ Populations presumed by HUD to be LMI persons:
 - Abused children
 - Elderly persons (62 and older)
 - Battered spouses
 - Homeless persons
 - Severely disabled adults (as defined by the Census)
 - Illiterate adults
 - Persons living with AIDS
 - Migrant farm workers
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
 - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
 - Geography
 - Markets
 - Prevalent housing stock and tenure
 - History
 - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
 - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

A description of the method used to identify the intended beneficiaries of the project if it were implemented

The Town's Parks & Recreation Revitalization Program will benefit all current and future residents and business owners (the intended beneficiaries) in the Town of Fort Myers Beach.

According to 2020 U.S. Census records, 56.3% of the Town's population is considered elderly (65+); the national average is 17.3%. In addition, 11.1% of the Town's population under 65 is disabled; the national average is 8.9%. As such, the Parks and Recreation Revitalization Project will thoughtfully consider the needs of the elderly and disabled populations in Fort Myers Beach through several key improvements designed to enhance accessibility, safety, and overall quality of life. All new facilities, including the Bay Oaks Community Pool and the Newton Park Beach Facility, will be fully ADA-compliant, ensuring that these spaces are accessible to individuals with mobility impairments. This includes the installation of ramps, wide pathways, and accessible restrooms to facilitate easy movement throughout the parks.

Additionally, the project will incorporate features that support needs of elderly residents, such as shaded seating areas and rest zones that provide comfortable spots to relax and socialize. Improved lighting systems in the downtown area and parks will enhance visibility and safety, reducing the risk of accidents for those with limited vision or mobility and enhancing connectivity between Bayside to the north and Time Square to the south, providing a continuous, accessible, and enjoyable environment for all community members.

By prioritizing the needs of the elderly and disabled, the Parks and Recreation Revitalization Project aims to create inclusive, welcoming environments that support the health, well-being, and active participation of all community members in Fort Myers Beach.

A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement

The Town of Fort Myers Beach notified the public of its intention to apply for infrastructure funds through the Lee County – CDBG Critical Infrastructure program. Notice was published in a newspaper of local circulation in block/display ad format on Friday, May 17, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person. Interested parties were invited to make public comments at the Town Meeting held on Monday, May 20, 2024; written comments were accepted through Thursday, May 23, 2024.

No comments were received.

A description and justification of the proposed costs

The total project budget for rehabilitation of the North Island Water Tower Complex is estimated at \$10,673,000.00. Additional information regarding detailed budget line items is provided below:

Construction Activities: \$9,165,000 Total. The Parks and Recreation Revitalization Project in Fort Myers Beach will involve comprehensive construction activities aimed at restoring and enhancing key public facilities and parks. Additional detail regarding each project is provided below:

Bay Oaks Community Pool Project (\$4,675,000). Construction activities will include demolition of damaged structures, including the hard deck, slide, and mechanical systems, construction of a new facility to house public restrooms and staff offices, full replacement of the hard deck and slide structure, and restoration of the pool basins. Infrastructure upgrades will include new drainage systems, lighting, and landscaping to improve functionality and aesthetics. All new structures will be ADA-compliant, with ramps, accessible restrooms, and pathways to ensure inclusivity.

Old San Carlos & Time Square Lighting Project (\$495,000). Construction activities will include clearing of old, damaged streetlights and poles, installation of new panel/switch boxes, installation of new wiring and conduit, and installation of 46 new streetlights and poles with turtle-compliant lighting fixtures. These improvements will enhance public safety by ensuring the entire downtown area is well-lit and inviting for both residents and visitors, and will mark an important first step in the Town's plan to create a "park corridor" that connects Bayside and Time Square.

Newton Park Beach Facility (\$3,995,000). Construction activities will include removal of any remaining storm-damaged structures, construction of a new elevated, resilient educational and environmental center, and construction of ADA-compliant restroom facilities. Project designs will consider resiliency measures such as reinforced foundations, roofs, high-impact glass, and water-resistant sealants. Environmental restoration efforts will include planting of native grasses and shrubs to mitigate erosion and flooding. A beach-friendly parking lot will also be constructed using eco-friendly materials, with spaces for buses and bicycles to promote greener transportation options. The new facility and surrounding areas will be fully ADA-compliant, with ramps, accessible restrooms, and wide pathways.

Engineering Fees: \$668,500 Total. Engineering funds will be utilized for costs associated with basic engineering and design services normally performed by an engineering firm on construction projects. Such services include preliminary engineering analysis, preliminary design, final design, and construction-phase professional services.

Permitting / Studies: \$50,000.00 Total. Funds specific to permitting and studies will be utilized for costs related to permitting activities and other studies that may be necessary throughout the life of the project. Permitting includes all activities necessary for issuance of a required permit, such as initial assessment of permits required, development of permit applications, submission of permit applications, and coordination with permitting agencies from application submission to issuance of a permit. Other studies include any other studies that may be needed to secure permitting, complete the Environmental Review Record, or ensure that engineering and design of project components; this may include geotechnical reports, topographical surveys, wetlands delineations, environmental site assessments, cultural resource surveys, asbestos surveys, etc.

Construction-Phase Engineering & Inspection (CEI): \$256,500 Total. Funds for CEI services will be utilized for costs related to basic construction management activities. These may include activities such as daily or weekly site inspections and monitoring of construction methods to meet specified standards; site supervision to ensure safety and efficiency on the construction site, adhering to regulations and best practices; compliance monitoring to verify adherence to local, state, and federal regulations, ensuring all necessary permits are obtained and maintained; and compilation of detailed CEI Reports to track construction progress, including daily logs and inspection reports.

Activity Delivery Costs: \$533,000 Total. ADC funds will be utilized for project specific direct costs that are integral to the delivery of the project, including management and oversight services and project specific compliance with the terms and conditions of the related award. ADC's may also include activities such as participation in meetings, strategy sessions, etc.; coordination with the selected project engineer to ensure compliance with the project-specific scope, schedule, and budget as approved in the grant agreement; compilation of required project-specific progress reporting; compilation of project-specific reimbursement requests and financial reporting; coordination and oversight support for procurement of engineering services and documentation of federal procurement compliance for same; coordination and oversight support for procurement of one or more construction contractors and documentation of federal procurement compliance for same; documentation of environmental compliance for project-specific activities; and documentation of project-specific labor standards compliance, including Davis Bacon and Section 3 Requirements; and other project-specific services as requested by the Town. The Town has budgeted activity delivery costs at 5% of the total award request based on the Lee County NOFA for CDBG-DR Public Facilities Program limitation of ADCs. This rate is consistent with industry standard budgeting for ADCs, providing a realistic estimate for the costs project specific ADCs. ADC services will be provided by Tidal Basin and all ADC activities will pertain to implementation of the Parks and Recreation Revitalization Project and will be integral to the delivery of the final project.

A description of whether the project will be implemented with applicant staff, vendor support and/or other

The project will be implemented by a team comprised of Town staff and vendor support. Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, including Mr. Andrew Hyatt, Mr. Frank Kropacek, and Mr. Joe Onzick. To supplement staff expertise and capacity, the Town has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. Tidal Basin Group is further supported by Gouras & Associates, LLC, whose team members collectively have more than 70 years of combined experience working with state and federal funding, including CDBG-DR funding, and projects of all scopes and sizes.

The Town will competitively procure the services of an engineering firm licensed in the state of Florida to complete all design, permitting, other studies, and construction-phase engineering and inspection.

The Town will competitively procure one or more properly licensed construction contractors to implement all construction activities based upon the plans, specifications, and contract documents developed by the project engineer.

A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services and one or more contractual agreements for construction services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

Contract A - Contractual Activity Delivery Services:

The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to supplement Town staff in project-specific activity delivery services. An existing contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for project-specific activity delivery services. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance. Timeframe associated with Contract A: Award + 1 month through project closeout.

Dependencies associated with Contract A: Issuance of an award for planning funds.

Contract B - Engineering, Permitting, and CEI Services (including other studies):

The Town of Fort Myers Beach will competitively procure a Florida-licensed professional engineering firm to complete all project engineering and design, secure all necessary permitting, perform all construction-phase oversight, and complete other studies that may be required throughout the life of the project. Upon project award, the Town will develop procurement documents and solicit Statements of Qualifications from firms qualified to perform these services. The Town anticipates that funding under this contract will be expended as follows:

- Engineering and Design Services: 75% of Basic Engineering Fee expended consistently throughout project design; 5% of Basic Engineering Fee expended throughout construction bidding; 20% of Basic Engineering Fee expended throughout construction phase activities.
- Permitting and Other Studies: 100% of Permitting/Other Study Fees expended during the project design phase.
- Construction-Phase Engineering and Inspection: 100% of CEI Fees expended consistently throughout the construction phase.

Timeframe associated with Contract B: Award + 4 months to Award + 45 months.

Dependencies associated with Contract B: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract. To address and control for dependencies, the Town will ensure that an RFQ for solicitation of engineering services developed promptly upon award of project funding.

Contract C - Construction Activities:

The Town of Fort Myers Beach will competitively procure one or more qualified and licensed construction companies to construct the project based on the plans, specifications, and contract documents prepared by the project engineer. A determination of the number and nature of construction contracts will be made during preliminary engineering and due diligence. At this time, the Town has scheduled consistent expenditure of funding throughout the project's construction phase; however, this may require modification if engineering due diligence determines that multiple construction contracts should be procured for independent implementation of each component.

Timeframe associated with Contract C: Award + 27 months to Award + 45 months.

Dependencies associated with Contract C: Issuance of a grant award; Completion of Engineering Procurement; Execution of an Engineering Contract; Completion of project design and permitting; Completion of Construction Procurement(s); Execution of one or more Construction Contract(s). To address and control for dependencies, the Town will regularly coordinate with the project engineer to ensure that pre-construction activities are progressing on-budget and on-schedule.



Budget Form

Description	CDBG-DR Funds Requested	Leveraged Funds	Project Cost
Activity Delivery Costs			
Environmental Review Costs	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
File Management	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Inspections	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Program Administration	\$533,000.00	\$0.00	\$533,000.00
Source of External Funds	N/A		
Construction			
Bonding/Insurance	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Construction Management	\$256,500.00	\$0.00	\$256,500.00
Source of External Funds	N/A		
Debris Removal	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Demolition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Fixtures/Equipment	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
General Contractor	\$9,165,000.00	\$0.00	\$9,165,000.00
Source of External Funds	N/A		
Landscaping	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Maintenance of Traffic	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Mobilization	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Site Preparation	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Planning/Design			
Development of Bidding Document	\$68,500.00	\$0.00	\$68,500.00
Source of External Funds	N/A		



Budget Form

Drawings/Blueprints	\$600,000.00	\$0.00	\$600,000.00
Source of External Funds	N/A		
Land Acquisition	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Permitting	\$50,000.00	\$0.00	\$50,000.00
Source of External Funds	N/A		
Site Plan	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Surveys	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		
Testing	\$0.00	\$0.00	\$0.00
Source of External Funds	N/A		

Funding Summary

CDBG-DR Funds Requested	Leveraged Funds	Project Cost
\$10,673,000.00	\$0	\$10,673,000.00

Duplication of Benefits

Source of Funds	Amount	Status of Funds
FEMA Building Resilient Infrastructure and Communities (BRIC)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Hazard Mitigation Grant Program (HMGP)	\$0.00	N/A
Purpose of Funds:	N/A	
FEMA Public Assistance (PA)	\$0.00	Identified
Purpose of Funds:	The Town is currently working with FEMA to secure funding that would contribute to the implementation of this project; however, at this time, funding has not been committed. No other leveraged funding sources are currently committed to the organization for this project. Should leveraged funds be committed to this project, the Town of Fort Myers Beach will promptly notify Lee County and adjust CDBG-DR funding awarded to ensure that no Duplication of Benefits exists.	
Local (Municipal) Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Other CDBG-DR Funds (from Florida COM)	\$0.00	N/A
Purpose of Funds:	N/A	
Other State Funds	\$0.00	N/A
Purpose of Funds:	N/A	
Resilient Florida	\$0.00	N/A
Purpose of Funds:	N/A	
US Army Corps of Engineers (USACE)	\$0.00	N/A
Purpose of Funds:	N/A	
US Department of Transportation	\$0.00	N/A
Purpose of Funds:	N/A	
Total	\$0.00	

Describe how the proposed project integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to, reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines

The proposed Parks and Recreation Revitalization Project integrates several mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, thereby enhancing the resilience and safety of the Town of Fort Myers Beach. Key measures include constructing all new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations with features such as reinforced foundations and roofs, high-impact glass, and water-resistant sealants. These features are designed to withstand future storms and flooding, significantly reducing risks to people and property. The installation of modern, energy-efficient lighting systems, including turtle-compliant fixtures, will ensure the downtown area remains well-lit and safe, even during adverse weather conditions, minimizing public service interruptions and enhancing safety for the most vulnerable community members.

The project also includes environmental restoration efforts, such as planting of native grasses and shrubs at Newton Park Beach, which will naturally mitigate erosion and flooding, thereby protecting the coastline and adjacent properties. The use of eco-friendly materials and sustainable construction practices will further reduce the environmental footprint and enhances the long-term resilience of the facilities. By incorporating these mitigation measures, the project aims to protect community lifelines, ensuring that essential public services and recreational spaces remain functional and accessible during and after natural disasters. These strategies collectively contribute to the town's ability to withstand and recover from climate-related risks, safeguarding the well-being of all residents, particularly those most vulnerable to such hazards.

Identify the risks or hazards being reduced and the impacts that those hazards have on people and property

The Parks and Recreation Revitalization Project addresses and mitigates several key risks and hazards that significantly impact the Town of Fort Myers Beach. Chief among these are flooding, storm surges, and extreme weather events, which have historically caused extensive damage to infrastructure, public facilities, and private properties. By constructing new buildings, such as the Bay Oaks Community Pool facility and the Newton Park Beach educational center, above base flood elevations and incorporating reinforced foundations, roofs, high-impact glass, and water-resistant sealants, the project reduces the risk of structural damage from future flooding and hurricanes. These measures protect people and property by ensuring that facilities can withstand severe weather conditions, thereby minimizing the likelihood of catastrophic loss and displacement.

Additionally, the project addresses the hazard of inadequate lighting in the downtown area, which can lead to increased crime and accidents, especially during severe weather when visibility is compromised. By installing modern, energy-efficient lighting systems, including turtle-compliant fixtures, the project enhances public safety and reduces the risk

of accidents and criminal activity, particularly benefiting vulnerable populations such as the elderly and disabled.

Environmental hazards such as erosion and flooding are also mitigated through the project's planting of native grasses and shrubs at Newton Park Beach. These natural barriers help protect the coastline and adjacent properties from erosion and flood damage. By addressing these risks, the project not only protects physical structures and property but also ensures the continuity of essential public services and recreational spaces, thereby safeguarding the overall well-being and resilience of the community.

Describe the value of the proposed project to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the project will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data

The Parks and Recreation Revitalization Project offers immense value to the Fort Myers Beach community by restoring and enhancing critical public facilities and parks, thereby improving the overall quality of life for residents and visitors. In the short term, the project will provide immediate benefits by reviving key recreational spaces like the Bay Oaks Community Pool and Newton Park Beach Facility, offering safe and accessible venues for physical activity, social interaction, and educational programs. This revitalization will foster community cohesion and promote physical and mental well-being. For instance, the ADA-compliant features and modern amenities will ensure that all community members, including the elderly and disabled, can fully utilize these spaces, enhancing inclusivity and participation. Additionally, the project will initiate the Town's long-term plan to evolve Old San Carlos Boulevard into a "park corridor," which will enhance connectivity between Bayside to the north and Time Square to the south, creating a continuous, accessible, and enjoyable environment for all community members.

Quantitatively, the project is expected to increase local tourism and support economic recovery by making Fort Myers Beach more attractive to visitors. The improved lighting in the downtown area will enhance safety, potentially reducing crime rates and accidents, which can be measured through local law enforcement and public health data.

In the long term, the project will significantly enhance community resilience by incorporating robust construction standards and sustainable practices that mitigate the risks of future natural disasters. Buildings constructed above base flood elevations with reinforced materials will withstand extreme weather events, reducing the likelihood of costly repairs and displacement. The environmental restoration efforts, including dune restoration and native plantings, will provide natural barriers against erosion and flooding, protecting both property and natural habitats.

During extreme events, these resilient infrastructure improvements will ensure resilient public facilities have minimized disruptions and facilitate quicker recovery. Qualitatively, this resilience can be seen in the community's ability to maintain normalcy and safety during adverse conditions, fostering a sense of security and stability among residents. Overall, the project's blend of immediate benefits and long-term resilience strategies will create a safer, more vibrant, and sustainable community in the Town of Fort Myers Beach.



Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 05/24/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 173.165.214.193

EXHIBIT G**CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Public Facilities Infrastructure Program* NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

Certificate(s) of Insurance

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place:

(1) Workers' Compensation Coverage

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(2) Commercial General Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(3) Business Auto Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(4) Directors & Officers Liability

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout

the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

(5) Fidelity Bonding

Certificate of Insurance for this insurance policy has been received and all annual renewals for this policy will be collected and maintained by Lee County throughout the duration of the Agreement. Certificates of Insurance are stored in VistaTRAK in the Town of Fort Myers Beach, Subrecipient Management, Certificates of Insurance line item.

EXHIBIT H (SIGNATURE REQUIRED)

CERTIFICATIONS **CDBG-DR COMPLIANCE PROVISIONS** *Housing and Infrastructure*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the Agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the Subrecipient certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

1. NATIONAL OBJECTIVES

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

2. DUPLICATION OF BENEFITS

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

- a. CDBG-DR Funds as Match (Infrastructure):** When applicable and approved by the County, Subrecipients may use grant funds to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or U.S. Army Corps of Engineers (USACE). By law, only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Furthermore, Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or which funds are also made available by, FEMA or USACE.

For all match activities, Subrecipients must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

3. EQUAL EMPLOYMENT OPPORTUNITY

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. Title VI of the Civil Rights Act of 1964:** This act provides that no person shall

be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a

qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- k. **The Equal Employment Opportunity Act**: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978**: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)**: This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246**: This executive order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

5. ENVIRONMENTAL PROTECTION AND ACTS

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, if a subrecipient is a state agency or an agency of a political subdivision of a state, it and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6. **CONSTRUCTION STANDARDS**

While the following Construction Standards requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the *CDBG-DR Construction Standards Procedure* for Housing Programs and applicable program guidelines.

- a. **Green and Resilient Building Standards in Housing:** All new construction or rehabilitation of residential structures must meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC-700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification

from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD

- b. Rehabilitation of Nonsubstantially Damaged Residential Buildings (Housing):** Per Federal Register Notice 88 FR 32046, for rehabilitation other than the rehabilitation of substantially damaged residential buildings described in 6.a. above, the Subrecipient must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

- c. Broadband Infrastructure in Housing:** Per Federal Register Notice 88 FR 32046, any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four units must include installation of broadband infrastructure.

d. Elevation Standards (Housing and Infrastructure):

- i. ***Housing:*** All new construction or rehabilitation of residential structures and located in the one percent annual chance (or 100-year) floodplain must be elevated at least two feet above the base flood elevation.
 - ii. ***Mixed-use and Non Residential:*** Non-residential structures and infrastructure must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
 - iii. ***Critical Actions:*** Structures and services defined at 24 CFR 55.2(b)(3) and within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2-3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
- e. Planning and Design (Infrastructure):** All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the Subrecipient is required to provide resilience performance metrics as identified by the County.

- f. Flood Control Structures (Infrastructure and Non-Residential Structures):**

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining approval from the County, HUD, and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Additional requirements and approval steps are outlined under Federal Register Notice guidance at 88 FR 32046.

7. AFFORDABILITY PERIOD REQUIREMENTS (HOUSING)

While the following minimum affordability period requirements are called out below, the Subrecipient also certifies and acknowledges that it has read and complies with all requirements as noted within the applicable program guidelines regarding affordability period requirements.

- a. **New Construction and Rehabilitation of Affordable Rental Housing:** To meet the LMI housing national objective, a Subrecipient who implements rental housing activities that will result in the new construction or rehabilitation of five or more units, assisted with CDBG-DR funds, must rent to LMI households at affordable rents as described within the *Lee County Action Plan for CDBG-DR Funds*. Furthermore, the minimum timeframes, enforceability, and other related requirements acceptable for compliance can be found under the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the of 24 CFR 92.252(e). The County has adopted these requirements and spells out affordability restriction enforcement and minimum affordability periods within the respective program guidelines, which Subrecipients are required to follow, where applicable.
- b. **New Construction of Homes Built for LMI Households:** For Subrecipients who implement activities where there is a construction of new single-family units (four units or less) for homeownership that will meet the LMI housing national objective criteria, the County has set affordability restrictions, which follow minimum affordability period and enforcements mechanisms of the HOME requirements set at 24 CFR 92.254(a)(4). Subrecipients whose activities are applicable to these requirements must follow the County's respective program guidelines regarding affordability restrictions, resale or recapture requirements, affordability period requirements, and all other requirements prescribed under the applicable guidelines regarding affordability.

8. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, VETERAN OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, veteran owned businesses, and labor

surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses, veteran owned businesses, and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's and veteran's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, veteran owned, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, veteran owned businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

9. POLITICAL ACTIVITY

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

10. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

11. DEBARMENT AND SUSPENSION

A contract award ([2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

By executing this Agreement or contract, the Subrecipient or Contractor verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs and will not enter into contracts with any entity that has been suspended or debarred from federal contract work.

12. CONFLICT OF INTEREST

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

13. DOMESTIC PREFERENCES FOR PROCUREMENTS

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

14. DAVIS-BACON AND RELATED LABOR STANDARD ACTS

- a. **Davis Bacon Act:** Subrecipient or Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 31413148) and 29 CFR Subtitle A, Parts 1, 3 and 5, as applicable, to construction, alteration, and repair contracts over \$2,000.00.
- b. **AntiKickback Act of 1986:** Subrecipient or Contractor shall ensure that all contracts comply with the AntiKickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.
- c. **Contract Work Hours and Safety Standards Act of 1962:** Subrecipient or Contractor shall ensure all contracts comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. § 3702) which requires that workers

receive overtime compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- d. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this agreement or contract. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract").
- e. Subrecipient or Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The work to be performed under this contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3), and implementing regulation at [24 CFR, Part 75](#). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The responsibilities outlined in 24 CFR Part 75.19 include:

- a. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- b. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- c. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- d. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (42 U.S.C. 4601 et seq.) – “URA”

The Subrecipient understands that activities and projects it undertakes with CDBG–DR funds may be subject to the URA at 49 CFR Part 24, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in Federal Register Notices 88 FR 3198 and 88 FR 32046. In such Notices, HUD waived or provided alternative requirements for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

Subrecipients are required to adopt the County’s Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to undertaking any activity assisted with CDBG–DR funding which involves relocation. The written policy must be available to the public, describe the relocation assistance that the Subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

In the event of displacement because of a federally funded award, Subrecipients must comply with the URA, for any household, regardless of income, which is involuntarily and permanently displaced, and to comply with Section 104(d). The County also provides notice to Subrecipients that any demolition or disposition of public housing is

subject to Section 18 of United States Housing Act of 1937, as amended, and 24 CFR Part 970.

17. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

18. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
- 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
 - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

c. Contractors shall:

- 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

20. PATENTS

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or

his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

21. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

22. DRUG-FREE WORKPLACE ACT OF 1988

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

23. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
 2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract
- a. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
 - b. If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

24. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

25. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

26. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

27. ACCESS TO RECORDS – MAINTENANCE OF RECORDS

Lee County, the Department of Housing and Urban Development, the Comptroller

Version 2.0, 10/01/2024

General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County’s final closeout of the grant.

28. INSPECTION

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

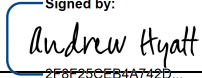
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	Signature	Date
	Andrew Hyatt	
	Name (print)	

EXHIBIT I**CDBG-DR SPECIAL TERMS AND CONDITIONS**

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

1. INITIAL RISK ASSESSMENT

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

2. RISK ASSESSMENT

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

3. SPECIAL CONDITIONS

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

A. ENVIRONMENTAL REVIEW SPECIAL CONDITION

The environmental review for this project is currently classified as “Exempt” under 24 CFR §58.34. However, upon the completion of 30% design, the Subrecipient must initiate the process for an Environmental Assessment (EA) pursuant to 24 CFR Part 58.

The Subrecipient shall adhere to the following requirements upon reaching 30% design completion:

1. **Notification to the County:** The Subrecipient must notify their Grant Manager and Lee County in writing via email or a VistaTRAK note that the project has reached 30% design completion.
2. **Submission of Designs:** The Subrecipient must upload the 30% design documents to VistaTRAK for County review.
3. **Restriction on Activities:** The Subrecipient must not execute any construction contracts, commit funds, or undertake any choice-limiting actions as defined in 24 CFR §58.22, until an Authority to Use Grant Funds (AUGF) has been issued by HUD.
4. **Coordination with Lee County:** The Subrecipient must coordinate closely with Lee County to ensure compliance with all applicable federal, state, and local environmental review requirements.

Failure to comply with these conditions may result in noncompliance findings and the withholding of reimbursement for project expenses until compliance is achieved and documented.

EXHIBIT J
SUBRECIPIENT STAFF ORGANIZATION
Parks & Recreation Revitalization

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

Section 1: Subrecipient Contract Administrator

1. Description

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

2. Contact Information

Name: Andrew Hyatt
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: andyhyatt@fmbgov.com

Section 2: Project Manager

1. Description

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

2. Contact Information

Name: Frank Kropacek
Title: Operations and Compliance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: fkropacek@fmbgov.com

Section 3: Davis Bacon and Labor Standards Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 4: Section 504 Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: amy@fmbgov.com

Section 5: Fair Housing Coordinator**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 6: Financial Manager

1. Description

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street, Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: JOnzick@fmbgov.com

Section 7: Certification of Time Allocation

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? If so how many, and list names.

n/a

EXHIBIT K

CDBG-DR PROGRAM SUBROGATION AGREEMENT

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between Town of Fort Myers Beach (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's application for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

Town of Fort Myers Beach
DR10263
Exhibit K
Page 3

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

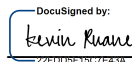
TOWN OF FORT MYERS BEACH

LEE COUNTY

By: Andrew Hyatt

By: Kevin Ruane

Signature:  Signed by: Andrew Hyatt
2F8F28CEBAA742D...

Signature:  DocuSigned by: Kevin Ruane
22FDD9F15C7E43A...

Title: Town Manager

Title: Chair

Date: 1/13/2025 | 10:43 AM EST

Date: 1/21/2025 | 9:02 AM EST

RESOLUTION NUMBER 25-203

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10263 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE PARKS FACILITY AND RECREATION REVITALIZATION PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

WHEREAS, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

WHEREAS, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager, and Joe Onzick, as Financial Director, to be replaced with William McKannay; and

WHEREAS, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 16th day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Jun 19, 2025 14:43 EDT)

Dan Allers, Mayor

ATTEST:

Jason Freeman

Jason Freeman, Town Clerk (Acting)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

Nancy Stuparich

Nancy Stuparich (Jun 18, 2025 10:31 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 20th day of June 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
CDBG-DR SUBRECIPIENT AGREEMENT**

THIS FIRST AMENDMENT is made and entered into this 16th day of June, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Provider” or “Contractor”, to that certain CDBG-DR Grant Agreement , dated November 20, 2023 (“Agreement”) DR10263 – Parks Facility and Recreation Revitalization.

WITNESSETH:

WHEREAS, on November 20, 2023, the Provider and Contractor entered into a Subrecipient Agreement. Under the Agreement, Exhibit J, the Town named key personnel, outlined within the Agreement, Section XVIII; and

WHEREAS, if there should be a substantive change to the organization, key personnel, the Town shall notify the Provider of said changes within 30 days of the change for the CDBG-DR Grant Agreement, DR10263. Exhibit J Subrecipient Staff Organizational change: remove Andrew Hyatt, Town Manager and Joe Onzick, Financial Director, to be replaced with William McKannay; and

WHEREAS, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning compliance with Florida’s Public Records Act; and

WHEREAS, Section 768.28, Florida Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, including municipalities; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Florida Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701, Florida Statutes related to social government and corporate activism are also added by virtue of this Amendment

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

1. Amendment. This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

2. Public Records Compliance. Provider agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Provider does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Provider or keep and maintain public records required by the public agency to perform the service. If the Provider transfers all public records to the public agency upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Florida Statute, **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS**

AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

3. Public Records Compliance Indemnification. Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Florida Statutes. Any indemnification or agreement to defend or hold harmless by the Town specified in the Agreement shall not be construed as a waiver of the Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by the Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. The Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Provider shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Provider is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Provider will not be awarded a public contract for at least one (1) year after the date on which

the Agreement was terminated. Provider will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Provider affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Provider is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Provider requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Provider is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Provider hereby certifies that Provider is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Provider further hereby certifies that Provider is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Provider understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Provider to civil penalties, attorney's fees, and/or costs. Provider further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Provider (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Disclosure Requirements for "Foreign Countries of Concern." Provider shall comply with the disclosure requirements set forth in section 286.101 (3) (a), Florida Statute, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest,

the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statue: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statue], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the State of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive the right to file any action, suit or proceeding in Federal Court, or remove any action, suit or proceeding to Federal Court.

10. Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

11. Public Entities Crime or Convicted Vendor List. Provider agrees and assumes a continuous duty to disclose to the Town if the Provider or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Provider shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Provider based on Provider’s social, political or ideological interest. Provider agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

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.

ATTEST:

Jason Freeman
Jason Freeman, Town Clerk (Acting)

Town of Fort Myers Beach

WB McKannay
WB McKannay (Jun 18, 2025 11:04 EDT)
William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Nancy Stuparich
Nancy Stuparich (Jun 18, 2025 10:31 ET)
Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SECOND AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10157 BETWEEN THE TOWN AND LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROGRAM; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDED AN EFFECTIVE DATE.

Why the action is necessary:

To stay in compliance with CDBG-DR requirements.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

On November 20, 2023, the Town and Lee County Board of County Commissioners entered into a CDBG-DR Subrecipient Agreement for the Recovery and Resiliency Planning Program. Under this agreement, if the Town has a key employee change, the Town is required to notify Lee County within 30 days (Exhibit I, CDBG-DR Special Terms and Conditions, under Initial Risk Assessment). Exhibit J - Subrecipient Staff Organization - Will McKannay to be removed as Finance Director and add Joe Onzick as the Finance Director.

Attachments:

1. NS 25-249 Planning Key Officials Finance Director and Address Second Amendment DR10157
2. Exhibit A to Resolution - 2nd Amendment to Update Signature Finance Director and Address DR10157
3. Exhibit A to 2nd Amendment - Lee County Subrecipient Agreement Exhibit J Subrecipient Staff Organization and Address
4. Grant Agreement -
Lee_County_Subrecipient_Agreement_Package_Town_of_Fort_Myers_Beach_300016 (009)
5. Res 25-205 CDBG-DR10157 Key Personnel Changes Signed First Amendment

Financial Impact:

Direct impact is to be out of compliance with CDBG-DR

6. **Alternative Action**

Do not accept the recommendation and forfeit the agreement.

7. **Management Recommendations:**

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist
Joe Onzick, Finance Director

Created/Initiated - 8/28/2025
Approved - 8/28/2025

nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025

RESOLUTION NUMBER 25-249

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT DR10157 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROGRAM AND CHANGE THE ADDRESS TO THE NEW TOWN HALL; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on November 20, 2023, the Provider and Contractor entered into a Subrecipient Agreement. Under the Agreement, Exhibit J, the Town named key personnel, outlined within the Agreement, Section XVIII; and

WHEREAS, if there should be a substantive change to the organization, key personnel, the Town shall notify the Provider of said changes within 30 days of the change for the CDBG-DR Grant Agreement, DR10157. Exhibit J Subrecipient Staff Organizational change: remove William McKannay, Finance Director, to be replaced with Joe Onzick and to change the address to the new Town Hall address, 6231 Estero Blvd, Fort Myers Beach, FL 33931; and

WHEREAS, the Town desires to complete and execute the second amendment as soon as possible to be in compliance with the grant agreement and funding.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Second Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 11th day of September 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of September 2025.

**SECOND AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
CDBG-DR SUBRECIPIENT AGREEMENT**

THIS SECOND AMENDMENT is made and entered into this 11th day of September, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Provider” or “Contractor”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10157 – Recovery and Resiliency Planning Program.

WITNESSETH:

WHEREAS, on November 20, 2023, the County and the Town entered into the Agreement, which included Exhibit J intended by the parties as an extension of the notice requirement contained in Section XVIII of the Agreement; and

WHEREAS, Exhibit J requires the Town to update the information concerning key personnel and contact information in Exhibit J within 30 days of a change; and

WHEREAS, on June 16, 2025, the Town provided the County with a 1st Amendment to the Agreement identifying Will McKannay as the Finance Director and included other changes required by Florida law to the Agreement; and

WHEREAS, the Town now desires to further amend Exhibit J of the Agreement as stated in the attached Exhibit A to substitute Joe Onzick as the Finance Director in place of Will McKannay and to update the address for the identified key personnel from 2731 Oak Street, Fort Myers Beach to 6231 Estero Blvd, Fort Myers Beach; and

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

1. Amendment. This Amendment hereby amends and supplements the terms of the Agreement as amended. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

2. Exhibit J. The parties agree to the update to Exhibit J as provided in Exhibit A attached to this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

Lee County, Florida

By: Glen V. Salyer
Assistant County Manager

EXHIBIT J

SUBRECIPIENT STAFF ORGANIZATION

Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XIX. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

{Lee County to REVIEW Subrecipient information below to create a profile for entrance into the County's grant management system, and for which the Subrecipient can update and modify when changes are made.}

Section 1: Subrecipient Contract Administrator

1. Description

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XIX. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XIX. NOTICES of the Agreement.

2. Contact Information

Name: William McKannay
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: will.mckannay@fmbgov.com

Section 2: Project Manager

3. Description

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

4. Contact Information

Name: Frankie Kropacek
Title: Operations & Compliance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: fkropacek@fmbgov.com

Section 3: Section 3, Davis Bacon and Labor Standards Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 4: Section 504 Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. *If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.*

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach FL, 33931
Telephone: 239-765-0202
Email: amy@fmbgov.com

Section 5: Fair Housing Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as

applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison/Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: jasonf@fmbgov.com

Section 6: Financial Manager

1. Description

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 6231 Estero Blvd Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: joe.onzick@fmbgov.com

Section 7: Certification of Time Allocation

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? Yes

If so how many, and list names:

Yes, all town staff listed in this Exhibit may assist with other Town programs other than CDBG-DR

CDBG-DR SUBRECIPIENT AGREEMENT

The following information is provided pursuant to 2 CFR 200.332(a)(1)

Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:	B-23-UN-12-0002
Assistance Listing Number (formerly CFDA #):	14.218 Community Development Block Grants/Entitlement Grants
Federal Register Notice & Public Law:	FR-6393-N-01: PL-117-328
Federal Award (HUD Grant Agreement) Date:	11/20/2023
Agreement No.:	DR10157
Responsible Entity (RE):	Lee County
Lead and Responsible Department:	Office of Strategic Resources and Government Affairs
CDBG-DR Funding Source/Program:	US Department of Housing and Urban Development
Subrecipient Name:	Town of Fort Myers Beach
Subrecipient ID (Unique Entity Identifier via SAM.gov):	J87EFSEEQ884
Subrecipient Period of Performance (Start Date):	08/01/2024
Subrecipient Period of Performance (End Date):	07/30/2026
Total Amount Obligated via Agreement:	\$1,575,000.00
Total CDBG-DR Obligation to Subrecipient (all Agreements, including this obligation):	\$1,575,000.00
Project/Activity ID(s):	DR10157
Federal Award Program/Project/Activity Description:	Recovery and Resiliency Planning Program/Town of Fort Myers Beach Long Term Recovery Plan and Comprehensive Plan Updates
Does the Federal award include an Indirect Cost Rate for Subrecipient?	Yes ☐ No ☒
If Yes, is the Indirect Cost Rate a:	☐ Negotiated Rate _____% ☐ De Minimis Rate

Official County Contact for Award: Glen Salyer, Assistant County Manager; 2115 Second St., Fort Myers, FL 33901; Phone: (239) 533-2315; Email: GSalyer@leegov.com

SUBRECIPIENT AGREEMENT BETWEEN
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
TOWN OF FORT MYERS BEACH

This **AGREEMENT** between Lee County, a political subdivision and charter county of the State of Florida, hereinafter referred to as “**COUNTY**,” and TOWN OF FORT MYERS BEACH a local government/municipality registered under the laws of Florida Statute, Chapters 165 and 166, hereinafter referred to as “**SUBRECIPIENT**” will become effective upon the date (“Effective Date”) after being signed by the Board of County Commissioners (BOCC).

SECTION I: **RECITALS**

WHEREAS, pursuant to Public Law (P.L.) 117-328, the “Department of Housing and Urban Development Appropriations Act, 2023” (hereinafter referred to as the “Appropriation Act”), and the “Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice,” 88 Federal Register (FR) 32046 (May 18, 2023); (hereinafter referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded \$1,107,881,000 (a \$963,375,000 allocation for unmet disaster recovery needs with an additional \$144,506,000 mitigation set aside) of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to the **COUNTY** for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the *Lee County Action Plan for CDBG-DR Funds* (hereinafter referred to as the “Action Plan”) for the Consolidated Appropriation Act (P.L. 117-328). The **COUNTY** is also hereinafter referred to from time to time as “Grantee.”

WHEREAS, the **COUNTY** believes it is in the public interest to serve as a pass-through entity by awarding and/or providing CDBG-DR funding for certain activities to **SUBRECIPIENTS** for the benefit of Lee County residents. CDBG-DR funding made available for use by the **SUBRECIPIENT** under this Agreement constitutes a subaward of the Grantee’s Federal award, for which the use of the subaward funds must conform to the **COUNTY’S** intent as stated in the applicable Notice of Funding Availability (NOFA) Application, and attachments, and/or exhibits, and all other terms and conditions as specified.

WHEREAS, the **COUNTY** has legal authority to disburse funds as a subaward under the Federal award and to enter into this Agreement with the **SUBRECIPIENT**, who by signing this Agreement, represents and warrants to the **COUNTY** that it will comply with all the requirements of the subaward described herein.

WHEREAS, the Action Plan has been developed to give the maximum feasible priority to activities that will benefit low- and moderate-income families and the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, therefore the **COUNTY** and the **SUBRECIPIENT** agree as follows:

SECTION II: **SCOPE OF WORK AND ACTIVITIES**

The **COUNTY** provides the **SUBRECIPIENT** the award under this Agreement to perform project activities under the **COUNTY’S** CDBG-DR Recovery and Resiliency Planning Program. Any proposal,

application, or exhibit associated with this CDBG-DR funding award are binding and incorporated herein as a part of this **AGREEMENT**.

The **SUBRECIPIENT** shall submit to the **COUNTY** the required information and documentation to complete Exhibits A (Scope of Work and Activities – Program/Project Activity Overview) & B (Scope of Work and Activities – Project Activity Scope of Work Description). If there is a disagreement between the **COUNTY** and **SUBRECIPIENT**, with respect to the formatting and content requirements of the Exhibit, the **COUNTY'S** has sole and absolute discretion; the **COUNTY'S** decisions shall prevail.

The **SUBRECIPIENT** must provide a statement of work, in accordance with 24 CFR 570.503 detailing the work to be performed, a schedule for completing the work, and a budget. The statement of work as prescribed by the **COUNTY** under Exhibits A and B must provide sufficient data and detail to provide a sound basis for the **COUNTY** to monitor performance.

The **SUBRECIPIENT** agrees to abide by all applicable state and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570, 2 CFR 200, the Federal Register Guidance, and the **COUNTY'S** Action Plan. This includes core CDBG-DR tenets and requirements as stated below:

SUBSECTION II.A. – MID REQUIREMENT: The **SUBRECIPIENT** must conduct all activities and expend all CDBG-DR award funds granted by the **COUNTY** in the “most impacted and distressed” (MID) areas resulting from the qualifying major disaster in 2022, which is in response to Hurricane Ian (Federal Emergency Management Agency (FEMA) Disaster No. 4673 – DR). As noted in the Federal Register Guidance (88 FR 32046), the HUD-identified MID area for this disaster allocation is all of Lee County.

SUBSECTION II.B. – ELIGIBLE ACTIVITIES: CDBG-DR funds are provided for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 United States Code (U.S.C.) 5301 et seq.), related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of related risk. The **SUBRECIPIENT** must utilize CDBG-DR funds, as prescribed under 24 CFR 570 Subpart C – Eligible Activities, and for alternative requirements and waivers as prescribed within the Federal Register Guidance. Furthermore, the **SUBRECIPIENT** shall conduct its project to align with the approved eligible activity(ies) found under the most-recent approved Action Plan for the **COUNTY'S** CDBG-DR Recovery and Resiliency Planning Program.

SUBSECTION II.C. – NATIONAL OBJECTIVE: The **SUBRECIPIENT** must meet the criteria for one of the CDBG-DR program's national objectives. For this scope of work, the **SUBRECIPIENT** must adhere to the following national objective type, as defined at 24 CFR 570.208 and alternative requirements under the Federal Register Guidance, and as reflected as an approved national objective type for this CDBG-DR program within the Action Plan

☒ Activities expended for planning and administrative costs under 24 CFR 570.205 and 24 CFR 570.206, which are considered to address the national objectives.

SUBSECTION II.D. – CDBG-DR MITIGATION SET-ASIDE AND STORM “TIE-BACK”: The **COUNTY** is responsible for informing the **SUBRECIPIENT** of whether CDBG-DR funding is awarded for an activity(ies) to address an unmet recovery need, a mitigation and resilience measure, or both. Depending on the recovery or mitigation designation by the **COUNTY**, the **SUBRECIPIENT** is responsible for documenting proof of the designation. For recovery activities, the **SUBRECIPIENT** must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated. For mitigation set-aside activities, the **SUBRECIPIENT** must document how its activity(ies) (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the **COUNTY'S** mitigation needs assessment in the MID areas under its

Action Plan; (3) is a CDBG-eligible activity under title I of the HCDA (or otherwise eligible pursuant to a waiver or alternative requirement); and (4) still meets a national objective. In some cases, the **COUNTY** may require the **SUBRECIPIENT** to provide evidence of the activity meeting both the CDBG-DR “tie-back” and mitigation measures justification. The **COUNTY** will spell out specific requirements for the **SUBRECIPIENT**, its project, and the project’s eligible activity under Exhibit A – Scope of Work and Activities – Program/Project Activity Overview and Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description.

SECTION III: **TERM OF AGREEMENT**

This Agreement shall begin on August 1st, 2024 (“the Effective Date”) and end on July 30th, 2026, unless suspended or terminated as specified in SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION.

The **COUNTY** and the **SUBRECIPIENT** agree that this Agreement shall be electronically signed, and that any electronic signatures appearing on this Agreement shall have the same force and effect as a written signature for the purposes of validity, enforceability, and admissibility. The **COUNTY** and **SUBRECIPIENT** shall maintain this Agreement, including any amendments, in its files.

The **COUNTY** shall not grant any extension of the Agreement unless the **SUBRECIPIENT** provides written justification that is satisfactory to the **COUNTY**, in its sole discretion, and the **COUNTY’S** authorized organizational representative approves such extension in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS of this Agreement.

SECTION IV: **AGREEMENT MODIFICATIONS AND AMENDMENTS**

SUBRECIPIENT must submit a written request, via the County’s approved method for submitting such request, for an Agreement amendment which details the nature of and justification for the requested change and the desired effective date of the change(s). The **COUNTY** reserves the right to approve or deny all Agreement amendments on the basis that such approval or denial is in the **COUNTY’S** best interest. An approved amendment shall be documented on the Agreement amendment form and signed by both parties.

The Assistant County Manager over the **COUNTY’S** Office of Strategic Resources and Government Affairs (SRGA), the BoCC, or their designee may approve amendments to the Agreement, in accordance with the **COUNTY’S** *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*. As noted within the Manual, the **COUNTY** reserves the right to review the request from the **SUBRECIPIENT** and determine whether an amendment is required or whether County Manager or BOCC approval is needed.

The **COUNTY** also affirms that it may unilaterally modify or amend any Manuals or Exhibits which are referenced throughout this Agreement without prior notification or agreement by the **SUBRECIPIENT**.

As noted in the **COUNTY’S** Action Plan, substantial amendments to the Action Plan are defined as (1) a change in program benefit or eligibility criteria; (2) the addition or deletion of an activity(ies); (3) the allocation or reallocation of funds which exceeds or is expected to exceed 5 percent of the current total approved budget; (4) a material change occurs which impacts information and analysis on which the Action Plan was based on to fund certain priority activities (e.g., impact on anticipated beneficiaries, project or activity scope, significant demographic changes, or new significant contributing factors on unmet needs in the jurisdiction); and/or upon HUD’s written notification specifying a material change that requires the revision. The **SUBRECIPIENT** understands that requests for Agreement amendments of the nature described herein, and which involve new or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activity or beneficiaries must first receive HUD approval before consideration by the **COUNTY** to amend the Agreement.

SECTION V: COMPENSATION AND ALLOWABLE PAYMENTS

SUBSECTION V.A. – AGREEMENT PAYMENT: The **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed **\$1,575,000.00**. The **COUNTY'S** standard method of payment to the **SUBRECIPIENT** is on a reimbursement basis. Payments under this method will be authorized only for work completed and/or services delivered during the term of the Agreement as stated in SECTION III: TERM OF AGREEMENT and prior to the payment request date. The **COUNTY** reserves the right to consider a written request from the **SUBRECIPIENT** for projects that require advanced payments in accordance with 2 CFR 200.305 and 24 CFR 570.502.

The **SUBRECIPIENT** will provide supporting documentation of eligible expenses as stated within this SUBSECTION and the applicable exhibits, forms, and attachments contained with this Agreement. Payment is subject to the provisions of SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SECTION XI. SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION. Funding is contingent upon the availability of CDBG-DR funds and the obligation of said CDBG-DR funds through the **COUNTY'S** annual fiscal year (FY) budget appropriation process.

The **COUNTY** has agreed to reimburse the **SUBRECIPIENT** for approved budget line items listed for the project and its activities under the **COUNTY'S** CDBG-DR **Recovery and Resiliency Planning Program**. The **SUBRECIPIENT** shall expend the allocation as follows:

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$1,500,000.00
Activity Delivery Funds	\$75,000.00
TOTAL	\$1,575,000.00

Furthermore, "not to exceed" line items and activity budgets under this Agreement shall be identified within the approved budget under the *Project Budget and Expense (Sources and Uses) Worksheet*.

After the **COUNTY** has approved funding and the Office of Strategic Resources and Government Affairs (SRGA) has issued an Agreement related to the funded project, the **SUBRECIPIENT** should sign and return the Agreement within 30 days for execution. In addition, the **SUBRECIPIENT** should begin to draw down funds as agreed upon within the project milestones set out under the *Project Schedule and Milestones* reporting deliverable unless additional time is authorized by the **COUNTY**. Failure to return the signed Agreement or begin spending funds within the agreed upon time frame may result in reduction or forfeiture of funds.

By execution of this Agreement, the **SUBRECIPIENT** attests that necessary written administrative procedures, processes, and fiscal controls are in place for the operation of its CDBG-DR program for which the **SUBRECIPIENT** received funds from the **COUNTY**. These written administrative procedures, processes, and fiscal controls must, at a minimum, comply with applicable state and Federal law, rules, and regulations, Federal Register Guidance, and the terms of this Agreement. The **SUBRECIPIENT** agrees to remedy any deficiencies in its written administrative procedures, processes, and fiscal controls identified by the **COUNTY** or duly authorized CDBG-DR authorities.

The **SUBRECIPIENT** shall request all funds in the manner prescribed by the **COUNTY**, utilizing the Payment Request Form(s) as outlined under SUBSECTION VI.A. REPORTING AND AGREEMENT DELIVERABLES. Except as set forth herein, or unless otherwise authorized in writing by the **COUNTY**, costs incurred for eligible activities or allowable costs prior to the Effective Date of this Agreement are

ineligible for funding with CDBG-DR funds.

If funds are not available to fully execute the project associated with this Agreement because of actions by the United States Congress, the Federal Office of Management and Budget, the **COUNTY** or the provision of SECTION XIII. ASSURANCE, CERTIFICATIONS, AND COMPLIANCE, all obligations on the part of the **COUNTY** to make any further payment of funds will terminate and the **SUBRECIPIENT** shall submit its administrative closeout report within thirty (30) calendar days from the receipt of notice from the **COUNTY**.

SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS): The **SUBRECIPIENT** shall expend CDBG-DR funds only for allowable costs and eligible activities which are incurred during the Agreement period, in accordance with federal cost principles at 2 CFR 200 Subpart E and 24 CFR 570 Subpart C, respectively. The **SUBRECIPIENT** shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from the obligations incurred during the Agreement period as specified under SECTION III. TERM OF AGREEMENT.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds paid in excess of the amount to which the **SUBRECIPIENT** or its contractors, subcontractors, or consultants are entitled under the terms and conditions of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds received for an activity if the activity does not meet an approved National Objective in accordance with 24 CFR 570.208 and the terms of this Agreement.

The **SUBRECIPIENT** shall refund to the **COUNTY** any funds not spent in accordance with the conditions of this Agreement or applicable law. For the scenarios detailed above, such reimbursement shall be sent to the **COUNTY**, by the **SUBRECIPIENT**, within thirty (30) calendar days from the **SUBRECIPIENT'S** receipt of notification of such noncompliance.

The **COUNTY** may also defer payment to the **SUBRECIPIENT** for noncompliance with Agreement deliverables, program performance requirements, or sufficient documentation to meet regulatory and statutory requirements, including cross-cutting requirements. If, as a result of monitoring or audit, the **COUNTY** determines that submitted costs are not documented, a payment may be deferred. If costs are found to be unallowable and payment has been made, no future payments will be made until the full amount of overpayment is remitted to the **COUNTY** or a repayment agreement is established by the **COUNTY**. If the monitoring or audit occurs after the term of this Agreement, the **SUBRECIPIENT** will be required to remit funds to the **COUNTY** in accordance with the repayment conditions below.

The **SUBRECIPIENT** agrees to return to the **COUNTY** any overpayments due to disallowed cost, pursuant to the terms of this Agreement and/or Federal requirements. Such funds shall be considered **COUNTY** funds and must be refunded to the **COUNTY** within thirty (30) days of receiving notice from the **COUNTY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **COUNTY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **COUNTY** for disallowed costs or fines resulting from acts of noncompliance.

The **COUNTY'S** determination that an expenditure is eligible does not relieve the **SUBRECIPIENT** of its duty to repay the **COUNTY** in full for any expenditures that are later determined by the **COUNTY** or the Federal Government, in each of its sole discretion, to be an ineligible expenditure or a Duplication of Benefits.

If requested by the **COUNTY**, all refunds, return of improper payments, or repayments due to the

COUNTY under this Agreement are to be made payable to Lee County and mailed directly to the **COUNTY**, pursuant to SECTION XIX. NOTICES and this Agreement.

The **SUBRECIPIENT** has responsibility for identifying and recovering grant funds that were expended in error, disallowed, or unused. The **COUNTY'S** provision of training, technical assistance, quality assurance and quality control reviews are in no way intended to alleviate the **SUBRECIPIENT** of the responsibility to administer activities in accordance with all federal, state, and local requirements, including the requirements outlined within this Agreement. The **SUBRECIPIENT** acknowledges full responsibility to return funds to the **COUNTY** in the event that HUD or other auditing agency determines that activities or costs are disallowed.

The **SUBRECIPIENT** will report all suspected or verified fraud to the **COUNTY**, regardless of whether the suspected or verified fraud is associated with disallowed cost or other perceived harm to the **SUBRECIPIENT** or the **COUNTY**.

SECTION VI: REPORTS AND EXHIBITS

SUBSECTION VI.A – REPORTING AND AGREEMENT DELIVERABLES: The **SUBRECIPIENT** shall provide the **COUNTY** with all reports and information set forth in the **COUNTY'S** approved system, including monthly performance reports and documentation outlined in all applicable exhibits to enable the Grantee to submit the required reporting to HUD within the Disaster Recovery Grant Reporting (DRGR) system.

The **SUBRECIPIENT'S** monthly reports, include administrative activity, financial activity, and program activity, must include sufficiently detailed summaries of the current status, progress, and completed work. The **SUBRECIPIENT** is responsible for all reporting of work of all contractors, subcontractors, and other entities under contract or agreement related to this Agreement.

At a minimum the following information will be required to be submitted in the system of record by the **SUBRECIPIENT**. Upon request from the **COUNTY**, the **SUBRECIPIENT** shall provide additional program or activity updates and information. If all required reports and copies are not sent to the **COUNTY** within the agreed-upon submission schedule or are otherwise not completed in a manner acceptable to the **COUNTY**, payments may be withheld in accordance with SUBSECTION V.B. DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) until the reports are completed. If the **COUNTY** withholds such payments, it shall notify the **SUBRECIPIENT** in writing of its decision, reasons for withholding payment, and the remedy for corrective action the **SUBRECIPIENT** must follow. The **COUNTY** may also take other action as stated within this Agreement or allowable by law.

The **SUBRECIPIENT'S** reporting deliverables include, but are not limited to, the following information:

1. **Project Schedule and Milestones:** A table or description of the work task, project start and end dates, other significant milestones (e.g., 50% complete), and timelines for the **SUBRECIPIENT** to submit outputs or deliverables to the **COUNTY**.
2. **Project Budget and Expense (Sources and Uses) Worksheet:** The **SUBRECIPIENT** must provide budget narratives and tables to describe all funding sources and the potential uses of those funding sources for the purposes of completing the project. This narrative will include, but may not be limited to, (a) a description and justification of the proposed costs, (b) a description of project implementation support with **SUBRECIPIENT** or vendor staff, (c) sources of leveraged funds committed by the **SUBRECIPIENT** to the project, and (d) timelines for the projected expenditure of CDBG-DR funds.
3. **Payment Request Form:** The means by which the **COUNTY** and the **SUBRECIPIENT** document project and activity expenses and requests for payment. The **SUBRECEIPIENT** shall utilize this form

when submitting or requesting any costs for payment and the form must be accompanied by legible supporting documentation to indicate the reasonableness, allowability, and appropriate procurement of the expense(s).

As noted under SECTION III. TERM OF AGREEMENT and SECTION V. COMPENSATION AND ALLOWABLE PAYMENTS, all payments are reimbursements for eligible expenses or services defined as uncompensated expenses rendered during the Agreement term and paid prior to the final payment request due date. Copies of supporting documentation are required as part of the Payment Request for review of grant compliance and before payment will be authorized by the **COUNTY** to the **SUBRECIPIENT**. Reimbursement for eligible expenses will be made after review and authorization of a correct and complete Payment Request Form and required back up documentation. In accordance with the Federal Register Guidance, the **COUNTY** must be payor of last resort, meaning that if services are eligible to be billed to any other entity or funding source, including but not limited to, Medicaid, third party insurance or any other entity or funding source, the **COUNTY** will not pay for that service.

Appropriate back-up/supporting documentation may include cancelled checks, vendor invoices, authorized purchase orders, attendance/service logs, other funder invoices, expenditure spreadsheets or other original documentation, as well as a copy of the **SUBRECIPIENT'S** check issued with authorized signature. For construction contracts, inspection reports from qualified officials should be submitted with the appropriate monthly payment request.

The **SUBRECIPIENT** must submit the *Payment Request Form* with an authorized signature. Cancelled checks, paystubs, payroll reports, bank statements, and/or other documentation from vendors that expenses have been paid or services provided may be verified.

As applicable, processing of payment requests is also subject to the requirements and conditions as set forth within the **COUNTY'S Hurricane Ian CDBG-DR Subrecipient Manual**.

4. **Monthly Activity Report:** The **SUBRECIPIENT** must identify information for this report that ties actual, real-time project and expenditure status to the approved activity budget, scope of work, and projected outcomes. Narratives on budget activity, project progress or delays, and performance measures are included within this report.
5. **Demographics and Beneficiary Report:** The **SUBRECIPIENT** must report on data and include documentation, such as maps detailing service areas, number of individual persons benefitting from the project, and other demographic information on households, where applicable, to indicate the public benefit of the project and activity.
6. **Project Amendment Request:** As referenced under SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS, the **SUBRECIPIENT** must notify the County and provide information on any project or activity changes within a project amendment request for the **COUNTY** to determine whether the request rises to the level of an amendment to the Agreement.
7. **Single Audit Certification Form:** The **SUBRECIPIENT**, if a nonprofit or governmental organization, must complete a form to certify whether it has expended \$750,000 in federal and/or state funding within the **SUBRECIPIENT'S** given Fiscal Year.
8. **Davis-Bacon and Related Acts (DBRA) Labor Standards Reports (as applicable):** When an activity triggers DBRA requirements, the **SUBRECIPIENT** must report and submit information on assigned labor compliance staff, labor compliance review processes and outcomes, bid and contract requirements documentation, work classification and minimum prevailing wage rates, written clearance of labor compliance issue resolutions, file maintenance plans, and payroll review plans.

9. **Section 3 Reports (as applicable):** When an activity triggers Section 3 requirements, the **SUBRECIPIENT** is required to submit data and information on Targeted Section 3 worker labor hours, Section 3 worker labor hours, total worker labor hours, and other qualitative efforts which the **SUBRECIPIENT** and their vendors took in an attempt to reach or achieve Section 3 goals.
10. **Closeout Report:** The **SUBRECIPIENT** must report project completion data and provide documentation of closeout processes in relation to this project and activity(ies).

The **SUBRECIPIENT'S Agreement deliverables (as identified within "Exhibits")**, which the **SUBRECIPIENT** must follow, include, but are not limited to, the following information:

11. **Exhibit A: Scope of Work and Activities – Program/Project Activity Overview:** Brief description on the identified and agreed-upon CDBG-DR Program eligible activity, National Objective to be achieved for the activity and measures, as applicable, the number of individuals benefitting as a result of the project and its activities, and the appropriate CDBG-DR storm tie-back or resilience need being met, in accordance with SECTION II. SCOPE OF WORK AND ACTIVITIES.
12. **Exhibit B: Scope of Work and Activities – Project Activity Scope of Work Description:** Detailed scope of work defining the plan, design, and approach for the activity.
13. **Exhibit C: Financial/Grant Management System Budget Worksheet:** The high level, official budget for the project as approved under SECTION V.A. AGREEMENT PAYMENT. Any adjustments to this budget will require an amendment in accordance with SECTION IV. AGREEMENT MODIFICATIONS AND AMENDMENTS.
14. **Exhibit D: Indirect Cost Rate Allocation Plan (as applicable):** As identified within the **NOFA Application** or the **Recovery and Resiliency Planning Program**, the **SUBRECIPIENT** has the option for the **COUNTY** to approve an indirect cost rate allocation plan. Where applicable, the plan and approval of the indirect cost rate for this Agreement is established under this Exhibit.
15. **Exhibit E: Projected Performance Measures and Outcomes Form:** The **COUNTY** will utilize the **SUBRECIPIENT'S** detailed scope of work to establish and project out specific performance metrics which the **SUBRECIPIENT** is required to meet to as a condition of project completion and closeout. The **COUNTY** will select the performance measure based on the eligible activity and proposed scope of work approved within the **NOFA Application** for the **Recovery and Resiliency Planning Program**.
16. **Exhibit F: Application:** The **SUBRECIPIENT'S** approved application is attached to this Agreement for identification and understanding of **SUBRECIPIENT'S** responses to critical project components.
17. **Exhibit G: Certificate(s) of Insurance:** In accordance with SECTION X.B. INSURANCE REQUIREMENTS, the **SUBRECIPIENT** must supply insurance coverage for the implementation of the project. This Exhibit will contain those required insurance coverages of the **SUBRECIPIENT**.
18. **Exhibit H: Certification of CDBG-DR Compliance Provisions:** This Exhibit outlines the compliance provisions which the **SUBRECIPIENT** must follow as a requirement of the federal CDBG-DR funding award. The **SUBRECIPIENT** must certify adherence with these conditions.
19. **Exhibit I: CDBG-DR Special Terms and Conditions:** The **COUNTY** may identify specific conditions, including but not limited to, training, technical assistance, capacity building, and policy development, which the **SUBRECIPIENT** must complete as a condition of receiving the CDBG-DR funding award.

20. **Exhibit J: Subrecipient Staff Organization:** In addition to annual certifications of continued operations, the **SUBRECIPIENT** is required to provide evidence of staff who will be responsible for conducting certain actions during project implementation. This Exhibit contains the contact information of those individual staff members.
21. **Exhibit K: CDBG-DR Program Subrogation Agreement:** As noted under SUBSECTION XIII.E. DUPLICATION OF BENEFITS and the Federal Register Guidance, the **SUBRECIPIENT**, as a recipient of federal assistance, must sign a Subrogation Agreement before the **COUNTY** can disburse CDBG-DR assistance to the **SUBRECIPIENT**.

An electronic signature or a scanned copy of the report with signature is acceptable for all reports or exhibits included above for which signatures are required. The **COUNTY** will instruct the **SUBRECIPIENT** on the approved System of Record under which the **SUBRECIPIENT** is expected to provide this data and information.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

The **COUNTY** notates in the *Subrecipient Agreement Document Checklist*, the required forms and reports the **SUBRECIPIENT** must submit. These reports and forms include, but are not limited to, activity performance reports, payment request forms, program information forms, budget analysis reports, closeout reports, and periodic certifications as described above.

The **SUBRECIPIENT** should submit all reports and forms electronically in a computer-readable format using the approved System of Record submission method specified by the **COUNTY**. When required, reports or exhibits must be certified by signature. An electronic signature is acceptable for all reports, forms, and attachments within the *Subrecipient Agreement Document Checklist*.

The **SUBRECIPIENT** is required to immediately report to the **COUNTY** any incident of suspected criminal misapplication of CDBG-DR funds associated with this Agreement.

SUBSECTION VI.B. – EXTERNAL REPORTING AND ORGANIZATIONAL DOCUMENT REQUIREMENTS: The **COUNTY** or its agents may also require the **SUBRECIPIENT** to submit additional non-project related reports, documentation, and information which are beneficial to determine the **SUBRECIPIENT'S** capacity, compliance, and performance related to this Federal award compliance. The **COUNTY** may request external reports, including but not limited to, prior and current fiscal year audits, other agency monitoring reports or reviews under other funding sources, organizational documents, and prior grant closeout reports. The **SUBRECIPIENT** agrees to provide such reports, documentation, and information requested by the County or its agents.

SECTION VII: AUDITS, MONITORING, AND RECORDS

SUBSECTION VII.A. – AUDITS AND INSPECTIONS: In accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508, the **SUBRECIPIENT** will allow the **COUNTY**, Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the **SUBRECIPIENT'S** non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The Clerk of Courts Internal Audit Division, Lee County employees, HUD, or any of their duly authorized representatives have the right of timely and reasonable access to any books, documents, papers, or other records, including electronic storage media, of the **SUBRECIPIENT** or Certified Public Accountant

(CPA) that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents in accordance with 2 CFR 200.332, 2 CFR 200.337, and 24 CFR 570.508.

If noncompliance with this Agreement or material weaknesses in the organization are noted, the **COUNTY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to the **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

SUBSECTION VII.B. – INDEPENDENT AUDIT REQUIREMENTS: Under the Single Audit Act and in accordance with the provisions of 2 CFR 200.501, the **SUBRECIPIENT** must conduct a single or program-specific audit if it expends \$750,000 or more in Federal awards from all sources during its fiscal year.

The **SUBRECIPIENT** shall also comply with the Federal Audit Clearinghouse (FAC) rules and directives, including but not limited to the pertinent report submission provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

For **SUBRECIPIENTS** who are Nonprofit Corporations and do not trigger the Single Audit Act requirements or provisions under 2 CFR 200.501, the **SUBRECIPIENT** must submit an independent certified, audited financial statement of the most recent or immediate prior fiscal year, including the management letter and written response. The **COUNTY** may consider exceptions on an individual basis, to include other supporting audit documents, such as a current CPA's peer review letter or monthly financial statements within the last 60 days, to meet this requirement.

In accordance with 2 CFR 200.514, a complete, independent financial audit of the **SUBRECIPIENT'S** financial accounting statements, in accordance with Generally Accepted Accounting Principles (GAAP) and/or current Generally Accepted Government Auditing Standards (GAGAS), as applicable, is required and must include the following:

1. Auditor's opinion;
2. Requisite reports on internal control and compliance, if required;
3. Management letter addressing internal controls (Note: If there were no items to be addressed, the letter must still be completed and state that no comments were noted);
4. Management's response to such letter;
5. The programs that are funded by this Agreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of Federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s), exhibit(s), and attachment(s).

The **SUBRECIPIENT** must submit the audit reports electronically to the **COUNTY** within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or within nine months after the end of the **SUBRECIPIENT'S** audit period. If applicable, any associated corrective action plan must be submitted. Failure to submit the report within the required time frame can result in the withholding of payment, or termination of the Agreement by the **COUNTY**.

The audit must be conducted by an independent, licensed certified public accountant expressing an unmodified opinion on their current peer review and must be in accordance with the General Accounting Office (GAO) Yellow Book, Generally Accepted Government Auditing Standards, 2 CFR 200 Subpart F – Audit Requirements, as applicable, the Florida Single Audit Act (F.S. 215.97) as applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable.

SUBSECTION VII.C. – SUBRECIPIENT RISK ASSESSMENTS AND MONITORING: In accordance with 2 CFR 200.332, the **COUNTY**, as HUD's Grantee and a pass-through entity, must evaluate each

subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring. To enable those periodic assessments, the **SUBRECIPIENT** must provide information and documentation as required to the **COUNTY**. The **COUNTY'S** risk assessments results will be used to support the **COUNTY'S** oversight strategies and the level and frequency of monitoring, technical assistance, training to the **SUBRECIPIENT**.

The **SUBRECIPIENT** agrees to permit the **COUNTY** and persons duly authorized by the **COUNTY**, HUD, and other Federal, state, or local agencies, as applicable, or any authorized representatives under these agencies, to have access to and inspect all records, papers, documents, facility's goods and services, and project activity sites of the **SUBRECIPIENT** including interviews of any clients and employees of the **SUBRECIPIENT** to assess satisfactory performance and compliance of the full terms and conditions of this Agreement, in accordance with 2 CFR 200 (specifically 200.332), 24 CFR 570, and the Federal Register Guidance and to the extent permitted by the law, after giving the **SUBRECIPIENT** reasonable notice of such inspection.

The **SUBRECIPIENT** must submit to monitoring of its project activity by the **COUNTY** and persons duly authorized, as necessary, to ensure the CDBG-DR subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this Agreement.

Monitoring will include: (1) reviewing financial and performance reports required by the Grantee; (2) following up and ensuring that the **SUBRECIPIENT** takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the **SUBRECIPIENT** from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the **SUBRECIPIENT** from the Grantee as required by 2 CFR 200.521. Any limited monitoring review scope of the terms and conditions within this Agreement does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with all applicable rules and sound management practices.

Following such monitoring and in accordance with 2 CFR 200.521, the **COUNTY** will deliver to the **SUBRECIPIENT** a written report regarding management decisions which notate how activities are being conducted and whether corrective action(s) by the **SUBRECIPIENT** need to be taken to address deficiencies. The **SUBRECIPIENT** will rectify all noted deficiencies documented by the **COUNTY** within the specified period of time indicated in the monitoring report or provide the **COUNTY** with a reasonable and acceptable justification for not correcting the noted deficiencies as defined by the **COUNTY**. The **SUBRECIPIENT'S** failure to correct or provide the **COUNTY** with accepted justification for the deficiencies within the time specified by the **COUNTY** may result in withholding of payments or being deemed in breach or default of this Agreement and may result in the termination of this Agreement.

In response to **SUBRECIPIENT** deficiencies or other instances of capacity concerns prior to this Agreement, the **COUNTY** may also impose additional conditions on the use of the CDBG-DR funds, as noted under Exhibit I – CDBG-DR Special Terms and Conditions. This Exhibit ensures future compliance through trainings, technical assistance, and capacity building in an effort to correct or avoid early noncompliance.

SUBSECTION VII.D. – RECORDKEEPING REQUIREMENTS: The **SUBRECIPIENT** must comply with the recordkeeping requirements of 24 CFR 570.506, as amended by the Federal Register Guidance's Consolidated Notice waivers and alternative requirements, which describes the types of records which must be kept by the **SUBRECIPIENT** and the **COUNTY** for the Federal CDBG-DR award.

The **SUBRECIPIENT** must comply with the longer of the records retention requirements contained within the Uniform Administrative Requirements (UAR) at 2 CFR 200.334 and State of Florida GS1-SL, except that the **SUBRECIPIENT** must:

1. Retain records for individual CDBG-DR activities for 5 years after the Agreement has ended, as prescribed in State of Florida GS1-SL.
2. Maintain records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503 or change of use provisions at 24 CFR 570.505 for as long as those provisions continue to apply to the activity(ies).
3. Maintain records for individual activities in which there are outstanding loan balances, other receivables, or contingent liabilities until such receivables or liabilities have been satisfied and for 5 years following that satisfaction.

In accordance with 24 CFR 570.506, the **SUBRECIPIENT** shall also maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the **COUNTY** under this Agreement. The **SUBRECIPIENT** must also retain all financial, client demographics, and programmatic records, supporting documentation, statistical records, and other records, which are necessary to document purchases, expenses, revenue, income, and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the retention period, the records shall be retained by the **SUBRECIPIENT** until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR 200.334. Additional types of records are further described under Exhibit H – Certification of CDBG-DR Compliance Provisions.

The records retention period, as described within this Subsection, may be longer depending on other funding sources for activities. It is the **SUBRECIPIENT'S** further obligation to comply with all Federal and State of Florida retention schedules if other schedules shall apply.

The **SUBRECIPIENT**, including all its employees or agents, contractors, subcontractors, and consultants to be paid from CDBG-DR funds provided under this Agreement, shall allow access to its records at reasonable times for audits, inspections and monitoring as described in this Section and Subsections.

The **SUBRECIPIENT** specifically acknowledges its obligations under 2 CFR 200.338 (further detailed within SUBSECTION XIII.K. PERSONALLY IDENTIFIABLE INFORMATION), and to comply with F.S., 119.0701, as amended from time to time, with regard to public records, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the **COUNTY** in order to perform the services required under this Agreement;
2. Upon request from the **COUNTY'S** custodian of public records, provide the **COUNTY** with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
4. Meet all requirements for retaining public records and transfer, at no cost to the **COUNTY**, all public records in possession of **SUBRECIPIENT** upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **COUNTY** in a format that is compatible with the information technology system of the **COUNTY**.

IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC

**RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901,
http://www.leegov.com/publicrecords.**

SECTION VIII: CONTRACTOR STATUS

SUBSECTION VIII.A. – INDEPENDENT CONTRACTOR: It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **COUNTY'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and the **COUNTY**, and the **COUNTY** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including, but not limited to, unpaid minimum wages and/or overtime premiums.

SUBSECTION VIII.B. – SUBCONTRACTS: Primary roles and responsibilities of the **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any program component that is subcontracted by the **SUBRECIPIENT** must have a written contract. The **SUBRECIPIENT** must provide written notice to the **COUNTY** of all subcontractors, as well as provide copies of all contracts entered into with subcontractors, upon the **COUNTY'S** request. Procurement and/or bidding of non-primary roles and responsibilities must be awarded on a fair and non-collusive basis and must be in compliance with all applicable Lee County, State of Florida, and Federal procurement standards at 2 CFR 200.318-327. The **SUBRECIPIENT** shall not enter into a transaction with a person or affiliate placed on the Florida Department of Management Services' Convicted Vendor List. For projects and services receiving federal funds, the **SUBRECIPIENT** shall also not enter into a transaction with debarred, suspended or ineligible contractors and participants included on the Federal Excluded Parties List, in accordance with 2 CFR 200.214. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Agreement, Exhibit H – Certification of CDBG-DR Compliance Provisions, and Exhibit F – Application, as applicable, and must be subject to indemnification as stated in SUBSECTION X.A. INDEMNIFICATION AND LIABILITY below.

SUBSECTION VIII.C. – CONTRACTS AND FEDERAL PROCUREMENT STANDARDS: If the **SUBRECIPIENT** contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the **COUNTY** Program Manager for prior written approval. For each contract, the **SUBRECIPIENT** shall report to the **COUNTY** as to whether that contractor or any subcontractors hired by the contractor, is a minority business and women's business enterprise, as defined in section 288.703, F.S. and in accordance with 24 CR 570.506, 24 CFR 570.507, and 2 CFR 200.321. The **SUBRECIPIENT** shall comply with the procurement standards at 2 CFR 200.318 - 200.327 and 2 CFR 200.330 when procuring property and services under this Agreement. The **SUBRECIPIENT** shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

1. The period of performance or date of completion;
2. The performance requirements;
3. That the contractor is bound by the terms of this Agreement;
4. That the contractor is bound by all applicable state and Federal laws, rules, and regulations;
5. That the contractor shall hold the **COUNTY** and the **SUBRECIPIENT** harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
6. The obligation of the **SUBRECIPIENT** to document in the **SUBRECIPIENT'S** reports the contractor's progress in performing its work under this Agreement;

7. The requirements of Appendix II to 2 CFR 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards - (refer to Exhibit H – Certification of CDBG-DR Compliance Provisions)

The **SUBRECIPIENT** must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.609 and 2 CFR 200.214), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The **SUBRECIPIENT** shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

SECTION IX: CONFLICTS OF INTEREST

The **SUBRECIPIENT** agrees that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of activities required under this Agreement. The **SUBRECIPIENT** further agrees that no person having any such interest shall be employed or engaged for said performance. The **SUBRECIPIENT** agrees that no employee, officer, agent of the **SUBRECIPIENT** or its subrecipients shall participate in the selection, award, or administration of a contract or construction bid if a conflict-of-interest, either real or implied, would be involved. The **SUBRECIPIENT** or its subrecipient employees, officers and agents should refrain from accepting gratuities, favors or anything of monetary value from contractors or potential contractors based on the understanding that the receipt of such an item of value would influence any action or judgment of the **SUBRECIPIENT**.

The **SUBRECIPIENT** is subject to the requirements at 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes developing or maintaining written standards of conduct and a conflict-of-interest policy that complies with the process for promptly identifying and addressing such conflicts.

Any potential conflict of interest shall be reported using the **COUNTY'S** disclosure form.

SECTION X: RISK MANAGEMENT

SUBSECTION X.A. – INDEMNIFICATION AND LIABILITY: To the fullest extent permitted by applicable law, **SUBRECIPIENT** shall protect, defend, indemnify, save and hold the **COUNTY**, the Board of County Commissioners, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the **SUBRECIPIENT** resulting from the **SUBRECIPIENT'S** work as further described in this Agreement and its attachments, which may arise in favor of any person or persons resulting from the **SUBRECIPIENT'S** performance or nonperformance of its obligations under this Agreement except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the **COUNTY**, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, the **SUBRECIPIENT** hereby agrees to indemnify the **COUNTY** for all reasonable expenses and attorney's fees incurred by or imposed upon the **COUNTY** in connection therewith for any loss, damage, injury, liability, or other casualty. The **SUBRECIPIENT** additionally agrees that the **COUNTY** may employ an attorney of the **COUNTY'S** own selection to appear and defend any such action, on behalf of the **COUNTY**, at the expense of the **SUBRECIPIENT**. The **SUBRECIPIENT** further agrees to pay all reasonable expenses and attorney's fees incurred by the **COUNTY** in establishing the right to indemnity.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Agreement. All individuals hired are employees of the

SUBRECIPIENT and not of the **COUNTY**.

The **SUBRECIPIENT** further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, F.S. The **SUBRECIPIENT** shall hold the **COUNTY** harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the **SUBRECIPIENT** to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

If the **SUBRECIPIENT** is a state agency or subdivision, as defined in Section 768.28, F.S., then the **SUBRECIPIENT** agrees to be fully responsible for its negligent or tortious acts of omissions, which result in claims or suits against the **COUNTY**. The **SUBRECIPIENT** agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by the state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

Nothing herein is intended to serve as a waiver of sovereign immunity by the **COUNTY** or the **SUBRECIPIENT**.

The provisions of this SUBSECTION X.A. INDEMNIFICATION AND LIABILITY shall survive the termination of this Agreement.

SUBSECTION X.B. – INSURANCE REQUIREMENTS**INSURANCE – NONPROFIT SUBRECIPIENTS**

The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Agreement. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **COUNTY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance **namely Lee Board of County Commissioners as Certificate Holder and additional insured** will be attached to this Agreement as an Exhibit (**Exhibit G – Certificate(s) of Insurance**). Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverages at the time of Agreement execution and upon policy renewal. Renewal certificates are due to the **COUNTY** on or before the expiration date.

1. **Workers' Compensation:** Statutory benefits as defined by Section 440, F.S., encompassing all operations contemplated by this Agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:
 - \$100,000 per accident
 - \$500,000 disease limit
 - \$100,000 disease limit per employee
2. **Commercial General Liability:** Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
 - \$500,000 bodily injury per person (BI)
 - \$1,000,000 bodily injury per occurrence (BI)
 - \$500,000 property damage (PD) or
 - \$1,000,000 combined single limit (CSL) of BI and PD

The General Liability Policy Certificate shall name "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" as "**Additional Insured**". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

3. **Business Auto Liability:** The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:
 - \$100,000 bodily injury per person (BI)
 - \$300,000 bodily injury per occurrence (BI)
 - \$100,000 property damage (PD) or
 - \$300,000 combined single limit (CSL) of BI and PD
4. **Directors & Officers Liability:** Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
5. **Fidelity Bonding:** Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

INSURANCE – GOVERNMENT/MUNICIPALITY SUBRECIPIENTS

Documentation of the above coverage requirements are not applicable to local governments or municipalities that are self-insured.

SUBSECTION X.C. – NOTICE OF CANCELLATION OR MODIFICATION: The **COUNTY** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Lee County Risk Manager, P. O. Box 398, Ft. Myers, FL 33902.

SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION

In accordance with the Federal Register Guidance, 2 CFR 200.208, 2 CFR 200.339, Appendix II to 2 CFR 200, 24 CFR 570.503, and other rights which may be available under law, the following Subsections identify suspension and termination of the Agreement, with and without cause, the potential events of default by the **SUBRECIPIENT**, and potential remedies by the **COUNTY** for noncompliance by the **SUBRECIPIENT** of any and all requirements of this Agreement, including any exhibits, attachments, and terms and conditions herein:

SUBSECTION XI.A. – SUSPENSION: The **COUNTY** reserves the right to suspend funding for failure to comply with the requirements of this Agreement. If the **SUBRECIPIENT** fails to submit required documents by the due date, the **COUNTY** can suspend the Agreement and withhold payments until all requirements are satisfied.

In the event the **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this Agreement, less funds for expenditures already incurred, shall be retained by the **COUNTY** and the **COUNTY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

SUBSECTION XI.B. – EVENTS OF DEFAULT: If any of the following events occur ("Events of Default"), the **COUNTY** may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in SUBSECTION XI.C. REMEDIES or pursue any remedy at law or in equity, without limitation:

1. Any warranty or representation made by the **SUBRECIPIENT**, in this Agreement with the **COUNTY**,

is or becomes false or misleading in any respect, or if the **SUBRECIPIENT** fails to keep or perform any of the obligations, terms, or covenants in this Agreement with the **COUNTY**, and/or has not cured them in a timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

2. Any material adverse change occurred in the financial condition of the **SUBRECIPIENT** at any time during the term of this Agreement and the **SUBRECIPIENT** fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by the **COUNTY**;
3. The **SUBRECIPIENT** fails to submit any required reports or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by the **COUNTY**;
4. The **SUBRECIPIENT** fails to perform or timely complete any of its obligations under this Agreement, including participation in the **COUNTY'S** measures for technical assistance and training;
5. Both the **SUBRECIPIENT** and the **COUNTY** agree that in the event the **COUNTY** elects to make payments or partial payments after any Events of Default, it does so without waving the right to exercise remedies allowable herein or at law and without becoming liable to make any further payment; or,
6. Neither the **SUBRECIPIENT** nor the **COUNTY** (Parties) shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the **SUBRECIPIENT**, the **COUNTY**, or either Parties' employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar causes wholly beyond both Parties' control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the **SUBRECIPIENT** shall take all reasonable measures to mitigate any and all resulting delays or disruptions in the **SUBRECIPIENT'S** performance obligation under this Agreement. If the delay is excusable under this Subsection, the delay will not result in any additional charges or cost under the Agreement to either Parties. In the case of any delay the **SUBRECIPIENT** believes is excusable under this Subsection, the **SUBRECIPIENT** shall notify the **COUNTY** in writing of the delay or potential delay and describe the cause of the delay either (1) with ten (10) calendar days after the cause that creates or will create the delay first arose, if the **SUBRECIPIENT** could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date the **SUBRECIPIENT** first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. The foregoing shall constitute the **SUBRECIPIENT'S** sole remedy or excuse with respect to delay. Providing notice in accordance with this Subsection is a condition precedent to such remedy. The **COUNTY**, at its sole discretion, will determine if the delay is excusable under this Subsection and will notify the **SUBRECIPIENT** of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against the **COUNTY**. The **SUBRECIPIENT** shall not be entitled to an increase in the Agreement price or payment of any kind from the **COUNTY** for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the **SUBRECIPIENT** shall perform at no increased cost, unless the **COUNTY** determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the **COUNTY**, in which case, the **COUNTY** may do any or all of the following: (1) accept allocated activity(ies) performance or deliveries from the **SUBRECIPIENT**, provided that the **SUBRECIPIENT** grants preferential treatment to the **COUNTY** with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by the **SUBRECIPIENT** for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

SUBSECTION XI.C. – REMEDIES: If an Event of Default occurs, the **COUNTY** may, in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the **SUBRECIPIENT**, and if the **SUBRECIPIENT** fails to cure within those thirty (30) calendar days,

the **COUNTY** may choose to exercise one or more of the following remedies, either concurrently or consecutively:

1. Terminate this Agreement upon written notice by the **COUNTY**, sent in conformity with SECTION XIX. NOTICES;
2. Begin any appropriate legal or equitable action to enforce performance of this Agreement;
3. Withhold or suspend payment of all or any part of a request for payment;
4. Demand the **SUBRECIPIENT** return to the **COUNTY** any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
5. Exercise any corrective or remedial actions, including but not limited to:
 - a. Request additional information from the **SUBRECIPIENT** to determine the reasons for or the extent of noncompliance or lack of performance;
 - b. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
 - c. Advise the **SUBRECIPIENT** to suspend, discontinue, or refrain from incurring costs for any activities in question.
6. Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude the **COUNTY** from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by the **COUNTY** to require strict performance does not affect, extend, or waive any other right or remedy available or affect the later exercise of the same right or remedy by the **COUNTY** for any other default by the **SUBRECIPIENT**.

SUBSECTION XI.D. – TERMINATION BY COUNTY: Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **COUNTY** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by Certified Mail, Process Server or Hand Delivery following a determination by the County Manager or designee, at its sole discretion, that such cancellation is in the best interest of the people of the **COUNTY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

If the financing for this project is contingent upon funding sources other than Lee County as identified in the application for this Agreement, and such funds become unavailable, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours written notice.

SUBSECTION XI.E. – TERMINATION BY SUBRECIPIENT: Excluding those scenarios and exceptions as noted within SUBSECTION XI.A. SUSPENSION, SUBSECTION XI.B. EVENTS OF DEFAULT, and SUBSECTION XI.C. REMEDIES, the **SUBRECIPIENT** may, at any time and for other reasons not mentioned above (“for convenience”), cancel this Agreement by giving seventy-two (72) hours prior written notice to the **COUNTY** by Certified Mail or Process Server of such and specifying the effective date.

The **COUNTY'S** obligation to make any payments under any provision of this Agreement shall cease on the effective date of termination.

In the event that this Agreement is terminated, the **SUBRECIPIENT** shall not incur new obligations under the terminated portion of the Agreement after the date the **SUBRECIPIENT** has received the notification of termination. The **SUBRECIPIENT** shall cancel as many outstanding obligations as possible. The **COUNTY** shall disallow all costs incurred after the **SUBRECIPIENT'S** receipt of the termination notice. The **COUNTY** may, to the extent authorized by law, withhold payments to the **SUBRECIPIENT** for the

purpose of set-off until the exact amount of damages due to the **COUNTY** from the **SUBRECIPIENT** is determined.

In accordance with 24 CFR 570.503, upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

SECTION XII: **USE AND REVERSION OF ASSETS, REAL PROPERTY**

The **SUBRECIPIENT** must ensure that any equipment or fixed assets purchased in whole or in part with CDBG-DR funds be adequately safeguarded and assure such assets are used solely for authorized purposes. The purchase, use, management and disposition of equipment and other capital assets must comply with 24 CFR 200.313, 24 CFR 200.439, the applicable Federal Register Guidance, and 24 CFR 570. See SECTION XI: SUSPENSION, EVENTS OF DEFAULT, REMEDIES, AND TERMINATION regarding the revision of any CDBG-DR funds or assets upon termination or expiration of this agreement. Per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income, and shall be returned to the **COUNTY** within 30 days of receipt of the proceeds.

Any real property under the **SUBRECIPIENT'S** control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the **SUBRECIPIENT** in the form of a loan) in excess of \$25,000 must (1) be used to meet a national objective until five years after expiration or termination of this Agreement (24 CFR 570.505), unless otherwise agreed upon by the Parties, or except as otherwise set forth herein or (2) if not used to meet a national objective, the **SUBRECIPIENT** shall pay to the **COUNTY** an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

The rights and remedies under this Section are in addition to any other rights or remedies provided by law or under this Agreement.

SECTION XIII: **ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from CDBG-DR funds provided through this Agreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided and activities are performed. Additional requirements of the assurances, certifications, and compliance measures below can be further detailed or outlined in the Agreement's exhibits, forms, and attachments.

SUBSECTION XIII.A. – IMMIGRATION LAWS AND CITIZENSHIP STATUS: The **COUNTY** will not intentionally award Agreements to any **SUBRECIPIENT** who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act (INA).

The **COUNTY** shall consider the employment by the **SUBRECIPIENT** of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the **COUNTY**.

Additionally, the **SUBRECIPIENT** must follow requirements to verify citizenship of CDBG-DR fund recipients in certain circumstances. In accordance with 49 CFR 24.408, the **SUBRECIPIENT** cannot provide relocation assistance to a person who has not provided certification of U.S. citizenship or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the **SUBRECIPIENT** that the denial of relocation assistance will result in an exceptional and extremely

unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. The **COUNTY** may require the **SUBRECIPIENT** to follow other verification requirements as prescribed within the Federal Register Guidance, regulations, or within the Action Plan.

Furthermore, the **SUBRECIPIENT** shall ensure that CDBG-DR funds, which are passed through Lee County, are restricted to people legally able to reside in the United States.

SUBSECTION XIII.B. - E-VERIFY REQUIREMENTS: The **SUBRECIPIENT** must verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the **SUBRECIPIENT**, or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of this Agreement.

SUBSECTION XIII.C. – NATIONAL OBJECTIVE: All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The **SUBRECIPIENT** certifies that the activities carried out under this Agreement shall meet the stated national objective as outlined under SUBSECTION II.C. NATIONAL OBJECTIVE. Furthermore, the **SUBRECIPIENT** certifies and acknowledges that it understands documentation and records requirements for the stated national objective type(s), as defined at 24 CFR 570.208, 24 CFR 570.506, and any and all alternative requirements under the Federal Register Guidance in relation to relevant national objective type(s) as stated in the above Subsection.

SUBSECTION XIII.D. – USE OF FUNDS AND ORDER OF ASSISTANCE: CDBG-DR Appropriations Acts generally include a statutory order of assistance for Federal agencies which require Grantees to verify whether funds made available by FEMA or the U.S. Army Corps of Engineers (USACE) are available for an activity, or the costs are reimbursable by FEMA or the USACE, before awarding CDBG-DR assistance for the cost of carrying out the same activity.

The **SUBRECIPIENT** shall not use CDBG-DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). The **SUBRECIPIENT** must verify and inform the **COUNTY** if FEMA and USACE funds are available prior to award or expenditure of CDBG-DR funds to an eligible activity within the Scope of Work contained under Exhibit B – Scope of Work and Activities – Project Activity Scope of Work Description, Exhibit H – Certification of CDBG-DR

Compliance Provisions further outlines Duplication of Benefits certifications which the **SUBRECIPIENT** must adhere to. Failure to do so can result in a return of funds as further outlined within this Agreement under SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS) and SUBSECTION XIII.E. DUPLICATION OF BENEFITS.

SUBSECTION XIII.E. – DUPLICATION OF BENEFITS: The **SUBRECIPIENT** certifies that it shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 et seq.) and described within Appropriations Acts and Federal Register Guidance. The **SUBRECIPIENT** must comply with HUD's requirements for Duplication of Benefits (DOB), as described in the Federal Register Guidance (Section IV.A.1. – Grant Administration; Duplication of Benefits (DOB)) and HUD guidance (including HUD training materials), including specific Order of Assistance requirements as noted under SUBSECTION XIII.D. USE OF FUNDS AND ORDER OF ASSISTANCE. The **SUBRECIPIENT** shall carry out the activities under this Agreement in compliance with the **COUNTY's** procedures to prevent DOB. The **SUBRECIPIENT** shall also sign a Subrogation Agreement (see Exhibit K – CDBG-DR Program Subrogation Agreement).

In accordance with the Federal Register Guidance at 88 FR 32053 – Section IV.A.1.(d)(v) Applicable Rules, Statutes, Waivers, and Alternative Requirements: Reassess Unmet Need When Necessary, the **SUBRECIPIENT** certifies that they will notify the **COUNTY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** application. This notification must include a statement explaining how this change in funding affects the provisions of the project and activity requirements as well as the use of and continued need for CDBG-DR funds through the **COUNTY**.

The **SUBRECIPIENT** shall either (1) maintain all funds provided under this Agreement in a separate bank account or (2) ensure that the **SUBRECIPIENT'S** accounting system shall have sufficient internal controls to separately track expenditure of all funds under this Agreement, in accordance with 2 CFR 200.302. In cases where the project and its activities are funded by more than one funding source (other funds besides CDBG-DR funds) where potential duplicative assistance could exist, the **SUBRECIPIENT** shall not commingle CDBG-DR funds provided under this Agreement with any other funds, projects or programs, when those funds are determined to be for the same purpose and same use, in accordance with the Federal Register Guidance. 88 FR 32050, Section IV.A.1.(a) – Overview of Grant Process, The Stafford Act – and Section 312 of the Stafford Act makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)). The **COUNTY** may, in its sole discretion, disallow costs made with commingled funds that were designated as being available for the same purpose and use as the CDBG-DR funds and require reimbursement for such costs as described herein (SUBSECTION V.B. – DEFERRED PAYMENTS AND RETURN OF FUNDS (RECAPTURE FOR DISALLOWED COSTS)).

SUBSECTION XIII.F. – CIVIL RIGHTS REQUIREMENTS: The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs, projects, and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this CDBG-DR funding, the **SUBRECIPIENT** assures and certifies the following:

1. That they will comply with all applicable Federal, state and local anti-discrimination laws pertaining to nondiscrimination in programs receiving Federal financial assistance, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations – including that recipients/grantees of Federal financial assistance are required to take reasonable steps to ensure meaningful access to persons who are Limited English Proficiency (LEP), as per Executive Order 13166 and the Federal Register Guidance, to items such as, but not limited to, project

outreach, project, or activity materials including communiques in the form of digital (website) media and paper materials.

- b. Section 109 - Title I of the Housing & Community Development Act of 1974
 - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
 - d. Age Discrimination Act of 1975 (42 U.S.C. 610 et. seq.)
 - e. Fair Housing Act
2. That they will comply with the Americans with Disabilities Act of 1990 ("ADA") (P.L. 101-336, as codified at U.S.C. 42.126 (sections 12101-12213) and as amended, and 28 CFR 35); the Florida Civil Rights Act, as amended, Chapter 76, F.S.; Title VII of the Civil Rights Act of 1964, as amended; and laws which give civil rights protections to individuals with disabilities, guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. A Single-Point-of-Contact shall be required if the agency employs 15 or more employees. The Single-Point-of-Contact will ensure effective communication with deaf or hard-of-hearing customers or companions in accordance with Section 504 and the ADA and coordinate activities and reports with the **SUBRECIPIENT'S** Single-Point-of-Contact.
 3. That if clients are to be transported under this Agreement, **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
 4. That if personnel in programs under this Agreement work directly with children/youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with applicable provisions under Florida Statutes 943.0542; 943.04351; 393.0655; 402, regarding employment screening.
 5. That activities under this Agreement shall provide for access to equal participation of religious or faith-based organizations, where applicable, in accordance with 24 CFR 570.200 and Executive Order 13279.

Additional requirement information can be accessed at the following websites:

- [Office of Fair Housing and Equal Opportunity \(FHEO\) Fair Housing Rights and Obligations](#)
- [FHEO main website](#)
- [Guidelines for promoting Fair Housing for individuals with Limited English Proficiency \(LEP\)](#)

These requirements are designed to prevent discrimination in the delivery of benefits and services because of race, color, religion (creed), sex, national origin, age, familial status or disability. Affirmative marketing plans and use of universal design features for construction and rehabilitative projects should be incorporated when possible.

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Different styles/types/sizes of logos and information regarding brochures can be found on the Fair Housing and Equal Opportunities HUD website.

SUBSECTION XIII.G. – DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE: In accordance with the Federal Register Guidance, the **SUBRECIPIENT** certifies that they will administer their programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud, waste, and abuse, and that it will target its services and activities to those who need them the most. Additionally, the **SUBRECIPIENT** certifies that their written standards of conduct and their conflict-of-interest policy will supplement their anti-fraud, waste, and abuse (AFWA) initiatives, and that the **SUBRECIPIENT** may be required to take part in fraud, waste, and abuse (FWA) training and will work with the **COUNTY** to develop a FWA complaint and reporting process, including reporting such

complaints to the **COUNTY**.

SUBSECTION XIII.H. – INELIGIBLE ACTIVITIES: The **SUBRECIPIENT** assures that it will not conduct or expend CDBG-DR funds on any activities which are deemed ineligible by the Federal Register Guidance (88 FR 32077, Section III.G.), federal regulations (most notably at 24 CFR 570.207), the Action Plan, and all other applicable laws.

SUBSECTION XIII.I. – PROGRAM INCOME: The **SUBRECIPIENT** shall report to the **COUNTY** all program income (as defined at 24 CFR 570.500 or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the **SUBRECIPIENT'S** periodic reporting outlined under SECTION VI. REPORTS AND EXHIBITS and SECTION VII. AUDITS, MONITORING, AND RECORDS.

The **SUBRECIPIENT** must return to the **COUNTY**, prior to closeout, any program income generated by the project and its activities. The **COUNTY** certifies that it shall use program income in accordance with the applicable requirements of 2 CFR 200.307 and alternative requirements and waivers as prescribed under the Federal Register Guidance at 88 FR 32074, Appendix B: CDBG-DR Consolidated Notice - Section III.E. Program Income (in place of requirements at 24 CFR 570.500 and 24 CFR 570.504), and the terms of this Agreement. The **SUBRECIPIENT** shall return program income to the **COUNTY** if a program income balance exists, or program income is generated after closeout. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Federal Register Guidance or the **COUNTY'S** CDBG Entitlement program, if program income is transferred to that program.

SUBSECTION XIII.J. – CITIZEN PARTICIPATION AND PUBLIC WEBSITE REQUIREMENTS: The **COUNTY**, as a Grantee, certified to HUD that it has a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements under the Federal Register Guidance). Additionally, the **COUNTY**, as a Grantee, certified to HUD that it will maintain a comprehensive CDBG-DR public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The Action Plan also details how the **COUNTY** will adhere to both requirements.

The **SUBRECIPIENT** certifies that it will adhere to requirements by the **COUNTY** to provide documentation and information which informs both the citizen participation and public website requirements. Further details on information needed to meet these requirements are spelled out in the exhibits, attachments, and forms as part of this Agreement.

SUBSECTION XIII.K. – PERSONALLY IDENTIFIABLE INFORMATION (PII): As previously referenced under SUBSECTION VII.D. RECORDKEEPING REQUIREMENTS and in accordance with 2 CFR 200.1 and 2 CFR 200.338, Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts. This does not include PII that is required by law to be disclosed.

PII must always be safeguarded, even in instances of public records requests. No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, *except for protected PII or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from*

disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency.

The **SUBRECIPIENT** certifies that they understand the PII definitions as noted above, and in accordance with their internal controls under 2 CFR 200.303, the **SUBRECIPIENT** shall take reasonable measures to safeguard protected PII and other information HUD or the **COUNTY** designates as sensitive or the **SUBRECIPIENT** considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and responsibility over confidentiality.

Additionally, the **COUNTY**, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a “covered entity,” as the law defines that term. Any “personal health information” (PHI) as defined by the law that the **COUNTY** receives pursuant to this Agreement in connection with this project and its activities, as applicable, is subject to the disclosure and security requirements of HIPAA. Transfer of information to the **COUNTY** sufficiently “de-identified” to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that public services are unaffected. Methods to accomplish the highest levels of public service coupled with PHI confidentiality will be an ongoing task of the affected staffs of the **COUNTY** and the **SUBRECIPIENT**.

SUBSECTION XIII.L. – NECESSARY AND REASONABLE REQUIREMENTS: The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for the Federal Awards in 2 CFR 200 Subpart E (Federal Cost Principles) apply to all CDBG-DR Grantees and their Subrecipients. The **SUBRECIPIENT** certifies that all costs incurred under this Agreement are necessary and reasonable for the performance of its project and/or activities. The Cost Principles are made applicable to local governments through 24 CFR 570.502. The **SUBRECIPIENT** must consider factors described at 2 CFR 200.404(a-e) when determining which types and amounts of cost items incurred under this Agreement are necessary and reasonable.

SUBSECTION XIII.M. – COPYRIGHT, PATENT AND TRADEMARK: In accordance with 2 CFR 200.1 and 2 CFR 200.135, trademarks, copyrights, patents and patent applications and property, are identified as intangible property, or property having no physical existence. The **SUBRECIPIENT** may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this CDBG-DR award. HUD, through the **COUNTY** as its pass-through entity, reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The **SUBRECIPIENT** is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR 401 (“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”).

Any and all patent rights accruing under, or in connection with, the performance of this Agreement are hereby reserved to the **COUNTY**. Any and all copyrights accruing under, or in connection with, the performance of this Agreement are hereby transferred by the **SUBRECIPIENT** to the **COUNTY**.

1. If the **SUBRECIPIENT** has a pre-existing patent or copyright, the **SUBRECIPIENT** shall retain all rights and entitlement to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.
2. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the **SUBRECIPIENT** shall refer the discovery or invention to the **COUNTY** for a determination whether the **COUNTY** will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the **COUNTY**. If any books, manuals, films, or other copyrightable material are produced, the **SUBRECIPIENT** shall notify the **COUNTY**. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the **SUBRECIPIENT** to

COUNTY. Within thirty (30) calendar days of execution of this Agreement, the **SUBRECIPIENT** shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. The **SUBRECIPIENT** shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and the **COUNTY** shall have the right to all patents and copyrights which accrue during performance of this Agreement.

SUBSECTION XIII.N. – FEDERAL TERMS AND CONDITIONS: For Federal CDBG-DR funded programs, the **SUBRECIPIENT** has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and will ensure compliance with applicable Uniform Administrative Requirements as described in 2 CFR 200, Community Development Block Grants (CDBG) regulations at 24 CFR 570, the Federal Register Guidance, the Action Plan, and all other established, applicable HUD regulations, acts, and statutes, as now in effect and as may be amended from time to time. The **COUNTY** outlines full CDBG-DR Compliance Provisions for the **SUBRECIPIENT** under Exhibit H – Certification of CDBG-DR Compliance Provisions and details program management standards within the respective program's manual.

SUBSECTION XIII.O. – STATE AND LOCAL GOVERNMENT REQUIREMENTS: The **SUBRECIPIENT** agrees to the following statements as it relates to state and/or local government requirements:

1. The **SUBRECIPIENT** will comply with all applicable laws, ordinances, and regulations of the United States, the State of Florida, the **COUNTY**, and the municipalities as said laws, ordinances, and regulations exist and are amended from time to time. In entering into this Agreement, the **COUNTY** does not waive the requirements of any **COUNTY** or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
2. The **SUBRECIPIENT** will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
3. The **SUBRECIPIENT** will comply with Chapter 415.1034, Florida Statutes, that any person who knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline (1-800-962-2873).
4. The **SUBRECIPIENT** will comply with and implement this Agreement in a manner satisfactory to Lee County and HUD and consistent with all applicable laws, regulations, and policies and procedures that may be required as a condition of Lee County providing the grant funds, including but not limited to, all applicable program administration and compliance requirements set forth by this Agreement, and in accordance with the CDBG-DR NOFA Application, CDBG-DR Action Plan, and any other documentation previously provided by the **SUBRECIPIENT**, attached as Exhibit F – Application, and made a part hereof.
5. Lee County's provision of grant funds under this Agreement is specifically conditioned on the **SUBRECIPIENT's** compliance with this provision and all terms and conditions of this Agreement, the most recently published version of Lee County's *Hurricane Ian CDBG-DR Subrecipient Manual* and *Internal Grant Management Manual*, and the CDBG-DR **Recovery and Resiliency Planning Program** Policies and Procedures Manual, which can be accessed on <https://cdbgdr.leegov.com>, and any amendments thereto, related Federal Register Guidance (including Guidance, which is provided under future Federal Register Notices), and the requirements of the authorities cited above, as the same may be amended from time to time.

6. The **SUBRECIPIENT** will acknowledge support for activities funded wholly or in part by CDBG-DR funds provided by HUD and the **COUNTY**. In publicizing, advertising, or describing the program, state "Funding provided by Lee Board of County Commissioners and HUD."
7. The **SUBRECIPIENT** will notify the **COUNTY** of any changes to the **SUBRECIPIENT** organization to include Board Membership (roster), Articles of Incorporation and Bylaws within ten (10) working days of the effective date.
8. If needed, **SUBRECIPIENT** may be called upon to assist the **COUNTY** during a natural disaster or emergency. This may include, but is not limited to, the use of the **SUBRECIPIENT'S** facility to assist with Emergency Food Stamp preregistration if the facility is operations and use of staff to assist with case management and post-disaster shelter assessments. **SUBRECIPIENT** will be responsible to notify United Way 211 via phone, email, or through submission of online survey form, immediately after a disaster declaration if the location is accessible and operational and of any **SUBRECIPIENT** staff who are available to assist with recovery efforts.

SECTION XIV: OTHER PROVISIONS AND CONDITIONS

If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

Any power of approval or disapproval granted to the **COUNTY** under the terms of this Agreement shall survive the term of this Agreement.

All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

In the event travel is pre-approved by the **COUNTY**, any bills for travel expenses shall be submitted and reimbursed in accordance with section 112.061, F.S., the rules promulgated thereunder and 2 CFR 200.474.

If the **SUBRECIPIENT** is allowed to temporarily invest any advances of CDBG-DR funds under this Agreement, any interest income shall either be returned to the **COUNTY**.

The **SUBRECIPIENT** acknowledges being subject to Florida's Government in the Sunshine Law (section 286.011, F.S.) with respect to the meetings of the **SUBRECIPIENT'S** governing board or the meetings of any subcommittee making recommendations to the governing board. The **SUBRECIPIENT** agrees that all such aforementioned meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

The **SUBRECIPIENT** shall comply with section 519 of P.L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Upon expiration or termination of this Agreement, the **SUBRECIPIENT** shall transfer to the **COUNTY** any CDBG-DR funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-DR funds.

SECTION XV: CITIZEN COMPLAINTS

The **SUBRECIPIENT** is responsible for tracking and reporting citizen complaints to the **COUNTY** under the following types of complaints and/or inquiries: (1) Program or Project Appeals, where applicable; (2) HUD complaints; (3) Fair Housing complaints; and (4) Fraud, Waste, and Abuse (FWA) complaints. The **SUBRECIPIENT** must adopt the **COUNTY's** written citizen complaint policy or provide their own policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days, where practicable, or the **SUBRECIPIENT** must document why additional time for the response is required.

SECTION XVI: LEGAL AUTHORIZATION

The **SUBRECIPIENT** certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The **SUBRECIPIENT** certifies that the undersigned person has the authority to legally execute and bind the **SUBRECIPIENT** to the terms of this Agreement. The **COUNTY** may, at its discretion, request documentation evidencing the undersigned has authority to bind the **SUBRECIPIENT** to this Agreement as of the Effective Date; any such documentation is incorporated herein by reference.

Prior to the execution of this Agreement, the **SUBRECIPIENT** warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation, or any other legal or financial condition that would in any way prohibit, restrain, or diminish the **SUBRECIPIENT'S** ability to satisfy its obligations. The **SUBRECIPIENT** shall immediately notify the **COUNTY** in writing if its ability to perform is compromised in any manner during the term of this Agreement.

SECTION XVII: AGREEMENT DISPUTE RESOLUTION PROCEDURE

Any dispute between the Parties with respect to provisions contained in a Lee County Office of Strategic Resources and Government Affairs Agreement or issues that arise pertinent to an Agreement shall be resolved as follows:

The Parties may, by mutual agreement, attempt to resolve their dispute in the following manner within a thirty (30) day period. If both parties are in agreement, the thirty (30) daytime period can be extended for an additional ten (10) days.

1. Duly authorized representatives shall meet as often as mutually agreeable to discuss in good faith the dispute and to negotiate a mutually agreeable resolution. Authorized representatives for SRGA include the Agreement Coordinator and Program Manager.
2. During the course of the dispute process, requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be responded to in good faith.
3. If the dispute is unable to be resolved between the authorized representatives within the specified time period, it will be forwarded to the Department Director for resolution. A decision by the Director will be issued within ten (10) days.
4. If the dispute remains unresolved after the Department Director's decision, the parties may proceed to litigation. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party

irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles. Unless otherwise agreed in writing, the **SUBRECIPIENT** will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

5. Either Party may at any time commence formal court proceedings, which shall be immediately communicated, and will end the informal Dispute Resolution process as described in Paragraph 1-3 above.

SECTION XVIII: AGREEMENT CLOSEOUT

The **SUBRECIPIENT** must complete a closeout checklist and final closeout reports to ensure complete and final documentation of all finance and program activities. The closeout checklist and reports must be submitted to the **COUNTY** within 90 days after the end date of this agreement.

The closeout checklist must include documentation and certification that:

1. All CDBG-DR funds have been expended within the exception of any closeout liabilities or contingent liabilities (24 CFR 570.509(a)(1));
2. All work financed with CDBG-DR funds has been completed, is eligible, and meets a national objective, including activities financed through escrow accounts, loan guarantees, or similar mechanisms; performance and expenditure reports have been submitted and account for program income and administrative expenditures (24 CFR 570.509(a)(2-5)); and
3. All other responsibilities under this Agreement have been met or the **COUNTY** has determined that there is no further benefit in keeping the Agreement open to secure performance (24 CFR 570.509(a)(6)).

The final closeout reports must include the following:

1. Final Project Performance Measures and Outcomes Form (*Exhibit E*);
2. Final *Monthly Activity Report* (with final progress narrative);
3. Updated *Project Budget and Expense (Sources and Uses) Worksheet* (including program income);
4. Final *Payment Request Form*; and
5. Inventory of property acquired or improved with CDBG funds. The inventory should identify real property acquired with over \$25,000 of CDBG funds including its current use, to facilitate compliance with requirements for the continuing eligible use of property at 24 CFR 570.505.

Based on the **SUBRECIPIENT'S** final reports and other relevant information, the **COUNTY** may execute a closeout agreement that specifies closeout costs or contingent liabilities that are subject to payment with CDBG-DR funds after the closeout agreement is signed; continuing responsibilities after closeout; or other provisions appropriate to special circumstances.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a **SUBRECIPIENT** does not affect:

1. The **COUNTY's** right to disallow costs and/or recover funds on the basis of a later audit or other review.
2. The **SUBRECIPIENT's** obligation to return funds due to the **COUNTY** from subsequent refunds, corrections, or other transactions.
3. The **COUNTY** and **SUBRECIPIENTS'S** obligation to comply with records retention as specified in 2 CFR 200, Subpart D—Post Federal Award Requirements, Records Retention and Access, including 2 CFR 200.334-338, as modified by 24 CFR 570.502(a)(7)(ii).
4. The **SUBRECIPIENT's** responsibilities for property management and disposition:

- For real property in 24 CFR 570.503(b)(7).
- For other property, as applicable in 2 CFR 200, Subpart D, Post Federal Award Requirements, Property Standards, including:
 - 2 CFR 200.310 (Insurance coverage).
 - 2 CFR 200.312 (Federally owned and exempt property).
 - 2 CFR 200.313 and 24 CFR 570.502(a)(6) (Equipment).
 - 2 CFR 200.314 (Supplies).
 - 2 CFR 200.315 (Intangible property).
 - 2 CFR 200.316 (Property trust relationship).
 - Audit requirements in 2 CFR 200, Subpart F.

SECTION XIX: NOTICES

Official notices concerning this Agreement will be directed to the following authorized representatives below, either in writing, by hand delivery, first class, or certified mail with return receipt requested at the addresses below, or in electronic format, by electronic mail:

SUBRECIPIENT

Name: Andy Hyatt
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 2525 Estero Boulevard, Fort Myers
Beach, FL 33931
Telephone: (239) 313-0895
Email: andyhyatt@fmbgov.com

COUNTY

Name: Glen Salyer
Title: Assistant County Manager
Agency: Office of Strategic Resources and
Government Affairs
Address: 2115 Second St. Fort Myers, FL 33901
Telephone: (239) 533-2315
Email: GSalyer@leegov.com

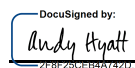
The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Andy Hyatt

Glen V. Salyer

Name (printed/typed)

Name (printed/typed)

DocuSigned by:


DocuSigned by:


Signature

Signature

Town Manager

Assistant County Manager

Title

Title

In the event that the **SUBRECIPIENT** designates different representatives after execution of this Agreement, notice of the name and address of the new representative will be rendered in writing or electronically by authorized officer of the **SUBRECIPIENT** to the **COUNTY**.

SECTION XX: ALL TERMS AND CONDITIONS INCLUDED

This Agreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, the **SUBRECIPIENT** and the **COUNTY** have caused this Agreement and all Agreement Exhibits, Attachments, Reports, and Forms as indicated on the *Risk Assessment Document Checklist* to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT: Town of Fort Myers Beach

BY:

DocuSigned by:
Andy Hyatt
2F8F20C6A17A2D...

Signature

Andy Hyatt

Name (print)

7/15/2024 | 7:48 AM EDT

Date

ATTEST:
CLERK OF CIRCUIT COURT

BY:

DocuSigned by:
Melissa Butler
34440A3DDF374A3...

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

DocuSigned by:
Mike Greenwell
AD51A9A2E0F943G...

Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

DocuSigned by:
Amanda L. Swindle
EC9B5A5504DD473...

County Attorney's Office

EXHIBIT A
SCOPE OF WORK AND ACTIVITIES
PROGRAM/PROJECT ACTIVITY OVERVIEW

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for program and project eligibility with core HUD CDBG-DR requirements. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record.

Program/Project Activity Overview

Project Name: Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates

CDBG-DR Program eligible activity: Planning

The National Objective to be achieved for each activity as a result of this Project: Activities expended for planning and administrative costs under 24 CFR 570.205 and 24 CFR 570.206, which are considered to address the national objectives.

The method of measuring the National Objective, if LMI:

The number of individuals benefiting as a result of this Project:

- Total beneficiaries: 0.00
- Total low/mod beneficiaries: 0.00

CDBG-DR storm tie-back and/or Mitigation resilience measure: Natural hazard risks, including climate-related risks, are of critical concern to the Town of Fort Myers Beach. In updating the Town's comprehensive plan and developing a long-term recovery strategy, the Town has established "Sustainability and Resiliency Measures" as a foundational consideration. The plan will address the following: mitigation measures and strategies to reduce natural hazard risks, including climate-related risks; reduction of risks to people and property; mitigation measures and strategies to reduce the risk of public service interruption for the community, especially those members of the community who are most vulnerable to natural and climate-related risks; and resiliency of community lifelines. This may include activities such as review of building codes, land-use regulations, and floodplain management strategies, strategies to preserve natural barriers such as wetlands and coastal barriers, and resilient infrastructure considerations, such as minimum elevations and reinforced buildings and materials. The proposed plan for updating the Town's comprehensive plan and crafting a long-term recovery strategy places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life.

Town of Fort Myers Beach
DR10157
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Page 2

EXHIBIT B
SCOPE OF WORK AND ACTIVITIES
PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

Project Activity Scope of Work Description ("Work")

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Recovery and Resiliency Planning Program to support critically necessary island-wide recovery and resilience planning initiatives. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for modernized, comprehensive and actionable recovery plans to guide the town's implementation of its recovery strategy, fully considering unmet needs, mitigation best practices and sustainability. Since the adoption of its last comprehensive plan on January 1, 1999, and subsequent amendments with the latest in 2009, the town recognizes the urgent need for an updated and strategic framework to guide its recovery from the catastrophic impacts of Hurricane Ian. The proposed funding will enable the creation of an updated comprehensive plan that thoroughly evaluates the current conditions, outlines a forward-looking vision for the community, and specifies actionable steps toward realizing this vision. This comprehensive planning endeavor will address key areas critical to the community's recovery and resilience, in accordance with Florida Statute 163.3177. (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/Sections/0163.3177.html) Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, planning efforts beyond those addressed in a typical Comprehensive Plan are needed. Through this project, the Town of Fort Myers Beach will build upon comprehensive planning activities to address the Town's Long Term Recovery Planning objectives. The Town aims to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning and execution. The planning process will prioritize recovery and redevelopment strategies that mitigate future risks, ensure continuity of critical services, protect vulnerable populations, and strengthen the community's resilience against natural and climate-related hazards. By incorporating considerations for FEMA Community Lifelines and aiming to reduce the disproportionate impacts on vulnerable groups, the plan will lay the groundwork for a resilient rebuild of Fort Myers Beach. The scope of planning activities encompasses all necessary data collection, studies, and analyses to formulate a holistic recovery strategy. Ultimately, comprehensive plan updates and a long-term recovery plan will not only provide strategic direction but also offer practical guidance for the effective

implementation of recovery actions, setting a precedent for resilience in the face of future challenges. The town may accomplish comprehensive planning updates and long-term recovery planning objectives through either development of a single plan or two symbiotic plans, based on upon expert guidance received from procured planning consultants with experience of projects in similar size and scope. In accordance with 2 CFR 200.318(d), the Town plans to procure a single contractor to complete both comprehensive plan updates and long term recovery planning activities to avoid procurement of duplicative services. While planning activities could be divided into separate projects and/or contracts, consolidation of this procurement will avoid procurement of duplicative services and a single contract can be expected to result in the most economical and fiscally responsible approach to pricing. The proposed planning initiatives for the Town of Fort Myers Beach, through the support of Community Development Block Grant Disaster Recovery (CDBG-DR) funding, are intended to fully address the unmet needs and mitigation requirements exposed by Hurricane Ian's devastation. By focusing on an integrative and community-driven approach, these initiatives will ensure that recovery planning is not only comprehensive but also deeply rooted in the real, on-the-ground needs of the community. The planning process will engage in a thorough analysis of unmet needs, identifying gaps in the existing recovery framework that have left certain areas, populations, or infrastructure vulnerabilities unaddressed. This will be achieved through a combination of data-driven evaluation and active engagement with community stakeholders, ensuring that the perspectives and experiences of those most affected by Hurricane Ian are central to the recovery strategy. By doing so, the plan will target resources and efforts towards the areas of greatest need, ensuring efficient use of funds and efforts. Furthermore, the approach to mitigation will be both forward-looking and grounded in best practices. Recognizing the changing climate and increasing frequency of severe weather events, the plan will incorporate cutting-edge resilience and mitigation strategies. These strategies will be focused not just on immediate recovery, but on long-term sustainability and preparedness for future events. By integrating the latest in climate adaptation and resilience thinking, the plan will position Fort Myers Beach as a leader in disaster preparedness, ensuring that the community is more robust and better protected against future threats. Additionally, the planning process itself will be characterized by efficiency and durability. By leveraging existing resources, engaging a wide range of stakeholders, and focusing on actionable outcomes, the planning initiatives will maximize impact while ensuring that the strategies developed are feasible and sustainable over the long term. The emphasis on actionable steps, grounded in a realistic assessment of resources and capabilities, will ensure that the plan is not just a visionary document but a practical roadmap to recovery and resilience. In summary, the comprehensive and long-term recovery planning proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, is a carefully designed approach to address the significant challenges posed by Hurricane Ian. By focusing on unmet needs, employing best-practice mitigation strategies, and ensuring the planning process is efficient and durable, the Town of Fort Myers Beach will not only recover from the impacts of Hurricane Ian but will emerge as a stronger, more resilient community, ready to face the challenges of the future with confidence.

Design and Approach: Phase I - Procurement: Upon award, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals

(RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327. In selecting a planning consultant, the Town will consider criteria such as: - Project understanding, original approach, and familiarity with innovative comprehensive and long-term recovery planning concepts. - Capabilities and previous experience in comparable projects and specialized experience and technical competence of the consultant, such as experience with post-disaster planning efforts that consider FEMA Community Lifelines and focus on community resilience and reduction of disproportionate impacts on vulnerable groups. - Demonstrated ability to utilize public engagement in the development of comprehensive and long-term recovery planning initiatives. - Proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to planning strategies. - Personnel assigned to the project demonstrating the consultant's capacity to complete the plans on time and within budget. - The Consultant's familiarity with the unique considerations of coastal communities in planning efforts; and, - Utilization of minority businesses and women's business enterprises, as required by 2 CFR 200.321. PHASE I DELIVERABLE: Execution of a contract for comprehensive plan updates and long-term recovery planning services. Phase II – Define Detailed Objectives and Deliverables: Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of comprehensive and long-term recovery planning initiatives. Foundational considerations of the Town's planning efforts will be: - Community Impact and Community Engagement: The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic "area of high need". Planning efforts will include extensive and inclusive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that will be impacted by planning efforts. - Sustainability and Resiliency Measures: Given the devastation suffered by the Town of Fort Myers Beach, sustainability and resiliency measures to mitigate future risks are fundamental "areas of high need" related to planning efforts. Mitigation or resiliency measures and strategies to reduce natural hazard risks are critical components of planning efforts. These include climate-related risks, such as reducing risks to people and property, public service interruption for members who are most vulnerable to natural and climate-related risks, disproportionate impacts of economic, social, and climate shocks to vulnerable populations, including those with disabilities, the elderly, LMI households and neighborhoods, and non-native English speakers, and/or community lifelines. - Local Coordination and Avoidance of Redundancy: To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning efforts will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community. Updates to the Town's comprehensive plan will be conducted in accordance with the required and optional elements of comprehensive plans specified in F.S. 163.3177. Additional areas of focus for the Town's long-term recovery planning activities may include considerations important to the Town beyond those specified in statute; as such, the Town acknowledges that the selected planning consultant may suggest areas of study based on industry best practices and the unique recovery challenges

faced by the Town of Fort Myers Beach. Potential areas of study include, but are not limited to: - Existing Conditions - Vision and Goals - Land Use - Housing Strategy, with particular emphasis on Workforce Housing - Critical Infrastructure - Community Resilience - Community Facilities - Environmental Considerations - Economic Revitalization - Demographics and Trends - Cultural Considerations

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges. In Phase II, the Town will determine if a single plan to achieve both comprehensive plan updates and detail long-term recovery objectives is the most effective approach to accomplish planning goals, or if two separate, but symbiotic plans are more appropriate.

PHASE II DELIVERABLE: A detailed implementation plan for completion of planning activities and a corresponding timeline for project completion.

Phase III – Plan Development: The planning consultant will be responsible for all activities necessary to develop comprehensive plan updates and the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, draft plan documents will be presented for Town review, consideration, and feedback.

PHASE III DELIVERABLE: Draft comprehensive plan updates and a draft long-term recovery plan for Town review.

Phase IV - Plan Refinement: Based on feedback provided in Phase III, the planning consultant will modify and refine the comprehensive recovery plan to ensure that the Town's detailed objectives have been addressed.

PHASE IV DELIVERABLE: Final comprehensive plan updates and a final long-term recovery plan for Town adoption.

Phase V – Plan Adoption: The planning consultant will publicly present the final comprehensive plan updates and the final long-term recovery plan, after which the Town can adopt the plans for implementation.

EXHIBIT C
FINANCIAL AND GRANT MANAGEMENT SYSTEM BUDGET WORKSHEET

The information provided under this Exhibit is retrieved from the Subrecipient Agreement. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations within the County’s financial accounting system for the awarded CDBG-DR funds. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

Financial and Grant Management System Budget Worksheet

As noted within the Agreement, the Subrecipient’s allocation of CDBG-DR funding for this project is broken down in the following manner:

	Most Impacted and Distressed (MID)
Activity Funds (Direct Project Costs)	\$1,500,000.00
Activity Delivery Funds	\$75,000.00
Total	\$1,575,000.00

EXHIBIT D
INDIRECT COST RATE ALLOCATION PLAN

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the NOFA 1. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up and encumber budget obligations for an indirect cost rate within the County's financial accounting system. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record, financial accounting records, and/or under a formal amendment in accordance with the Agreement.

Indirect Cost Rate Allocation Plan

When applicable, documentation that supports the indirect cost rate and Activity Delivery Cost must be included under this Exhibit. The County is responsible for reviewing and approving the Subrecipient's indirect cost allocation plan or proposal included below. Calculated Modified Total Direct Costs (MTDCs) subject to a: Not applicable – an indirect cost rate will not be utilized or requested from the subrecipient under this Agreement.

See the plan or proposal above for further details and requirements of when the Subrecipient is set to receive indirect costs. The County also identifies financial data and information in Exhibit C for the Subrecipient's use in the submission of Payment Request Forms, Single Audits, and other reports which require the County's accounting of CDBG-DR funding through its financial system.

EXHIBIT E**PROJECTED PERFORMANCE MEASURES AND OUTCOMES FORM**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement and the Subrecipient's approved application in response to the Recovery and Resiliency Planning NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to set up detailed performance management goals for the Subrecipient to meet through implementing and completing the project.

The Subrecipient will report via the monthly activity report on how the project has progressed on reaching the target numbers of the projected performance measure(s). Subrecipients will work with the County to ensure any updates to this Exhibit are subsequently reviewed and approved within the System of Record in accordance with the Agreement.

Projected Performance Measures and Outcomes

When applicable, documentation which supports the performance measure(s) is taken from the Subrecipient's stated project scope of work ("projected outcomes"). The following table provides those measures which the Subrecipient must report performance on related to meeting performance goals:

{SELECT TABLE ROWS which are appropriate for the eligible activity(ies) provided under Exhibit A – From that point, select only those eligible activity performance measures which the Subrecipient will report on and provide that table below. The table may continue onto a second or third page}

Eligible Activity Type	Possible Performance Measures/Accomplishments (select at least one measure for the eligible activity being met)	Projected Total
Planning	# of Water Management/Flood Maps Updated	
	# of Community Engagement Meetings/Events Conducted	
	# of Public Education Meetings Conducted	
	# of Hazard Mitigation Plans Prepared	
	# of Resilience Plans Created	
	# of Plans or Planning Products	1
	# of Water Management/Flood Plans Completed	
	# of Floodplain Design Standards Updated	
	# of Survey Respondents with an Increased Understanding of Flood Risks and Water Management Issues	
	# of Mitigation Plans Completed	
	# of Plans Adopted	1
	# of Non-Business Organizations Benefiting	
	# of Entities at Resilience Meetings	
	# of Climate Action Plans Completed	
	# of Acres with Improved Multiple Hazard Risk Mapping	
	# of Disaster Recovery Plans Completed	
	# of Persons at Resilience Meetings	
	# of Planning Studies and Initiatives Completed	
	Other	

EXHIBIT F**APPLICATION**

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the *Recovery and Resiliency Planning NOFA*. In coordination and agreement with the Subrecipient, the County will utilize the information below as a reference point to establish the original, approved conditions under which the original project was considered. The County will review this Exhibit when considering changes to the Agreement or other project details as outlined within the System of Record. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

Application

Please see the following documentation below: The full, approved project application, submitted by the Subrecipient, for which this Agreement was completed. Supporting documentation submitted by the Subrecipient as part of the application process is incorporated by reference and is maintained within the System of Record. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:

1. *Subrecipient Agreement*
2. *Notice of Funding Availability Recovery and Resiliency Planning.*
3. *Recovery and Resiliency Planning Program Guidelines*
4. *Notice to Proceed*
5. *Subrecipient's application in response to the Notice of Funding Availability*

{INCLUDE/DROP IN the project application and Program Guidelines into this Exhibit to complete it}.



Lee County
Southwest Florida

Recovery and Resiliency Planning Program



Organization Information

- ▶ Organization Name: Town of Fort Myers Beach
- ▶ Address: 2525 Estero Boulevard Fort Myers Beach, FL 33931
- ▶ Organization Type: Unit of general local government
- ▶ Telephone: (239) 765-0202
- ▶ Federal Employer ID #: 65-0632342
- ▶ Organization Website: <https://fortmyersbeachfl.gov/>
- ▶ Unique Entity Identifier: J87EFSEEQ884

Authorized Organization Representative

- ▶ Name: Frank Kropacek
- ▶ Title: Operations & Compliance Director

Contact Person

- ▶ Name: Jason Freeman
- ▶ Title: Legislative Liaison / Deputy Clerk
- ▶ Email: jasonf@fmbgov.com
- ▶ Telephone: (239) 266-4673



Plan Information

- ▶ Plan Name: Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates
- ▶ Plan Type: New Plan

Plan Type

- | | |
|---|---|
| ☒ Comprehensive | ☒ Historic Preservation |
| ☒ Community Development | ☒ Housing |
| ☒ Continuity of Operations | ☒ Land-Use |
| ☒ Economic Revitalization | ☒ Open Space and Recreation |
| ☒ Energy Use and Conservation | ☒ Transportation |
| ☒ Floodplain, Wetlands Management, or other Natural Hazards | ☒ Utilities |
| ☐ Other: | ☒ Human Services |



Target Services Location

Target Service Location

- | | |
|---|--|
| ☐ City of Cape Coral | ☒ Town of Fort Myers Beach |
| ☐ City of Fort Myers | ☐ Village of Estero |
| ☐ City of Bonita Springs | ☐ Unincorporated Lee County |
| ☐ City of Sanibel | ☐ All of Lee County |
| ☐ Other: | |

Additional Service Areas

- Service Areas Outside Lee County: No

The scope and projected outcome(s) of the plan

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Recovery and Resiliency Planning Program to support critically necessary island-wide recovery and resilience planning initiatives. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for modernized, comprehensive and actionable recovery plans to guide the town's implementation of its recovery strategy, fully considering unmet needs, mitigation best practices and sustainability.

Since the adoption of its last comprehensive plan on January 1, 1999, and subsequent amendments with the latest in 2009, the town recognizes the urgent need for an updated and strategic framework to guide its recovery from the catastrophic impacts of Hurricane Ian. The proposed funding will enable the creation of an updated comprehensive plan that thoroughly evaluates the current conditions, outlines a forward-looking vision for the community, and specifies actionable steps toward realizing this vision. This comprehensive planning endeavor will address key areas critical to the community's recovery and resilience, in accordance with Florida Statute 163.3177. (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL;=0100-0199/0163/Sections/0163.3177.html)

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, planning efforts beyond those addressed in a typical Comprehensive Plan are needed. Through this project, the Town of Fort Myers Beach will build upon comprehensive planning activities to address the Town's Long Term Recovery Planning objectives. The Town aims to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning and execution.

The planning process will prioritize recovery and redevelopment strategies that mitigate future risks, ensure continuity of critical services, protect vulnerable populations, and strengthen the community's resilience against natural and climate-related hazards. By incorporating considerations for FEMA Community Lifelines and aiming to reduce the disproportionate impacts on vulnerable groups, the plan will lay the groundwork for a resilient rebuild of Fort Myers Beach.

The scope of planning activities encompasses all necessary data collection, studies, and analyses to formulate a holistic recovery strategy. Ultimately, comprehensive plan updates and a long-term recovery plan will not only provide strategic direction but also offer practical guidance for the effective implementation of recovery actions, setting a precedent for resilience in the face of future challenges. The town may accomplish comprehensive planning updates and long-term recovery planning objectives through either development of a single plan or two symbiotic plans, based on upon expert guidance received from procured planning consultants with experience of projects in similar size and scope. In accordance with 2 CFR 200.318(d), the Town plans to procure a single contractor to complete both comprehensive plan updates and long term recovery planning activities to avoid procurement of duplicative services. While planning activities could be divided into separate projects and/or contracts, consolidation of this procurement will avoid procurement of duplicative services and a single contract can be expected to result in the most economical and fiscally responsible approach to pricing.

The proposed planning initiatives for the Town of Fort Myers Beach, through the support

of Community Development Block Grant Disaster Recovery (CDBG-DR) funding, are intended to fully address the unmet needs and mitigation requirements exposed by Hurricane Ian's devastation. By focusing on an integrative and community-driven approach, these initiatives will ensure that recovery planning is not only comprehensive but also deeply rooted in the real, on-the-ground needs of the community. The planning process will engage in a thorough analysis of unmet needs, identifying gaps in the existing recovery framework that have left certain areas, populations, or infrastructure vulnerabilities unaddressed. This will be achieved through a combination of data-driven evaluation and active engagement with community stakeholders, ensuring that the perspectives and experiences of those most affected by Hurricane Ian are central to the recovery strategy. By doing so, the plan will target resources and efforts towards the areas of greatest need, ensuring efficient use of funds and efforts.

Furthermore, the approach to mitigation will be both forward-looking and grounded in best practices. Recognizing the changing climate and increasing frequency of severe weather events, the plan will incorporate cutting-edge resilience and mitigation strategies. These strategies will be focused not just on immediate recovery, but on long-term sustainability and preparedness for future events. By integrating the latest in climate adaptation and resilience thinking, the plan will position Fort Myers Beach as a leader in disaster preparedness, ensuring that the community is more robust and better protected against future threats.

Additionally, the planning process itself will be characterized by efficiency and durability. By leveraging existing resources, engaging a wide range of stakeholders, and focusing on actionable outcomes, the planning initiatives will maximize impact while ensuring that the strategies developed are feasible and sustainable over the long term. The emphasis on actionable steps, grounded in a realistic assessment of resources and capabilities, will ensure that the plan is not just a visionary document but a practical roadmap to recovery and resilience.

In summary, the comprehensive and long-term recovery planning proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, is a carefully designed approach to address the significant challenges posed by Hurricane Ian. By focusing on unmet needs, employing best-practice mitigation strategies, and ensuring the planning process is efficient and durable, the Town of Fort Myers Beach will not only recover from the impacts of Hurricane Ian but will emerge as a stronger, more resilient community, ready to face the challenges of the future with confidence.

Implementation Plan - The approach to completing the plan

Phase I - Procurement:

Upon award, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals (RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR

200.318-327. In selecting a planning consultant, the Town will consider criteria such as: - Project understanding, original approach, and familiarity with innovative comprehensive and long-term recovery planning concepts. - Capabilities and previous experience in comparable projects and specialized experience and technical competence of the consultant, such as experience with post-disaster planning efforts that consider FEMA Community Lifelines and focus on community resilience and reduction of disproportionate impacts on vulnerable groups. - Demonstrated ability to utilize public engagement in the development of comprehensive and long-term recovery planning initiatives. - Proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to planning strategies. - Personnel assigned to the project demonstrating the consultant's capacity to complete the plans on time and within budget. - The Consultant's familiarity with the unique considerations of coastal communities in planning efforts; and, - Utilization of minority businesses and women's business enterprises, as required by 2 CFR 200.321.

PHASE I DELIVERABLE: Execution of a contract for comprehensive plan updates and long-term recovery planning services.

Phase II – Define Detailed Objectives and Deliverables:

Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of comprehensive and long-term recovery planning initiatives. Foundational considerations of the Town's planning efforts will be: - Community Impact and Community Engagement: The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic “area of high need”. Planning efforts will include extensive and inclusive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that will be impacted by planning efforts. - Sustainability and Resiliency Measures: Given the devastation suffered by the Town of Fort Myers Beach, sustainability and resiliency measures to mitigate future risks are fundamental “areas of high need” related to planning efforts. Mitigation or resiliency measures and strategies to reduce natural hazard risks are critical components of planning efforts. These include climate-related risks, such as reducing risks to people and property, public service interruption for members who are most vulnerable to natural and climate-related risks, disproportionate impacts of economic, social, and climate shocks to vulnerable populations, including those with disabilities, the elderly, LMI households and neighborhoods, and non-native English speakers, and/or community lifelines. - Local Coordination and Avoidance of Redundancy: To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning efforts will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community.

Updates to the Town's comprehensive plan will be conducted in accordance with the required and optional elements of comprehensive plans specified in F.S. 163.3177. Additional areas of focus for the Town's long-term recovery planning activities may include considerations important to the Town beyond those specified in statute; as such, the Town acknowledges that the selected planning consultant may suggest areas of study based on industry best practices and the unique recovery challenges faced by the Town of Fort Myers Beach. Potential areas of study include, but are not limited to: - Existing Conditions - Vision and Goals - Land Use - Housing Strategy, with particular emphasis on Workforce Housing - Critical Infrastructure - Community Resilience - Community Facilities - Environmental Considerations - Economic Revitalization - Demographics and Trends - Cultural Considerations

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

In Phase II, the Town will determine if a single plan to achieve both comprehensive plan updates and detail long-term recovery objectives is the most effective approach to accomplish planning goals, or if two separate, but symbiotic plans are more appropriate.

PHASE II DELIVERABLE: A detailed implementation plan for completion of planning activities and a corresponding timeline for project completion.

Phase III – Plan Development:

The planning consultant will be responsible for all activities necessary to develop comprehensive plan updates and the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, draft plan documents will be presented for Town review, consideration, and feedback.

PHASE III DELIVERABLE: Draft comprehensive plan updates and a draft long-term recovery plan for Town review.

Phase IV - Plan Refinement:

Based on feedback provided in Phase III, the planning consultant will modify and refine the comprehensive recovery plan to ensure that the Town's detailed objectives have been addressed.

PHASE IV DELIVERABLE: Final comprehensive plan updates and a final long-term recovery plan for Town adoption.

Phase V – Plan Adoption:

The planning consultant will publicly present the final comprehensive plan updates and the final long-term recovery plan, after which the Town can adopt the plans for implementation.

The unmet or mitigation need that is being addressed by the plan and how the plan aligns with community goals

The Town of Fort Myers Beach has not undergone comprehensive planning since 1999, with the most recent updates having been adopted in 2009. Even without the unprecedented destruction of Hurricane Ian, the Town of Fort Myers Beach would be long overdue for comprehensive planning updates; however, Hurricane Ian's devastation of the community has created increased urgency for current comprehensive planning efforts and supplemental long term recovery planning. Every facet of the Town was impacted by

this disaster. As rebuilding and recovery continues, it is critical that the Town has current comprehensive planning, while also addressing unique post-disaster challenges in a broader long-term recovery plan. In conjunction, accomplishing these objectives (through either a single plan or separate plans) will promote thoughtful, intentional recovery and future development that is both (a) aligned with the community's vision and (b) implemented with resilience and sustainability in mind.

The urgency and importance of comprehensive and long-term recovery planning activities for Fort Myers Beach in the aftermath of Hurricane Ian cannot be overstated. The catastrophic impacts of the hurricane have exposed vulnerabilities across every facet of the town, from infrastructure and housing to the local economy and natural environment. The disaster has not only underscored the need for immediate rebuilding efforts but has also highlighted the critical necessity for strategic, forward-thinking planning to ensure the community's resilience and sustainability in the face of future challenges.

The proposed comprehensive planning activities will provide a framework for the Town of Fort Myers Beach to rebuild in a manner that corrects pre-existing vulnerabilities and strengthens the community against future storms and climate-related impacts. This planning is crucial for identifying areas where the town's infrastructure, buildings, and public services can be improved and made more resilient. By doing so, the town will not only recover from the immediate damage inflicted by Hurricane Ian but also enhance its overall capacity to withstand and quickly recover from future disasters.

Furthermore, integrating long-term recovery planning with comprehensive planning efforts will ensure that the town's development trajectory is both sustainable and reflective of the community's vision. This dual approach allows for the incorporation of modern urban planning principles, environmental conservation, and sustainable development practices that are critical for addressing the challenges of climate change and sea-level rise. It provides a unique opportunity to reimagine Fort Myers Beach as a model of resilience, where economic, social, and environmental sustainability are interwoven into the fabric of the community.

Additionally, these planning activities are essential for securing the trust and support of the community. Engaging residents and stakeholders in the planning process fosters a sense of ownership and collective responsibility for the town's recovery and future. This participatory approach ensures that recovery efforts are not only aligned with the community's needs and aspirations but also bolster the social cohesion necessary for effective long-term resilience.

Moreover, comprehensive and long-term recovery planning will enable Fort Myers Beach to leverage funding and resources more effectively. By presenting clear, well-conceived plans, the town will be in a stronger position to attract investment, secure disaster recovery funds, and implement projects that provide the greatest benefit to the community. This strategic approach to planning and resource allocation is critical for maximizing the impact of limited resources and ensuring that recovery efforts are both efficient and equitable.

In conclusion, the devastation wrought by Hurricane Ian has brought into sharp focus the critical need for updated comprehensive planning and the integration of long-term recovery strategies for Fort Myers Beach. These planning activities are not merely administrative tasks but are fundamental to building a resilient, sustainable, and thriving community that is prepared to face the challenges of the future. Through thoughtful, intentional recovery and development efforts, Fort Myers Beach can emerge from this disaster stronger and more resilient than ever before.

Explain your agency's experience completing plans of a similar size and scope, including federal, state, and/or local government grant experience and capacity of the organization to administer the plan and oversee all compliance requirements

The Town of Fort Myers Beach staff members who will be directly engaged in this project are listed below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will partner with Hendry County to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG

Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Describe how the proposed plan integrates mitigation measures and strategies to reduce natural hazard risks, including climate-related risks. Mitigation measures include but are not limited to reducing risks to people and property; public service interruption for members who are most vulnerable to natural and climate-related risks; and/or community lifelines.

Natural hazard risks, including climate-related risks, are of critical concern to the Town of Fort Myers Beach. In updating the Town's comprehensive plan and developing a long-term recovery strategy, the Town has established "Sustainability and Resiliency Measures" as a foundational consideration. (See Phase II of the Town's approach to plan completion.) The Town's planning consultant will be directed to address considerations such as: mitigation measures and strategies to reduce natural hazard risks, including climate-related risks; reduction of risks to people and property; mitigation measures and strategies to reduce the risk of public service interruption for the community, especially those members of the community who are most vulnerable to natural and climate-related risks; and resiliency of community lifelines. This may include activities such as review of building codes, land-use regulations, and floodplain management strategies, strategies to preserve natural barriers such as wetlands and coastal barriers, and resilient infrastructure considerations, such as minimum elevations and reinforced buildings and materials. The Town of Fort Myers Beach is acutely aware of the heightened vulnerability its community faces in light of natural and climate-related hazards. In response, our proposed plan for updating the Town's comprehensive plan and crafting a long-term recovery strategy places a premium on integrating advanced mitigation measures and resilience-building strategies designed to reduce risks to both people and property, ensure the continuity of essential public services during disasters, and safeguard community lifelines critical for recovery and daily life. This comprehensive approach to mitigation and resilience is encapsulated in the "Sustainability and Resiliency Measures" phase of our planning process, demonstrating our commitment to a future where Fort Myers Beach thrives in harmony with its natural environment and is prepared for the challenges posed by climate change.

The Town's methodology involves a multi-faceted approach to identifying and addressing natural hazard risks. Initially, the Town's planning consultant will conduct a thorough review of existing building codes, land-use regulations, and floodplain management strategies to identify current gaps and areas for improvement. This review will inform the development of revised policies that not only comply with but exceed current standards for resilience, incorporating the latest science and best practices in disaster risk reduction. For instance, strategies to preserve and restore natural barriers, such as wetlands and coastal dunes, will be prioritized for their dual role in protecting against storm surge and providing valuable ecosystems.

Moreover, our approach advocates for the implementation of resilient infrastructure designs, including the adoption of minimum building elevation standards, the use of reinforced construction materials, and the integration of green infrastructure to manage stormwater and reduce flood risk. These measures are aimed at minimizing damage during disasters, ensuring rapid recovery, and reducing long-term costs for rebuilding and insurance.

Planning efforts will include targeted strategies to address the specific vulnerabilities of our most at-risk populations, including those with disabilities, the elderly, low- to moderate-income (LMI) households, neighborhoods, and non-native English speakers. These strategies encompass enhanced communication and emergency preparedness training, the development of accessible evacuation plans, and the establishment of

resilient community centers that can serve as hubs of support during and after disasters.

The plan's intent to reduce targeted risks will be articulated through a clear narrative supported by quantifiable projections. This will involve the use of risk modeling and vulnerability assessments to quantify potential impacts of natural and climate-related hazards under current and future scenarios. By comparing these projections with the anticipated benefits of proposed mitigation measures, the plan will offer a compelling, data-driven rationale for its strategies, demonstrating how they will concretely reduce the community's risk profile.

Ultimately, the Town's plan (or plans) will be designed to enhance the long-term resilience of Fort Myers Beach by embedding sustainability and resilience into the fabric of our community. Through the adoption of new and enhanced data-driven approaches to understanding and mitigating risk, coupled with a commitment to ongoing evaluation and adaptation of our strategies, our plan will lay the groundwork for a Fort Myers Beach that not only survives but thrives in the face of natural disasters and climate change. This forward-thinking approach ensures that our community's recovery and development are built on a foundation of resilience, protecting our people, our economy, and our unique way of life for generations to come.

Identify the risks or hazards being reduced and the impacts that those hazards have on people and property

Future hurricane/weather impacts and risks associated with climate change, such as sea level rise, are the most apparent risks that will be addressed and reduced by planning efforts to be undertaken by the Town. The town of Fort Myers Beach was one of the most impacted areas of Lee County. Fort Myers Beach suffered catastrophic flooding and storm surge, resulting in widespread destruction of vertical construction and infrastructure. While many areas of Lee County were able to reopen and begin rebuilding in the days and weeks following Ian, Fort Myers Beach is still devastated in many critical respects. Peak storm surge inundation levels of 10 to 15 feet above ground level (AGL) occurred in Fort Myers Beach and Estero Island, with a United States Geological Survey (USGS) water level sensor measured a wave-filtered water level of 12.70 ft above the mean higher high water (MHHW) level at Fort Myers Beach Pier, which was the highest water level measurement from this network.

Lee County's Action Plan for Hurricane Ian CDBG-DR funding accurately indicates that the Town of Fort Myers Beach fell within the highest possible bracket for each damage perspective considered: Fort Myers Beach had greater than \$50,000,000 in Real Property FEMA Verified Losses (RPFVL), greater than \$8,000 in average RPFVL, more than 800 FEMA Applicants with Real Property Damages. Further, the Action Plan also indicates that the Town of Fort Myers Beach ranks High/Medium or High/High in both RPFVL and Social Vulnerability.

The devastation caused by Hurricane Ian in 2022 impacted nearly every resident and property in the Town of Fort Myers Beach; this planning effort will identify effective mitigation measures for Town adoption, thereby mitigating the risk of future devastation and destruction similar to that experienced in the aftermath of Hurricane Ian.

Planning efforts to be undertaken by the Town of Fort Myers Beach are focused on a multi-dimensional approach to risk reduction, targeting not just the physical impacts of

hurricanes and climate change but also the broader social and economic vulnerabilities exposed by such disasters. The identified risks and hazards, notably future hurricane impacts, storm surge, sea level rise, and the resulting effects on the community, necessitate a nuanced understanding of how these factors interplay to exacerbate the town's vulnerability.

The physical impacts of these hazards are stark, with catastrophic flooding, storm surge, and the destruction of buildings and infrastructure laying bare the urgent need for robust mitigation strategies. However, beyond the immediate physical damage, these events have profound implications for the social fabric and economic stability of Fort Myers Beach. The community's experience following Hurricane Ian illustrates the cascading effects of such disasters, where the immediate challenge of physical rebuilding is compounded by longer-term issues such as displacement, loss of livelihoods, and the psychological toll on affected populations.

To address these risks comprehensively, the planning efforts will incorporate advanced modeling and risk assessment tools to predict the impacts of future weather events and climate change phenomena with greater accuracy. This includes detailed mapping of flood zones, understanding the potential for future sea level rise, and modeling storm surge impacts under various scenarios. By identifying the specific areas and populations at greatest risk, the town can prioritize mitigation measures that offer the most significant protective benefits.

Furthermore, the planning process will explore innovative mitigation strategies that go beyond traditional infrastructure solutions. These may include nature-based solutions such as the restoration of mangroves and dunes that act as natural barriers against storm surge, the implementation of green infrastructure to manage floodwaters, and the design of buildings and communities that are both resilient and adaptable to changing environmental conditions.

Economic and social resilience measures are also a critical component of the planning efforts. Initiatives to strengthen local economies, support displaced workers, and provide mental health resources in the aftermath of disasters are vital for the community's long-term recovery and resilience. By integrating these measures into the comprehensive planning process, Fort Myers Beach can ensure that its approach to risk reduction is holistic, addressing not only the physical impacts of hazards but also the social and economic challenges that accompany them.

In conclusion, the planning efforts by the Town of Fort Myers Beach to reduce the risks and impacts of hurricanes and climate-related hazards are comprehensive and forward-looking. By combining detailed risk assessments with innovative mitigation and resilience strategies, the town is laying the groundwork for a future where its people, property, and way of life are better protected against the inevitable challenges posed by natural disasters and climate change. This approach not only aims to mitigate the risk of future devastation but also to enhance the overall resilience of Fort Myers Beach, ensuring its ability to thrive in the face of adversity.

Describe the value of the proposed plan to the community. Describe the anticipated short-term impacts during normal circumstances, as well as how the plan will enhance resilience in the long term and during extreme events. Description should include qualitative or quantitative data

Comprehensive plan updates and long-term recovery planning efforts hold incalculable value for the Town of Fort Myers Beach. Through thoughtful community engagement, these plans will reflect the community's needs and values and provide direction for future planning and development decisions. The Town anticipates plans that will provide short-term recommendations and suggestions that can be adopted immediately to promote thoughtful short-term growth and development consistent with the community's vision. Plans will also address long-term resiliency planning and mitigation strategies that can be adopted to guide future growth and development in ways that will better equip the Town, its residents, and businesses to deal with future extreme weather events. Phase II of the Town's approach to plan completion specifically addresses "Sustainability and Resiliency Measures" as a foundational component of planning activities that will be funded through this project.

The proposed comprehensive plan updates and long-term recovery planning efforts represent a pivotal investment in the future of Fort Myers Beach, offering both immediate and enduring benefits to the community. In the short term, these planning initiatives promise to lay the groundwork for strategic growth and development that aligns closely with the community's vision and values. By engaging residents and stakeholders in the planning process, the Town ensures that the resulting recommendations and guidelines are deeply rooted in the community's collective aspirations, thereby fostering a sense of ownership and commitment to the plan's implementation.

Short-term impacts of the proposed plan include the rapid adoption of recommendations that address current challenges and opportunities. For instance, improvements in zoning and land use, enhancements to public spaces, and initiatives aimed at boosting local economic development can be swiftly implemented, leading to immediate improvements in community livability and economic vitality. These actions, grounded in the principles of sustainability and resilience, also set the stage for long-term benefits by establishing a framework for decision-making that prioritizes the community's long-term health and prosperity.

Quantitatively, the value of these planning efforts can be measured in several ways, such as increased economic activity, enhanced property values, and improved public safety metrics. Qualitatively, the benefits include a stronger sense of community identity, greater civic engagement, and a heightened collective capacity to envision and work towards a shared future.

In the long-term, the comprehensive plan and recovery strategy will serve as a blueprint for resilience in the face of extreme weather events and climate change. By incorporating "Sustainability and Resiliency Measures" as a core element, the plan will guide the Town in implementing mitigation strategies designed to reduce vulnerability to natural disasters. This includes, but is not limited to, infrastructure improvements, adoption of resilient building codes, and the preservation and restoration of natural barriers. These measures not only protect against immediate hazards but also contribute to the overall sustainability of the community, ensuring that Fort Myers Beach remains a vibrant and attractive place to live, work, and visit for generations to come.

The long-term value of these planning efforts is also reflected in the enhanced resilience of the community during extreme events. By proactively addressing vulnerabilities and implementing targeted mitigation strategies, the Town will be better prepared to withstand and recover from future disasters. This resilience translates to reduced recovery costs, minimized economic disruption, and a quicker return to normalcy for residents and businesses alike.

In conclusion, the proposed comprehensive plan updates and long-term recovery



planning efforts are of immense value to the Town of Fort Myers Beach. They offer a strategic path forward that balances immediate needs and long-term goals, with a clear focus on community engagement, sustainability, and resilience. Through these efforts, the Town is not only addressing current challenges but also laying the foundation for a future where Fort Myers Beach is better prepared, more resilient, and thriving in the face of whatever challenges may come.

Timelines of critical tasks to be accomplished for each proposed activity, including a description of the steps you will take to complete the funded activities and describe any dependencies or actions that need to happen before you can start on the activities

Phase I - Procurement: Award + 4 months

The Town of Fort Myers Beach will develop solicitation documents in the form of a Request for Proposals (RFP) to solicit proposals from qualified planning consultants with proven experience in comprehensive planning and post-disaster long-term recovery planning. Careful consideration will be given to the scope of the RFP to ensure selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town's approach to plan completion further details considerations of RFP compilation.

The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327.

Dependencies or actions that must occur before this phase can begin: Execution of an award for planning activities.

Phase Deliverable: Execution of a contract for planning services.

Phase II – Define Detailed Objectives and Deliverables: Award + 6 Months

Upon selection of a planning consultant, Town leadership will conduct a kickoff meeting to further refine the detailed goals and deliverables of the planning effort. The Town's foundational considerations of "Community Impact and Community Engagement", "Sustainability and Resiliency Measures", and "Local Coordination and Avoidance of Redundancy" will be critical components of establishing plan objectives, as further described in the Town's approach to plan completion.

Measurable deliverables will be established, along with deadlines for completion of each deliverable. Periodic team meetings will be held with Town leadership and the planning consultant team to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

Dependencies or actions that must occur before this phase can begin: Completion of Phase I Procurement activities and execution of a contract for planning services.

Phase Deliverable: A detailed implementation plan and timeline for all planning activities.

Phase III – Plan Development: Award + 12 Months

The planning consultant will be responsible for all activities necessary to update the Town's comprehensive plan and develop the long-term recovery plan, with Town support and guidance. Periodic progress milestones will be established in Phase II, which will allow the Town to monitor progress and ensure that planning efforts are on track and consistent with the Town's stated goals and objectives. Throughout Phase III, extensive community engagement will take place and, based on the feedback received, a draft

comprehensive recovery plan will be presented for Town review, consideration, and feedback.

Dependencies or actions that must occur before this phase can begin: Finalization of a detailed implementation plan and timeline for all planning activities.

Phase Deliverable: Draft comprehensive plan updates and long-term recovery plan documents for Town review.

Phase IV - Plan Refinement: Award + 15 Months

Based on feedback provided in Phase III, the planning consultant will modify and refine the plans to ensure that the Town's detailed objectives have been addressed.

Dependencies or actions that must occur before this phase can begin: Submission of draft plans for Town review; Town comments returned to the planning consultant for edits / revisions to the draft plans.

Phase Deliverable: A final, updated comprehensive plan and a final long-term recovery plan for Town adoption.

Phase V – Plan Adoption: Award + 18 Months

The planning consultant will publicly present the final plans, after which the Town can adopt the final plans for implementation.

Dependencies or actions that must occur before this phase can begin: Submission of the final plans for Town adoption completed and submitted to the town.

Phase Deliverable: Adoption of comprehensive plan updates and adoption of a long-term recovery plan.

Monthly spending plans and proposed draw down schedules

The Town of Fort Myers Beach anticipates the following monthly spending plan and proposed draw down schedule for project activities throughout the 18-month period of performance for completion of planning activities.

This schedule has been estimated assuming consistent monthly spending / draws for compliance and oversight of \$4,833.33 for the entire period of performance and consistent monthly draws for indirect funding of \$8,816.67 throughout the entire 18 month period of performance. Beginning with Phase II activities, consistent monthly spending / draws for planning activities of \$107,142.86 are estimated throughout the remainder of the period of performance (Months 5 – 18).

Estimated project spending and draw downs total \$1,745,700.00.

Phase I – Procurement (Award + 4 months)

Month 1: \$13,650.00 Month 2: \$13,650.00 Month 3: \$13,650.00 Month 4: \$13,650.00

Phase II – Define Detailed Objectives and Deliverables (Award + 6 Months) Month 5: \$120,792.86 Month 6: \$120,792.86

Phase III – Plan Development (Award + 12 Months) Month 7: \$120,792.86 Month 8: \$120,792.86 Month 9: \$120,792.86 Month 10: \$120,792.86 Month 11: \$120,792.86 Month 12: \$120,792.86

Phase IV - Plan Refinement (Award + 15 Months) Month 13: \$120,792.86 Month 14: \$120,792.86 Month 15: \$120,792.86

Phase V – Plan Adoption (Award + 18 Months) Month 16: \$120,792.86 Month 17: \$120,792.86 Month 18: : \$120,792.86

Reporting schedule for outcomes achieved

The Town will hold regularly scheduled status meetings with the planning consultant to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

The Town will submit all reports required by Exhibit A – Scope, Budget, Performance, and Reporting Requirements of any Subrecipient Agreement executed between the Lee County Board of County Commissioners and the Town of Fort Myers Beach, in the manner and frequency established therein. Required reporting may include, but is not limited to, activity performance reports, payment request forms, program information forms, budget analysis, closeout reports, and periodic certifications by the Town, to be specified in Exhibit A.

The Town of Fort Myers Beach's commitment to ensuring the success and accountability of the comprehensive plan updates and long-term recovery planning efforts is demonstrated through its structured approach to project management and oversight. This approach is designed to keep the planning process on track, adaptable, and transparent to all stakeholders involved.

Regularly scheduled status meetings with the planning consultant are a critical component of the Town's approach to planning activities. These meetings serve multiple purposes. They provide a forum for continuous progress monitoring, enabling the Town and the consultant to stay aligned on project goals, timelines, and deliverables. They also offer an opportunity to promptly identify and address any unforeseen challenges or obstacles that may arise, ensuring that such issues are managed proactively to mitigate potential impacts on the project's timeline and budget. This dynamic and responsive communication strategy is essential for maintaining momentum and ensuring that the planning efforts remain aligned with the community's needs and expectations.

Moreover, the Town's adherence to the reporting requirements outlined in Exhibit A of the Subrecipient Agreement with the Lee County Board of County Commissioners further underscores its dedication to transparency and accountability. These requirements ensure that all activities, from budget management to performance metrics, are documented and reported in a consistent and comprehensive manner. The variety of reports required—including activity performance reports, payment request forms, and closeout reports—provides a structured framework for tracking the project's financial and operational progress. This not only facilitates effective project management, but also

ensures compliance with the funding requirements, reinforcing the Town's commitment to stewardship of public funds.

Detailed reporting and regular consultations with the planning consultant are designed to preemptively identify risks to the project's timeline and budget, allowing for the development of strategic responses to such risks. This could include reallocating resources, adjusting timelines, or modifying project scopes to accommodate changing circumstances, ensuring that the planning efforts continue to move forward efficiently.

In summary, the Town's approach to monitoring progress, coupled with its rigorous reporting protocol, is a testament to its commitment to delivering a comprehensive and resilient plan for the future. By implementing these strategies, the Town of Fort Myers Beach not only safeguards the project against potential risks but also ensures that the planning process is conducted with the highest levels of efficiency, transparency, and accountability. This oversight is instrumental in achieving the ultimate goal of creating a sustainable and resilient community, ready to face future challenges with confidence.

Describe the process carried out to determine cost estimations prior to applying

The process adopted by the Town of Fort Myers Beach to ascertain cost estimations for its comprehensive planning and long-term recovery efforts prior to applying for funding was both strategic and methodical, ensuring a realistic and informed budgetary foundation for the application. This proactive approach involved a series of steps aimed at accurately capturing the financial requirements of the proposed planning activities, reflecting the Town's commitment to fiscal responsibility and project feasibility.

Initially, the Town engaged in consultations with professional planning firms possessing expertise in handling projects of similar size and scope. These consultations were instrumental in gathering valuable insights into the current market rates for comprehensive planning services, including the costs associated with data collection, analysis, community engagement, and the development of planning documents. Considerations in planning cost estimates included compliance with code Florida Statute 161.3191, which requires comprehensive plan to be evaluated once every 7 years and compliance with Florida Statute 163.7132 (2)(f)1-6 "Peril of Flood" Community planning standards. Cost estimates also consider compliance with Florida Statute 380.093, which requires development of a report that prioritizes the town's critical assets and their vulnerability to specific climate hazards, including sea-level rise and storm surge, and include public outreach and stakeholder engagement, exposure and sensitivity analysis. By soliciting estimates, the Town was able to establish a benchmark for anticipated planning costs, ensuring that the budget reflected the true scope and complexity of the work required.

Furthermore, the Town calculated grant oversight and compliance fees, setting these at an industry-standard rate of 5% of the total grant award. This percentage was chosen based on common practices within the field, providing a realistic estimate for the costs associated with managing and overseeing the grant funds effectively. This includes the tasks such as monitoring project progress, financial reporting, and ensuring compliance with grant conditions.

Additionally, indirect costs were estimated based on a de minimis rate of 10% of modified total direct costs, in accordance with federal guidelines specified in 2 CFR 200.414(f). This rate encompasses expenses that are not directly attributable to a specific project activity but are necessary for the general operation of the Town and the successful execution of the project. Examples of indirect costs include administrative support, facilities maintenance, and utilities. Utilizing the de minimis rate simplifies the calculation of indirect costs, ensuring compliance with federal regulations while acknowledging the overhead expenses incurred by the Town in supporting the planning efforts.

A Detailed Project Budget reflecting SF-424A Detailed Budget Line Items for Non-Construction Programs is attached for reference. A corresponding Budget Narrative has also been attached, providing additional description and justification of proposed costs. Total estimated project costs are \$1,745,700.00.

By undertaking this thorough and informed process to determine cost estimates, the Town of Fort Myers Beach established a solid financial foundation for its application. This diligent preparation not only demonstrates the Town's pragmatic approach to project planning and budgeting but also enhances the credibility of the application by grounding it in realistic and justifiable cost projections. Such financial planning is crucial for securing the necessary funding and for the successful implementation of the comprehensive

planning and long-term recovery initiatives, ultimately contributing to the resilience and sustainable development of Fort Myers Beach.

Describe additional steps you will take, if approved, to manage costs, change orders, and ensure the plan is completed on time and within budget

To manage costs associated with contractual services, the Town of Fort Myers Beach plans to enter into firm fixed price, lump sum agreements for completion of planning activities and grant administration. Change orders will only be considered if the circumstances prompting a contractual change were reasonably unforeseeable or unknowable at the time of contract execution and additional services due to such conditions are necessary for successful completion of the contractual scope of work. Furthermore, change orders will only be considered if funding for such a change order is available and proposed change order costs are determined to be reasonable and necessary.

The Town will hold regularly scheduled status meetings with the planning consultant to monitor progress, address unforeseen circumstances and challenges, and develop strategies to mitigate timeline and budgetary risks related to such challenges.

Describe the actions that will be taken to implement the plan after completing the plan. Describe how the plan will be maintained and updated

Once adopted, comprehensive plan updates and long-term recovery plans will be made publicly available and accessible to all residents, businesses, or other entities interested in rebuilding, redevelopment, or future development efforts.

The Town's zoning and community development departments will be provided with the plans to ensure that any policies or procedures affected by the final plans are updated accordingly.

The implementation of the comprehensive plan updates and the long-term recovery plan in the Town of Fort Myers Beach is a critical phase that will translate the vision and strategies outlined in these documents into tangible improvements and resilience for the community. The process for implementing these plans is designed to be inclusive, transparent, and adaptable to ensure that the momentum gained during the planning phase continues through to execution. This involves several key actions: Public Accessibility and Engagement: Upon adoption, both the comprehensive plan updates and the long-term recovery plan will be made publicly available. This ensures transparency and allows all community members, businesses, investors, and other stakeholders to access the plans easily. The Town will leverage multiple platforms, such as the official municipal website, public libraries, and community centers, to disseminate the plans. Additionally, informational sessions and workshops may be organized to walk stakeholders through the plans, highlighting key initiatives, and explaining how individuals and businesses can align their rebuilding and development efforts with the broader community vision.

Policy and Regulatory Updates: The Town's zoning and community development departments play a pivotal role in the implementation phase. These departments will be tasked with integrating the strategies and guidelines from the comprehensive plan and recovery plan into local policies, zoning codes, and development regulations. This may involve revising local zoning to encourage resilient building practices, adjusting land use plans to reduce vulnerability to natural hazards, or implementing new sustainability standards for new developments. The alignment of local policies and procedures with the updated plans ensures that all future development is consistent with the community's long-term resilience and sustainability goals.

Ongoing Review and Maintenance: Recognizing that resilience and recovery are dynamic processes, the Town plans to institute a regular review cycle for the plans, ideally every five years. This regular review process will allow the Town to assess the effectiveness of implemented strategies, integrate new scientific and technological advancements, and adjust to changes in the community's needs and priorities. While the commitment to this review cycle is strong, it is acknowledged that the ability to conduct these reviews is subject to the availability of future funding. To address this, the Town will actively seek diverse funding sources, including grants, public-private partnerships, and other financing mechanisms, to ensure the plans remain current and actionable.

Capacity Building and Education: To support the effective implementation of the plans, the Town will invest in capacity-building initiatives for local government staff, developers, and community members. This includes training programs on resilient building techniques, workshops on sustainable development practices, and educational campaigns on disaster preparedness and mitigation. By building local expertise and awareness, the Town ensures that the principles of resilience and sustainability are embedded in all aspects of community development and recovery efforts.

In summary, the actions taken to implement the comprehensive plan updates and the long-term recovery plan in Fort Myers Beach will be multifaceted and continuous. Through public accessibility, policy updates, regular reviews, community involvement, and capacity building, the Town aims to create a living framework that guides the community towards a resilient, sustainable, and prosperous future.

Describe how the plan is innovative, based on national best practices, and designed in accordance with an existing evidence-based program

During proposal scoring, consideration will be given to the selection of a planning firm with proven use of innovative concepts, national best practices, and existing evidence-based programs that may be applicable to comprehensive planning and long-term recovery strategies in post-disaster, coastal communities. Incorporation of this as a selection metric in the RFP will ensure that the selected planning consultant is both experienced in planning initiatives that are forward-thinking and innovative and is also capable of providing actionable plans that can be of function and utility in both short- and long-term Town development.

The commitment to innovation and adherence to national best practices and evidence-based programs is a cornerstone of the Town of Fort Myers Beach's approach to comprehensive planning and long-term recovery strategies, particularly in the context of post-disaster and coastal community resilience. This commitment is operationalized through the selection process for planning firms, ensuring that the chosen consultant

brings a wealth of knowledge, experience, and creativity to the project.

Innovative Planning Practices: The innovative aspect of the plan is emphasized through the prioritization of planning firms that demonstrate a history of incorporating cutting-edge concepts and technologies into their work. This includes, but is not limited to, the use of advanced geographic information systems (GIS) for risk assessment and land-use planning, the application of smart city technologies to enhance urban resilience, and the integration of green infrastructure to address stormwater management and coastal erosion. By leveraging these innovative practices, the Town aims to develop a comprehensive plan and recovery strategy that not only addresses current challenges but also anticipates future trends and vulnerabilities.

National Best Practices: Alignment with national best practices ensures that the planning efforts are grounded in proven strategies that have been successful in similar contexts across the country. This includes adherence to the guidelines and recommendations set forth by leading organizations such as the American Planning Association (APA), the National Institute of Standards and Technology (NIST), and the Federal Emergency Management Agency (FEMA). By drawing on these resources, the planning process will benefit from a wealth of expertise in areas such as disaster recovery, community engagement, sustainable development, and climate adaptation. The incorporation of these best practices into the planning process ensures that the strategies developed are not only innovative but also reliable and effective.

Evidence-Based Programs: The emphasis on evidence-based programs underscores the Town's commitment to implementing strategies that are supported by empirical research and have demonstrated positive outcomes in similar settings. This approach ensures that the planning initiatives are not based on theoretical models, but on practical solutions that have been tested and validated in real-world scenarios. For example, the plan might incorporate resilience measures that have been shown to effectively reduce flood risk in coastal communities or economic development strategies that have successfully revitalized post-disaster towns.

By making innovation, national best practices, and evidence-based programming key selection criteria in the Request for Proposals (RFP) for planning consultants, the Town ensures that the comprehensive plan and recovery strategy will be forward-thinking, grounded in proven methodologies, and tailored to the unique needs and challenges of Fort Myers Beach. This strategic approach not only enhances the quality and effectiveness of the planning process but also ensures that the resulting plans are actionable, providing a clear and practical roadmap for the Town's development in both the short and long term.



A description of how you will coordinate with other planning, community development, and/or recovery or resilience plans and initiatives that are underway

The of Fort Myers Beach recognizes that some aspects of future development extend beyond our local boundaries, necessitating collective action. Phase II of the Town's approach to plan completion specifically address "Local Coordination and Avoidance of Redundancy" as a foundational component of planning activities that will be funded through this project. To promote a streamlined planning effort that mitigates the risk of redundancy and duplication, planning activities will include an assessment of adopted plans and ongoing planning efforts to build upon existing materials and ensure future strategies that are optimized for the Town of Fort Myers Beach and the broader coastal community. Specifically related to long-term recovery planning, FEMA has drafted preliminary long-term recovery planning documents for the Town's review and consideration. Through this planning project, the Town will utilize the foundational work performed by FEMA through that effort as a basis to expand and create a more comprehensive, actionable, and task-oriented long-term recovery strategy. By utilizing FEMA's plan as a starting-point, the Town will be able to ensure that CDBG-DR funds are utilized in a fiscally responsible way that builds upon existing materials and does not duplicate the effort or benefit provided by FEMA.

Phase II of the Town's approach to plan completion also addresses "Community Impact and Engagement". Planning efforts will include comprehensive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that may be impacted by comprehensive plan updates and the long-term recovery plan. These extensive outreach efforts will promote coordination with other planning, community development, and/or recovery or resilience plans and initiatives that are underway by (a) thoughtfully considering relevant outside efforts in the Town's planning activities and (b) promoting transparency for outside entities that may have a symbiotic interest in the Town's plan development.

Are there any existing plans?

Yes



Authorized Organization Representative

- ▶ Plan Name: DRAFT Long-Term Recovery Plan
- ▶ Plan Website URL:
- ▶ Is this plan in progress? Yes

Plan Description

Preliminary assessment of long-term recovery needs guided by the Town's 2009 Comprehensive Plan Updates

Interaction with Proposed Activities

The draft Long-Term Recovery Plan (LTRP) compiled by FEMA was guided by the Town's 2009 Comprehensive Plan. Through this CDBG-DR planning project, the Town's comprehensive plan will be updated to thoroughly evaluate current conditions and address key areas critical to the community's recovery and resilience. The FEMA LTRP will provide a solid foundation for long-term recovery planning efforts to be performed through this project, which will be guided by current comprehensive plan updates, which are required by state statute. The draft FEMA LTRP will be provided to the Town's procured planning consultant as a resource in planning activities to be conducted through this project.

A description of the area of high need that will be addressed by the plan

The entire Town of Fort Myers Beach suffered tremendous devastation due to Hurricane Ian – as such, the entire community is considered a geographic “area of high need”. The area of high need for this project is recognized to be the entire island – specifically Census Tracts 601 and 602. A Risk Comparison Report for the project area is attached, documenting the high priority objectives of mitigating hurricane and flood-related risks and increasing the area’s “very low” community resilience scores. FEMA Flood Insurance Rate Maps (FIRMs) are also attached, further supporting the Town’s risk of flood related impact.

A description of the intended impact the plan will have on the community and area of high need

Comprehensive plan updates, in conjunction with long-term recovery planning, are intended to guide the recovery, growth, development, and overall planning of the Town of Fort Myers Beach as it rebuilds in the aftermath of Hurricane Ian. The plans will address key areas critical to the community’s recovery and resilience, such as housing, infrastructure, economic revitalization, preservation of natural and cultural assets, as well as health and social services. The plans aim to equip local leaders with a detailed blueprint for holistic and sustainable redevelopment, emphasizing community engagement and public participation as foundational elements to ensure the success of planning efforts and subsequent execution.

Given the foundational consideration of “Sustainability and Resiliency Measures”, the plans are also intended to provide strategic insight into best practices for recovery and growth across all key areas of study, with a focus on sustainability and resiliency measures that will mitigate future natural hazard risks faced by the Town. The comprehensive plan updates and long-term recovery planning for the Town of Fort Myers Beach are designed to serve as a cornerstone for the community's path forward, particularly in addressing the high needs arising from the devastating impact of Hurricane Ian. These plans are not merely documents, but blueprints for action that will shape the future of the town in profound ways. The intended impact of these efforts is multifaceted, focusing on immediate recovery needs while laying the groundwork for sustainable growth and resilience against future challenges.

Holistic Community Recovery and Growth: At the core of the intended impact is the holistic recovery and growth of Fort Myers Beach. The plans will be crafted to guide the reconstruction of the town, ensuring that it not only recovers from the physical damages inflicted by Hurricane Ian but also emerges stronger, more vibrant, and more resilient. This encompasses revitalizing the local economy, rebuilding and improving infrastructure to better withstand future natural disasters, and ensuring that housing is not only restored, but is made more affordable and resistant to climate impacts.

Sustainability and Resiliency: A significant intended impact is the incorporation of sustainability and resiliency measures across all facets of the town's recovery and development efforts. This means that the plans will advocate for and guide the implementation of green infrastructure, sustainable land use, energy efficiency, and water conservation practices. By embedding these principles into the fabric of the town's

redevelopment, Fort Myers Beach aims to reduce its environmental footprint, enhance its resilience to climate change, and safeguard the natural and cultural assets that define the community's identity.

Community Engagement and Empowerment: Central to the intended impact is the emphasis on community engagement and public participation. The plans recognize that the success of recovery and development efforts hinges on the active involvement of local residents, businesses, and stakeholders. Through workshops, public forums, and ongoing dialogues, the planning process will empower the community, giving voice to diverse perspectives and ensuring that the redevelopment reflects the collective vision and needs of the town's inhabitants.

Equitable and Inclusive Recovery: The plans are intended to address the needs of all community members, particularly those most vulnerable to the impacts of natural disasters and climate change. This includes low-income households, the elderly, individuals with disabilities, and other marginalized groups. By focusing on equitable recovery and development, the plans aim to ensure that the benefits of revitalization efforts are shared widely, reducing social disparities and promoting a more inclusive community fabric.

Strategic Insight into Best Practices: Comprehensive plan updates and long-term recovery planning efforts are designed to provide strategic insight into recovery and growth best practices. This includes learning from other communities that have faced similar challenges, incorporating cutting-edge research on disaster recovery and sustainability, and applying lessons learned to mitigate future risks. By doing so, the Town of Fort Myers Beach will not only address its immediate recovery needs but also position itself as a model for resilience, sustainability, and thoughtful community development.

In summary, the intended impact of the comprehensive plan updates and long-term recovery planning is to catalyze a recovery that is robust, sustainable, and inclusive, transforming the challenges posed by Hurricane Ian into opportunities for growth and resilience. Through these efforts, Fort Myers Beach will not just rebuild but will reimagine its future, creating a community that is better prepared for the challenges that lie ahead.

A description of the intended beneficiaries of the plan, including any HUD-defined vulnerable populations and communities who are the intended beneficiaries of the plan

The intended beneficiaries of the plans include the Town of Fort Myers Beach's residents, business-owners, and other stakeholders. Because the geographic scope of this plan will include all of Census Tracts 601 and 602, all residents of those tracts can be considered intended beneficiaries.

Broad Community Benefit: The primary beneficiaries of the plans encompass the entire residential and business community of Fort Myers Beach. This includes homeowners, renters, local business owners, and other stakeholders who have a vested interest in the town's recovery, sustainability, and future growth. By including the whole of Census Tracts 601 and 602 within the plan's geographic scope, the strategy ensures that all residents—without exception—are recognized as intended beneficiaries. This comprehensive coverage ensures that the planning efforts address the diverse needs



and aspirations of the entire community, fostering a unified and cohesive approach to recovery and development.

HUD-Defined Vulnerable Populations: In accordance with HUD guidelines, special attention is given to identifying and supporting vulnerable populations within the community. These groups include, but are not limited to, low-income households, the elderly, families with children, individuals with disabilities, and those with limited English proficiency. The plans will be crafted with the intent to provide targeted support and resources to these groups, ensuring that recovery and development efforts are equitable and inclusive. This might manifest in various forms, such as affordable housing initiatives, accessible public services and infrastructure, and programs designed to enhance economic opportunities for low-income residents.

Communities with Increased Risk: Acknowledging that certain communities within the town face heightened risks due to geographic location, socio-economic factors, or other determinants, the plans aim to specifically address these vulnerabilities. Strategies will be implemented to mitigate risks related to natural disasters, climate change, and social isolation, ensuring that these communities are not only protected but also empowered to actively participate in the town's recovery and growth. This targeted approach ensures that the planning efforts do not merely benefit the community as a whole but also address the specific needs of those at greatest risk.

Engagement and Empowerment: A key aspect of ensuring that the intended beneficiaries truly benefit from the plans is through active engagement and empowerment. The planning process will incorporate mechanisms for community input and feedback, ensuring that the voices of all residents, particularly those from vulnerable populations, are heard and considered. This participatory approach not only enriches the planning process with diverse perspectives but also fosters a sense of ownership and commitment among the beneficiaries, enhancing the effectiveness and sustainability of the implemented strategies.

In conclusion, the comprehensive plan updates and long-term recovery planning for the Town of Fort Myers Beach are designed with a deep commitment to inclusivity and equity. By identifying and addressing the needs of the entire community, with particular attention to HUD-defined vulnerable populations and communities at increased risk, the plans aim to foster a recovery and development process that is robust, sustainable, and reflective of the collective aspirations of Fort Myers Beach's diverse population. Through this approach, the plans will lay the foundation for a community that is not only resilient in the face of future challenges but also vibrant, inclusive, and thriving.

Authorized Organization Representative

	Census Tract	Block Group
1	601.02	1, 2, 3, 4, 5
2	602.01	1, 2, 3
3	602.02, 602.03	602.02: 1, 2 / 602.03: 1, 2



The types of entities benefitting from the plan

- | | |
|--|--|
| ☒ Residents | ☒ Businesses |
| ☒ Local Government | ☐ Other: |

- ▶ If "Residents" is selected, list the projected number of beneficiaries and number of LMI beneficiaries who will benefit from the plan, if it were implemented

Total Number of Beneficiaries:	6670
Total LMI Beneficiaries:	2055

The target populations from the table below who would benefit from the plan if it were implemented

- ☒ Populations presumed by HUD to be LMI persons:
 - Abused children
 - Elderly persons (62 and older)
 - Battered spouses
 - Homeless persons
 - Severely disabled adults (as defined by the Census)
 - Illiterate adults
 - Persons living with AIDS
 - Migrant farm workers
- ☒ Protected classes (groups protected from discrimination under federal civil rights law based on the following):
 - Race
 - Color
 - National origin
 - Sex (including sexual orientation and gender identity)
 - Religion
 - Familial status
 - Disability
 - Age
- ☒ Vulnerable populations, as defined by HUD in the Consolidated Notice:
 - Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing resources, based on such factors as the following:
 - Geography
 - Markets
 - Prevalent housing stock and tenure
 - History
 - Prejudice
- ☒ Underserved communities, as defined by HUD in the Consolidated Notice:
 - Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life

A description of the method used to identify the intended beneficiaries of the plan if it were implemented

The Town's comprehensive plan updates and long-term recovery planning efforts will benefit all current and future residents, business owners, and stakeholders of the designated "area of high need". As planning efforts evolve, beneficiaries may be further refined through methods such as those described below to promote a systematic and inclusive approach to planning activities, with the goal of ensuring that the plans are reflective of and responsive to the needs of the entire community, especially those within designated "areas of high need."

Demographic Analysis: A thorough demographic analysis may be conducted to gain a deep understanding of the population within the designated areas of high need. This analysis examines various factors, including income levels, age distribution, housing status, and language proficiency, among others. The objective will be to identify vulnerable populations that may require specific forms of support or targeted interventions. This data-driven approach ensures that the plans are tailored to the unique characteristics and needs of the community's diverse population.

Stakeholder Engagement: Engagement with stakeholders will be a critical component of the method used to refine intended beneficiaries. This may include public consultations, workshops, surveys, and meetings with community groups, business associations, and other relevant organizations. These engagements will provide valuable insights into the community's priorities, challenges, and aspirations. They will also offer an opportunity for diverse voices to be heard, ensuring that the plans are inclusive and representative of the entire community's interests.

Integration with Existing Data and Plans: The identification process will also involve reviewing and integrating findings from existing plans, studies, and reports related to the community's development, resilience, and sustainability. This will ensure that the comprehensive plan updates and long-term recovery plan build upon prior knowledge and efforts, avoiding duplication and leveraging existing resources to maximize benefit to the community.

In summary, the refinement of beneficiaries of the comprehensive plan updates and long-term recovery plan in the Town of Fort Myers Beach will be characterized by its thoroughness, inclusivity, and adaptability. By implementing methods such as those described, the Town will ensure that resulting plans are grounded in the realities of the community's needs and aspirations. This approach will not only facilitate effective and targeted recovery and development efforts, but will also foster a sense of ownership and commitment among the beneficiaries, enhancing the overall impact and sustainability of the plans.

A description of the community outreach and engagement that has happened to date, including a description of the stakeholders and approaches to outreach and engagement

The Town of Fort Myers Beach notified the public of its intention to apply for planning funds through the Lee County – CDBG Recovery and Resiliency Planning program.

Notice was published in a newspaper of local circulation in block/display ad format on Tuesday, February 13, 2024, and included instructions for submitting written comments via email and instructions for submitting written comments in person.

A description of additional community outreach, engagement, and partnerships that will occur as part of the development of this plan, including the approach to engaging new stakeholders, if applicable

Planning efforts will include comprehensive stakeholder outreach and engagement with a broad cross section of the community, including residents, non-profit organizations, community and/or neighborhood organizations, businesses, and other interested parties that may be impacted by the plan. A detailed implementation plan, including specific methods of engagement (i.e., town hall meetings, surveys, digital comment submission, etc.) and timelines for engaging both existing and new stakeholders, will be established in Phase II of the Town's approach to plan completion.

A description and justification of the proposed costs

A Detailed Project Budget reflecting SF-424A Detailed Budget Line Items for Non-Construction Programs is attached for reference. A corresponding Budget Narrative has also been attached, providing additional description and justification of proposed costs. Total estimated project costs are \$1,745,700.00.

The Town of Fort Myers Beach will implement the plan with applicant staff and contractual support to perform grant oversight and compliance.

Costs associated with Town staff oversight of project activities and grant compliance activities will be funded via Indirect Cost reimbursement; the Town has elected to utilize the de minimis cost rate (10%), with total estimated indirect cost reimbursement of \$158,700.00

Costs associated with contractual support for grant oversight and compliance are estimated at 5% of total project costs, which is consistent with industry standard rates for these services on projects of similar size and scope. Total estimated costs for contractual grant oversight and compliance are \$87,000.00.

The Town of Fort Myers Beach will procure a professional planning consultant to complete comprehensive plan updates and long term recovery planning efforts. Through consultations with professional planning firms possessing expertise in handling projects of similar size and scope, the Town estimates that total costs for contractual planning activities are \$1,500,000.00.

A description of whether the plan will be implemented with applicant staff, vendor support and/or other

The Town of Fort Myers Beach will implement the plan with applicant staff and contractual support. Staff members who will be directly engaged in this project are listed below, along with their experience in managing projects funded with grant funds:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane

County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's administrative expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manger for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will partner with Hendry County to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to administration of CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Completion of comprehensive plan updates and long term recovery planning efforts will be completed by a planning consultant, to be procured in Phase I of project activities. Upon award of planning funds, the Town of Fort Myers Beach (the "Town") will develop solicitation documents to competitively procure a planning consultant with proven experience in post-disaster comprehensive plan and long-term recovery strategy development. Careful consideration will be given to the scope of the Town's Request for Proposals (RFP) to ensure the selection of a firm with a history of successfully completing projects of similar size and scope, including any necessary data collection, studies, analyses, community engagement that may be critical to successful planning efforts. The Town will procure these contractual services in accordance with local procurement policy and applicable state and federal procurement regulations, such as those established in 2 CFR 200.318-327.

A description of the timeframe, dependencies, and methods for obligating grant funds, and how the applicant plans to ensure funds are spent timely. A description of how the applicant will address and control for dependencies, if applicable

The Town of Fort Myers Beach anticipates completion of project activities through two contractual agreements for professional services. The timeframe for execution of each, as well as dependencies that may affect execution of each contract is further described below:

Contract A: Contractual Grant Oversight and Compliance: The Town of Fort Myers Beach has competitively procured the services of Tidal Basin Group to support contractual and oversight compliance activities. An existing contract is in place with Tidal Basin Group. Upon award of planning funds, a task order can be issued to obligate grant funds for oversight and compliance activities. The Town anticipates that funding under this contract will be expended consistently throughout the project's period of performance.

Dependencies associated with Contract A: Issuance of an award for planning funds.

Contract B: Contractual Planning Activities

The Town of Fort Myers Beach will competitively procure professional planning services to complete comprehensive plan updates and long-term recovery planning activities. Upon award of planning funds, The Town will develop procurement documents and solicit these services. The Town anticipates that funding under this contract will be expended consistently from award of a contract through completion of planning services.

Timeframe associated with Contract B: Award + 4 months

Dependencies associated with Contract B: Issuance of an award for planning funds; Completion of Phase I Procurement Activities. To address and control for dependencies, the Town will ensure that procurement documents are developed promptly upon award of planning funds.



Budget Form & Duplication of Benefits

Budget Form & Duplication of Benefits

Description	Total Requested
Development of Plan (Comprehensive, Land Use, Resiliency and Mitigation)	\$1,500,000.00
Mapping and Data Upgrades	\$0.00
Education or Outreach Programs	\$0.00
Building Codes	\$0.00
Zoning Ordinances	\$0.00
Other Eligible Costs	\$75,000.00
Description: Other eligible activity delivery costs	
Funding Requested from CDBG-DR	\$1,745,700.00

Sources of Leveraged Funds

Source of Funds	Amount	% of Total	Status of Funds
FEMA Building Resilient Infrastructure and Communities (BRIC)	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
FEMA Hazard Mitigation Grant Program (HMGP)	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
FEMA Public Assistance (PA)	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
Local (Municipal) Funds	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
Other CDBG-DR Funds (from Florida COM)	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
Other State Funds	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:		N/A	
Resilient Florida	\$0.00	0.00	N/A



Budget Form & Duplication of Benefits

Source of Funds	Amount	% of Total	Status of Funds
Use of Funds:			
Purpose of Funds:	N/A		
US Army Corps of Engineers (USACE)	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:	N/A		
US Department of Transportation	\$0.00	0.00	N/A
Use of Funds:			
Purpose of Funds:	N/A		
Total	\$0.00		

Funding Summary

Item	Total Amount
Other Funding Sources	\$0.00
Total Funds Available for Plan	\$1,575,000.00
Remaining Unmet Need	\$0.00



Application Certification

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and that the application and all support documentation has been duly authorized by the governing body of the applicant. I further certify that I am authorized to submit this application and have followed all policies and procedures of my agency regarding grant application submissions.

- ▶ Authorized Organization Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Name: Andrew Hyatt
- ▶ Authorized Submitter Representative Title: Town Manager
- ▶ Certification Date: 02/23/2024
- ▶ Authorized Submitter Representative Signature: Andrew Hyatt
- ▶ Authorized Submitter Representative IP Address: 96.80.164.213

EXHIBIT G**CERTIFICATE(S) OF INSURANCE**

The information provided under this Exhibit is retrieved from the Subrecipient Agreement or the Subrecipient's approved application in response to the *Recovery and Resiliency Planning NOFA*. In coordination and agreement with the Subrecipient, the County will utilize the information below to confirm that the Subrecipient has sufficient coverage against personal, commercial, or any other liability regarding the spending of CDBG-DR dollars. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently updated, reviewed, and/or approved within the System of Record when necessary.

Certificate(s) of Insurance

The Subrecipient has provided the following documentation below in an effort to confirm sufficient coverage is in place *{If any of the coverages below are combined under one policy, those individual items should be combined together under one item, e.g., (1) Workers' Compensation and (2) Commercial General Liability under (1) Workers' Compensation and Commercial General Liability, etc.}*:

(1) Workers' Compensation Coverage

{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.

(2) Commercial General Liability

{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.

(3) Business Auto Liability

{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.

(4) Directors & Officers Liability

{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.

(5) Fidelity Bonding

{{INCLUDE/DROP IN the policy coverage document pertaining to this insurance}}.

CERTIFICATE OF COVERAGE			
Certificate Holder and Loss Payee LEE COUNTY 2440 THOMPSON STREET FORT MYERS FLORIDA 33901		Administrator Florida League of Cities, Inc. Department of Insurance Services P.O. Box 538135 Orlando, Florida 32853-8135	
Issue Date 2/23/2024			
COVERAGES THIS IS TO CERTIFY THAT THE AGREEMENT BELOW HAS BEEN ISSUED TO THE DESIGNATED MEMBER FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE AGREEMENT DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH AGREEMENT			
COVERAGE PROVIDED BY: FLORIDA MUNICIPAL INSURANCE TRUST			
AGREEMENT NUMBER: FMIT 0778		COVERAGE PERIOD: FROM 10/1/23	
		COVERAGE PERIOD: TO 10/1/24 12:01 AM STANDARD TIME	
TYPE OF COVERAGE - LIABILITY General Liability ☒ Comprehensive General Liability, Bodily Injury, Property Damage, Personal Injury and Advertising Injury ☒ Errors and Omissions Liability ☒ Employment Practices Liability ☒ Employee Benefits Program Administration Liability ☒ Medical Attendants'/Medical Directors' Malpractice Liability ☒ Broad Form Property Damage ☐ Law Enforcement Liability ☒ Underground, Explosion & Collapse Hazard Limits of Liability * Combined Single Limit Deductible \$2,500 Automobile Liability ☒ All owned Autos (Private Passenger) ☒ All owned Autos (Other than Private Passenger) ☒ Hired Autos ☒ Non-Owned Autos Limits of Liability * Combined Single Limit Deductible N/A		TYPE OF COVERAGE - PROPERTY ☒ Buildings ☐ Basic Form ☒ Special Form ☒ Personal Property ☐ Basic Form ☒ Special Form ☒ Agreed Amount ☒ Deductible \$500 ☒ Coinsurance 100% ☒ Blanket ☐ Specific ☒ Replacement Cost ☐ Actual Cash Value Limits of Liability on File with Administrator	
		TYPE OF COVERAGE - WORKERS' COMPENSATION ☒ Statutory Workers' Compensation ☒ Employers Liability \$1,000,000 Each Accident \$1,000,000 By Disease \$1,000,000 Aggregate By Disease ☐ Deductible N/A ☐ SIR Deductible N/A	
Automobile/Equipment - Deductible ☒ Physical Damage Per Schedule - Comprehensive - Auto Per Schedule - Collision - Auto Per Schedule - Miscellaneous Equipment			
Other * The limit of liability is \$200,000 Bodily Injury and/or Property Damage per person or \$300,000 Bodily Injury and/or Property Damage per occurrence. These specific limits of liability are increased to \$5,000,000 for General Liability and \$3,000,000 for Automobile Liability (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28 (5) Florida Statutes or liability/settlement for which no claims bill has been filed or liability imposed pursuant to Federal Law or actions outside the State of Florida.			
Description of Operations/Locations/Vehicles/Special Items Events, activities, elections and functions authorized by the certificate holder involving the designated member while being held upon the premises of the certificate holder. The certificate holder is hereby added as an additional insured, except for Workers' Compensation and Employers Liability, as respects the member's liability for the above described event.			
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE AGREEMENT ABOVE.			
Designated Member Town of Fort Myers Beach 2525 Estero Boulevard Fort Myers Beach FL 33931		Cancellations SHOULD ANY PART OF THE ABOVE DESCRIBED AGREEMENT BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE PROGRAM, ITS AGENTS OR REPRESENTATIVES.  _____ AUTHORIZED REPRESENTATIVE	

EXHIBIT H (SIGNATURE REQUIRED)

CERTIFICATIONS **CDBG-DR COMPLIANCE PROVISIONS** *Planning and Public Services*

This Exhibit to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the applicant certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

1. NATIONAL OBJECTIVES

In accordance with [24 CFR 570.208](#), Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Planning Exemption

Planning activities are presumed to meet a National Objective. HUD’s Federal Register Notice (88 FR 32046) governing the CDBG-DR funds describes planning efforts as addressing the National Objectives without the limitation of any circumstances. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment, independent of the ultimate source of implementation funds.

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient

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must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

2. DUPLICATION OF BENEFITS

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

3. EQUAL EMPLOYMENT OPPORTUNITY

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- a. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.
- b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- c. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability

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or age in a program or activity which does not directly benefit from such assistance.

- d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- e. **The Fair Housing Amendment Act of 1988**: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- f. **The Age Discrimination Act of 1975**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- g. **Section 504 of the Rehabilitation Act of 1973**: It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- h. **The Americans with Disabilities Act of 1990 (ADA)**: This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- i. **Executive Order 11063**: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.
- j. **Executive Order 12259**: This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities

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throughout the United States.

- k. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.
- l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.
- m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- n. **Executive Order 11246:** This executive order applies to all Federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**
(applicable to contracts and subcontracts over \$10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for

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specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

5. **ENVIRONMENTAL PROTECTION AND ACTS**

- a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, [24 CFR 58.22](#) prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.
- b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding \$100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.
- c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).
- e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, a non-Federal entity that is a state agency or an agency of a political subdivision of a state, and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in

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guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources:
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

7. POLITICAL ACTIVITY

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

8. LOBBYING PROHIBITION AND BYRD ANTI-LOBBYING AMENDMENT

The Subrecipient is prohibited from using contracted funds for the following purposes: (1) political activities; (2) lobbying; (3) political patronage; (4) nepotism activities; and (5) inherently religious activities such as worship, religious instruction, or proselytization. The Subrecipient will also comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Agreement funds for the purpose of lobbying the legislature, state or county agencies.

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Additionally and in accordance with 24 CFR 87, the Subrecipient certifies that it will not use CDBG-DR funds received from the County to directly or indirectly influence legislation or any other official action by the Florida legislature, any state agency, or other local government and county (BOCC) business, including through the use of Federal appropriated funds being paid to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an office or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement. If the County and/or the Subrecipient suspects such action of occurring, the County reserves the right to request that the Subrecipient disclose and certify such activities in accordance with reporting requirements noted within the Agreement.

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

- 1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

9. CONFLICT OF INTEREST

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure

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or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

10. DOMESTIC PREFERENCES FOR PROCUREMENTS.

Per [2 CFR 200.322](#), as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

11. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Per [2 CFR 200.216](#), Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

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12. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS

- a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

- b. An agreement between the Subrecipient and any contractor or other party shall require:
 - 1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.
 - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.
 - 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.
 - 4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.
- c. Contractors shall:
 - 1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If a Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulation issued by the awarding agency.

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14. PATENTS

- a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.
- c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

15. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

16. DRUG-FREE WORKPLACE ACT OF 1988

- a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon

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employees for drug abuse violations.

- c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- f. Make an ongoing, good faith effort to maintain a drugfree workplace by meeting the requirements of the act.

17. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION

- a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.
- b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.
- c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.
- d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific

Lee County CDBG-DR
Exhibit H Compliance Provisions

safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

18. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- a. Obtaining the County's approval of the Application for such assistance; or,
- b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

19. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

20. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

Lee County, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County's final closeout of the grant.

21. INSPECTION

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

22. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Lee County CDBG-DR
Exhibit H Compliance Provisions

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

BY:

DocuSigned by:



2F8F25CE64A742D...

Signature

Andy Hyatt

Name (print)

7/15/2024 | 7:48 AM EDT

Date

EXHIBIT I

CDBG-DR SPECIAL TERMS AND CONDITIONS

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains special conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

1. INITIAL RISK ASSESSMENT

The Subrecipient has provided, or will provide, the County with information about the Subrecipient's experience, processes, policies, and procedures related to the management of Federal funding by the Subrecipient. These submissions, in addition to discussions with the Subrecipient, have been used by the county to assess the risk of noncompliance and capacity to compliantly execute the required activities for which the Agreement is made.

Should there be substantive changes to the organization, key personnel, methods, capacity, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall notify the County of said changes within 30 days of those changes.

The Subrecipient agrees to provide documents and information to the County, within 30 days of such a request made by the County, to facilitate its due diligence review as required by Federal Register Notice 88 FR 32046. Subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintain the capacity to carry out disaster recovery activities in a timely and compliant manner at all times during the term hereof.

2. RISK ASSESSMENT

During the term of this Agreement, the Subrecipient agrees to provide documents and information, within 30 days of such a request made by the County, to facilitate the County's Subrecipient risk assessment process. The Subrecipient further agrees to comply with the requirements, requests, and results of the County's risk assessment, including participation in Subrecipient monitoring events.

3. SPECIAL CONDITIONS

Pursuant to Exhibit A, Scope of Work, and the Risk Assessment Sections, as referenced above, Subrecipient agrees to adhere to the following Special Conditions:

Town of Fort Myers Beach

DR10157

Exhibit I

Page 2 of 2

A. Special Condition Regarding Adoption of Excessive Force Policy:

- i. The Town of Fort Myers Beach hereby acknowledges its intent to adopt the Excessive Force Policy as established by Lee County. The adoption is contingent upon the approval of the resolution currently in draft form, which is scheduled for consideration by the Town Council on August 5th. The formal adoption of this policy by the Town Council on the specified date shall constitute fulfillment of the terms set forth in Exhibit I of this agreement.

EXHIBIT J
SUBRECIPIENT STAFF ORGANIZATION

Town of Fort Myers Beach Long Term Recovery Plan & Comprehensive Plan Updates

The Subrecipient must complete the following information, as applicable, as an extension of the requirements outlined within SECTION XVIII. NOTICES of the Agreement. The Subrecipient is not required to hire or create the following positions or titles but should assign the following roles to staff members who will serve as a primary point of contact for relevant responsibilities associated with that role.

Some projects or activities will not require a contact for all roles identified below. In addition, individual staff members may perform multiple roles. The Subrecipient will complete the contact information for those roles which are applicable for successful completion of this project/activity and denote where a specific member is performing multiple roles. If certain roles are not applicable for implementation of this project/activity, please denote "Not Applicable" under the Contact Information for each role.

The Subrecipient is responsible for providing an updated version of this Exhibit as contact information changes or updates are made to personnel which impact the roles and responsibilities. Descriptions of each role are outlined below.

Section 1: Subrecipient Contract Administrator

1. Description

The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in SECTION XVIII. NOTICES of the Agreement. Unless otherwise directed by the County, any notice, report, or other communication required by the Agreement shall be directed via the County's approved system or written to the Subrecipient's Contract Administrator at the contact information identified in SECTION XVIII. NOTICES of the Agreement.

2. Contact Information

Name: Andrew Hyatt
Title: Town Manager
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: andyhyatt@fmbgov.com
Email: 239-765-0202

Section 2: Project Manager

1. Description

The Subrecipient staff member who will serve as the primary contact and decision-maker for the project's implementation. This staff member is responsible for ensuring the project reaches established milestones and deadlines for completion, oversees all elements of project completion (e.g., procurement actions, reconciliations, contract management, administration), and is considered the administrator to ensure general and overall compliance of the project/activity with the CDBG-DR grant.

2. Contact Information

Name: Frank Kropacek
Title: Operations & Compliance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: fkropacek@fmbgov.com
Email: 239-765-0202

Section 3: Davis Bacon and Labor Standards Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 3 and Davis-Bacon and Related Acts (DBRA) labor standards. This staff member is responsible for actions such as providing guidance to (including conducting monitoring and oversight of) contractors and vendors on Section 3 and labor compliance requirements. This includes, but is not limited to, overseeing Section 3 goals reporting by contractors and vendors, conducting employee interviews, reviewing certified labor payrolls, and completing Section 3 and labor compliance reports for submission of performance data to the County. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison / Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: jasonf@fmbgov.com
Email: 239-765-0202

Section 4: Section 504 Coordinator

1. Description

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Section 504, the Americans with Disabilities Act of 1990 ("ADA") and ensuring meaningful access to persons who are Limited English Proficiency (LEP). This staff member is responsible for actions which include, but are not limited to, conducting a Section 504 evaluation or self-assessment of Subrecipient facilities, detailing and tracking complaints or grievances on potential Section 504 or Civil Rights violations, and developing and maintaining Language Access Plans (LAPs) for LEP individuals, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Amy Baker
Title: Town Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: amy@fmbgov.com
Email: 239-765-0202

Section 5: Fair Housing Coordinator**1. Description**

The Subrecipient staff member who will serve as the contact and subject matter expert for ensuring the project's compliance with Fair Housing requirements as outlined within the Agreement and Exhibits. This staff member is responsible for actions which affirmatively promote fair housing, which may include, but are not limited to, conducting, overseeing, and documenting fair housing activities, conducting affordable housing reports, and detailing and tracking complaints or grievances on potential Fair Housing violations, as applicable. The Coordinator would likely be responsible for ensuring proper recordkeeping of such files to provide access to records by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. If this role is handled by a consultant or other personnel who is not a part of the Subrecipient's staff, please also note a Subrecipient staff member who is responsible for overseeing the acceptable completion of duties by personnel for this role.

2. Contact Information

Name: Jason Freeman
Title: Legislative Liaison / Deputy Clerk
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: jasonf@fmbgov.com
Email: 239-765-0202

Section 6: Financial Manager

1. Description

The Subrecipient staff member who will serve as the primary contact and subject matter expert for all financial management duties associated with the project. This staff member is most likely responsible for overseeing accounting actions such as accounts receivable, accounts payable, project budget setup, or encumbering the CDBG-DR dollars within the Subrecipient's financial management system and/or fiscal year (FY) obligations of CDBG-DR dollars to the project/activity governed by this Agreement. Tasks of the Financial Manager may include, but are not limited to, approving project invoices, overseeing monthly account reconciliations, creating or approving annual budgets for expending CDBG-DR dollars under this project/activity, and being responsible for walking through accounting procedures for County staff. The Financial Manager would likely be responsible for ensuring proper recordkeeping of such financial and accounting records for access by the County or other parties, as described in the Agreement, in support of monitoring, audits, and inspections. Given the segregation of duties for financial and accounting staff, the Financial Manager may also supervise or oversee multiple accounting clerks, financial analysts, or other financial staff who perform duties described above.

2. Contact Information

Name: Joe Onzick
Title: Finance Director
Agency: Town of Fort Myers Beach
Address: 2731 Oak Street Fort Myers Beach, FL 33931
Telephone: jonzick@fmbgov.com
Email: 239-765-0202

Section 7: Certification of Time Allocation

Are there any staff who are working on both CDBG-DR and non CDBG-DR programs? Yes

If so how many, and list names:

Yes, all town staff listed in this Exhibit may assist with other Town programs other than CDBG-DR

EXHIBIT K

CDBG-DR PROGRAM SUBROGATION AGREEMENT

This Subrogation and Assignment Agreement ("Agreement") is made and entered into by and between **Town of Fort Myers Beach** (hereinafter referred to as "Subrecipient") and Lee County (hereinafter referred to as "County").

In consideration of the Subrecipient's receipt of funds or the commitment by the County to evaluate the Subrecipient's **application** for the receipt of funds (collectively, the "Subrecipient Award") under the Community Development Block Grant – Disaster Recovery Program (the "CDBG-DR Program") administered by the County, the Subrecipient hereby assigns to the County all of the Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit, or insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs"), that was the basis of the calculation of the Subrecipient Award paid or to be paid to the Subrecipient under the CDBG-DR Program and that are determined at the sole discretion of the County to be a duplication of benefit ("DOB"), as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA, or the SBA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds."

The Subrecipient agrees to notify the County within five (5) business days of any additional or new payments, loans, grants, or awards by HUD, FEMA, SBA, the State of Florida, or any other entity not specifically disclosed in this Agreement. Further, the Subrecipient understands and acknowledges the County's right and responsibility to enforce this requirement by recapturing all or a portion of the CDBG-DR Subrecipient Award if the Proceeds received are determined to be DOB Proceeds within this CDBG-DR Program activity. The Subrecipient will be required to pay back the received CDBG-DR Subrecipient Award, which was found to be DOB Proceeds, within 30 days of receipt of the identified duplicative payment. The amount of DOB determined to be paid to the County shall not exceed the Subrecipient Award amount received by the Subrecipient from the CDBG-DR Program.

The Subrecipient agrees to assist and cooperate with the County to pursue any of the claims the Subrecipient has against insurers for reimbursement of DOB Proceeds under any such policies. The Subrecipient's assistance and cooperation shall include, but not be limited to, allowing suit to be brought under the Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the County. The Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by the County, the Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the County, to

the extent of the Subrecipient Award paid to the Subrecipient under the CDBG-DR Program, the policies, any amounts received under the CDBG-DR Program that are DOB Proceeds, and/or any right thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the County to consummate and make effective for the purposes of this Agreement.

The Subrecipient explicitly allows the County to request of any company with which the Subrecipient held insurance policies, FEMA, SBA, or any other entity from which the Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the County to monitor and enforce its interest in the rights assigned to it under this Agreement and give the Subrecipient's consent to such company(ies) to release all information to the County.

If the Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, the Subrecipient agrees to promptly pay such amounts to the County, if Subrecipient received a Subrecipient Award under the CDBG-DR Program in an amount greater than the amount the Subrecipient would have received if such DOB Proceeds had been considered in the calculation of the Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, the Subrecipient shall notify the County in the manner above of such subsequent Proceeds. The County will determine the amount, if any, of the subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of the determined Subsequent DOB Proceeds shall not be requested from the Subrecipient to provide to the County. Subsequent DOB Proceeds shall be remitted to the County as follows:

1. If the Subrecipient has received full payment of the Subrecipient Award, any Subsequent DOB Proceeds shall be remitted to the County.
2. If the Subrecipient has received no payment of the Subrecipient Award, any determined Subsequent DOB Proceeds shall be used by the County to reduce payments and the agreed-upon amount of the Subrecipient Award to the Subrecipient, and all Subsequent DOB Proceeds shall be retained by the Subrecipient for use on the CDBG-DR Program activity.
3. If the Subrecipient has received a portion of the Subrecipient Award, any Subsequent DOB Proceeds shall be used, retained, and/or disbursed in the following order: **(A)** Subsequent DOB Proceeds shall first be used to reduce the remaining payments or agreed-upon amount of the Subrecipient Award, and Subsequent DOB Proceeds in such amount shall be retained by the Subrecipient for use on the CDBG-DR Program activity; and **(B)** any remaining Subsequent DOB Proceeds shall be remitted to the County.
4. If the County makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, less any portion of the Subrecipient Award amount paid to the Subrecipient and which needs to be remitted to the County, and this Agreement shall terminate.

Once the County has recovered an amount equal to the Subrecipient Award paid to the Subrecipient, the County will reassign to the Subrecipient any right assigned to the County pursuant to this Agreement.

The Subrecipient represents that all statements and representations made by the Subrecipient regarding Proceeds received by the Subrecipient shall be true and correct as of the date of the signing of this Agreement.

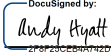
Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 C.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he/she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by the Subrecipient.

In any proceeding to enforce this Agreement, the County shall be entitled to recover all costs of enforcement, including actual attorney's fees.

TOWN OF FORT MYERS BEACH

By: Andy Hyatt

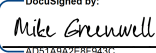
Signature: 

Title: Town Manager

Date: 7/15/2024 | 7:48 AM EDT

LEE COUNTY

By: Mike Greenwell

Signature: 

Title: Chair

Date: 7/16/2024 | 10:59 AM EDT

RESOLUTION NUMBER 25-205

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CDBG-DR SUBRECIPIENT GRANT AGREEMENT DR10157 BETWEEN THE TOWN AND THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS TO CHANGE THE REFERENCED KEY PERSONNEL FOR THE RECOVERY AND RESILIENCY PLANNING PROJECT; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on November 20, 2023, the Town and Lee County Board of County Commissioners entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that identified the Town’s key personnel; and

WHEREAS, Exhibit J required the Town to notify Lee County of any changes in key personnel within 30 days; and

WHEREAS, it is necessary to amend Exhibit J to replace Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director, with William McKannay; and

WHEREAS, the Town desires to complete and execute this First Amendment as soon as possible to be in compliance with the requirements of Exhibit J.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The First Amendment to the Agreement attached hereto as “Exhibit A”, between Lee County and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 16th day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Jul 15, 2025 12:56 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Jul 15, 2025 09:48 EDT)

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

Nancy Stuparich

Nancy Stuparich (Jul 16, 2025 11:07 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 15th day of July 2025.

**FIRST AMENDMENT TO CDBG-DR SUBRECIPIENT AGREEMENT
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
CDBG-DR SUBRECIPIENT AGREEMENT**

THIS FIRST AMENDMENT is made and entered into this 16th day of June, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Lee County Board of County Commissioners, hereinafter referred to as “Lee County”, to that certain CDBG-DR Grant Agreements , dated November 20, 2023 (“Agreement”) DR10157 – Recovery and Resiliency Planning Program.

WITNESSETH:

WHEREAS, on November 20, 2023, the Town and Lee County entered into a Subrecipient Agreement, which included Exhibit J in Section XVIII that named the Town’s key personnel involved in the project; and

WHEREAS, Exhibit J also required the Town to notify Lee County within 30 days in the event of a change in key personnel; and

WHEREAS, recently William McKannay was appointed to serve as the Town Manager and will also be assuming the role of Financial Director replacing Andrew Hyatt, as Town Manager and Joe Onzick, as Financial Director; and

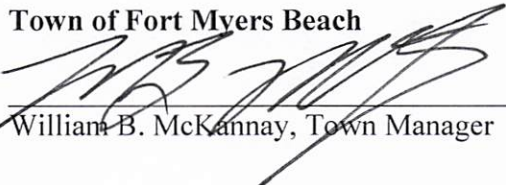
NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this Amendment as follows:

- 1. Amendment.** This Amendment hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.
- 2. Exhibit J.** Exhibit J is amended as provided in Attachment A.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:


Amy Baker (Jul 15, 2025 09:48 EDT)
Amy Baker, Town Clerk

Town of Fort Myers Beach

William B. McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Nancy Stuparich
Nancy Stuparich (Jul 16, 2025 11:07 EDT)
Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE CONTRACT APPROVED AUGUST 4, 2025 WITH ANDREW SITEWORK FOR THE PURCHASE AND REPLACEMENT OF 18 ADDITIONAL NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN FOR AN ADDITIONAL COST NOT TO EXCEED \$145,256 FOR A TOTAL NOT TO EXCEED CONTRACT AMOUNT OF \$435,768; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the additional expenditure when added to the amount of the existing Contract with Andrew Sitework exceeds the Town Manager's purchasing authority and therefore requires Town Council approval.

What the action accomplishes:

This action enables the Town to comply with its purchasing ordinance and obtain replacement of unsafe fire hydrants.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager

5. **Background:**

The Fort Myers Beach Fire Department reported that 36 fire hydrants were out of service. Thereafter, the Town Council approved Resolution 25-236 authorizing repair and replacement of the non-functioning fire hydrant replacement. The Town then proceeded to conduct an island-wide fire hydrant assessment and found an additional 18 fire hydrants unsafe for use. The rusted-out hydrants pose a serious threat to anyone attempting to use them. The rust has disintegrated the bolts that hold the body of the hydrant to the riser (base) that provides the water. The hydrant is capable of just breaking off from the riser. In an emergency, this would delay the firefighters and pose a real possibility of bodily harm. The only way to make them safe and secure is to replace them. This is due to age, being underwater (multiple times) and the delay in starting the hydrant maintenance programs after all the hurricanes (starting with Ian). In accordance with the National Fire Protection Association, there are a minimum number of hydrants for buildings to meet adequate fire flow. Andrew Site Work (Teir 1 contractor) was currently working on the island and proceeded to replace the hydrants per the resolution. From the original resolution (25-236) so far 34 of the original 36 have been replaced. This amendment will allow Andrew Site Work to continue with the emergency replacement project.

Attachments:

1. Final NS 25-256, Amendment 1 ASW Fire Hydrants
2. Final First Amendment to Andrew Sitework Contract
3. Emergency Form ASW 18 fire hydrants signed

Financial Impact:

The total expenditure will be funded through the water fund balance or the emergency fund depending upon ultimate availability of funds.

6. **Alternative Action**

Do not approve the purchase.

7. **Management Recommendations:**

Management recommends approval of the amendment to increase the number of fire hydrants to be purchased on an emergency basis.

8. **Recommended Approval:**

Mark Ashton, Utilities Manager
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/27/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025

RESOLUTION NUMBER 25-256

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE CONTRACT RATIFIED AND APPROVED AUGUST 4, 2025 WITH ANDREW SITEWORK, FOR THE ADDITIONAL PURCHASE AND REPLACEMENT OF 18 NON-OPERABLE FIRE HYDRANTS LOCATED THROUGHOUT THE TOWN FOR AN ADDITIONAL COST NOT TO EXCEED \$145,256, FOR A TOTAL NOT TO EXCEED CONTRACT AMOUNT OF \$435,768; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, on August 4, 2025, the Town Council of the Town of Fort Myers Beach approved Resolution 25-236 to ratify approval of an emergency purchase by contract, with an attached addendum, between the Town of Fort Myers Beach and Andrew Sitework, LLC, for the replacement of thirty-six (36) fire hydrants deemed unsafe within the Town, at a not-to-exceed amount of \$290,512.00 (“the Contract”); and

WHEREAS, the Town recently became aware of the existence of eighteen (18) additional unsafe fire hydrants within the Town of Fort Myers Beach, which require replacement; and

WHEREAS, the cost to replace the additional eighteen (18) unsafe fire hydrants is estimated not-to-exceed \$145,256.00; and

WHEREAS, the parties desire to amend the existing Contract to add the additional eighteen (18) unsafe fire hydrants to the scope of work and to increase the not to exceed amount of the existing Contract by \$145,256 for a total amount of \$435,768 inclusive of the additional work; and

WHEREAS, because the value of the amendment to the Contract is in excess of the authority of the Town Manager, the amendment requires approval by the Town Council, as provided in Section 2-480(b) of the Town of Fort Myers Beach Code of Ordinances; and

WHEREAS, approval of the amendment to the Contract is in the best interest of the Town for the safety and benefit of the citizens and visitors of the Town of Fort Myers Beach and to ensure compliance with minimum fire protection standards.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution approves an amendment to the Contract with Andrew Sitework, LLC to provide for the total replacement of fifty-four (54) unsafe fire hydrants at a total not-to-exceed amount of \$435,768.00. A copy of the amendment to the Contract 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 September 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:**

Nancy Stuparich, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day ____ 2025.

**FIRST AMENDMENT TO CONTRACT BETWEEN
ANDREW SITEWORK LLC AND THE TOWN OF FORT MYERS BEACH**

THIS FIRST AMENDMENT is made to that certain contract by and between Andrew Sitework LLC and the Town of Fort Myers Beach, as ratified and approved by the Town Council on August 4, 2025 in Resolution 25-236 (“the Contract”).

WITNESSETH

WHEREAS, the Contract was ratified and approved by the Town Council on August 4, 2025 in the amount of \$290,512.00 on an emergency basis shortly after the Town became aware that 36 fire hydrants located throughout the Town were inoperable; and

WHEREAS, since that time, the Town Council has become further aware of the existence of eighteen (18) additional unsafe fire hydrants within the Town of Fort Myers Beach, which similarly require replacement for the safety and wellbeing of the Town’s residents and visitors and to ensure compliance with minimum fire protection standards; and

WHEREAS, the cost to replace the additional unsafe fire hydrants is estimated to not exceed \$145,256.00; and

WHEREAS, the parties desire to amend the Contract to authorize the replacement of the additional 18 fire hydrants and associated costs as stated herein.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to amend the Contract as follows:

1. **AMENDMENT OF SCHEDULE OF VALUES.** The Contract shall allow for the replacement of a total of 54 fire hydrants for a total amount not to exceed \$435,768.00.

2. **REMAINING TERMS.** All other terms and conditions of the Contract, and its Addendum, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment of the Contract as of the date last signed below.

WITNESSES:

ANDREW SITEWORK LLC

1st Witness Signature

Print Name: _____

Date: _____

1st Witness Print Name

2nd Witness Signature

2nd Witness Print Name

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor of Fort Myers Beach

Date: _____

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

REQUEST/JUSTIFICATION FOR EMERGENCY PURCHASE
(ATTACH ADDITIONAL PAGES IF NECESSARY)

REQUESTER NAME: Mark Ashton _____ DATE: 6-12-2025 _____
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.

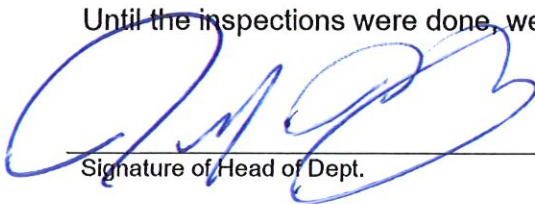
18 Fire hydrants have been inspected and determine to be unsafe..

FINANCIAUOPERATIONAL 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.

9-2-25

Date

Dee Omsick

Signature of Administrative Services/Finance Director

9-3-25

Date



Signature of Town Manager

9-3-25

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: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO: 1) INCREASE FUNDS AVAILABLE FOR ADDITIONAL GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$130,000.00 AND 2) INCLUDE ADDITIONAL STANDARD CONTRACT TERMS AND CONDITIONS; AUTHORIZING THE EXECUTION OF THE THIRD AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary to comply with our purchasing ordinance requirement for Town Council to authorize expenditures greater than \$75,000.

What the action accomplishes:

This action will authorize a not-to-exceed amount sufficient to cover the upcoming year of locating services.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager

5. **Background:**

Pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT (Attached) "Stormwater Maintenance and Repair" was approved in February of 2023. The Town and Earthview ("Firm"), entered into a Service Provider Agreement for Stormwater Maintenance and Repair. The first amendment was ratified on the 20th day of June 2023 by Resolution 23- 69 (Attached) to extend the agreement. The agreement included a provision for additional services. Those services included ground penetrating radar (locates) services. Then the second amendment was ratified on February 3, 2025, for locating services with Resolution 25-54 (Attached). The second amendment was approved for \$130,000. which was retroactive to June 1, 2024. The \$130,000 amount was the estimated amount for a year of services. Therefore, going from June of 2024 to August 2025 our allotment has been depleted. In accordance with Chapter 556, Florida Statutes, all property owners and excavators must call Sunshine 811 and locate all underground utility lines (locates) prior to any digging. The island is still experiencing an increase in construction activity as the island continues to recover from Ian and other hurricanes. The town is in the process of hiring a locates technician. Until that happens we must continue to provide our community with location services. The \$130,000 is the estimate for a year of services.

Attachments:

1. PM NS 25-279, Earthview locates (1)
2. Third Amendment to Earthview LLC Service Agreement
3. 25-54 Earthview Second Amendment Signed (1)
4. 23-69 First Amendment to Earthview Agreement Signed
5. Earthview agreement- EXECUTED - combined
6. RFP-23-03-UT Stormwater Maintenance and Repair- final

Financial Impact:

The \$130,000 not-to-exceed amount will be the total expense incurred by the Water Fund for these services.

6. **Alternative Action**

The Town Council may choose to revise the amount or not approve of this contract amendment.

7. **Management Recommendations:**

Management recommends ratification of these expenditures to comply with the town's purchasing ordinance.

8. **Recommended Approval:**

Mark Ashton, Utilities Manager
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/27/2025
Approved - 9/2/2025
Approved - 9/2/2025
Approved - 9/3/2025
Approved - 9/3/2025
Final Approval - 9/3/2025

RESOLUTION NUMBER 25-270

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A THIRD AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO: 1) INCREASE FUNDS AVAILABLE FOR ADDITIONAL GROUND PENETRATING RADAR SERVICES IN AN AMOUNT NOT-TO-EXCEED \$130,000.00 AND 2) INCLUDE ADDITIONAL STANDARD CONTRACT TERMS AND CONDITIONS; AUTHORIZING THE EXECUTION OF THE THIRD AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair”- in February of 2023 the Town and Earthview LLC (“the Firm”) entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was first amended on the 20th day of June 2023 by Resolution 23- 69, and amended again by approval of Resolution 25-54 on February 3, 2025; and

WHEREAS, the Town and the Firm desire to approve a third amendment to the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to August 1, 2025 and to add additional standard contract terms and conditions since the Second Amendment was approved.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Manager is authorized to execute a third amendment to the Agreement, which shall be retroactive to August 1, 2025.

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.

**THIRD AMENDMENT TO SERVICE PROVIDER AGREEMENT EARTH
VIEW LLC – STORMWATER MAINTENANCE AND REPAIR**

THIS THIRD AMENDMENT is made and entered into this ____ day of September 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair as amended on June 20, 2023 and retroactive to June 1, 2024.

WITNESSETH:

WHEREAS, the services provided by Contractor to date have been beneficial to the Town, and as a result, the parties desire to amend the Agreement to provide for the continuation of Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to August 1, 2025; and

WHEREAS, the parties further desire to include additional standard terms and conditions since approval of the Second Amendment to the Agreement; and

WHEREAS, approval of this Third Amendment is in the best interest of the Town and its residents. and/or modify existing terms and conditions in the initial Agreement as provided herein.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this Third Amendment as follows:

1. Amendment. This Amendment amends and supplements the terms of the Agreement as amended to increase the Town’s Payment Obligation as provided in Exhibit B to the Second Amendment not to exceed an additional \$130,000.00. In the event of a conflict between the terms of the Agreement and terms of this Amendment, the terms of this Amendment shall prevail.

2. Term. This Amendment shall be retroactive to August 1, 2025.

3. 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.

4. 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.

5. 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.

6. 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.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor: Earthview, LLC

Print Name: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Will McKannay, Town Manager

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

EXHIBIT A ADDENDUM

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement as directed by the TOWN's representative through Work Order Tickets:

Provider shall locate utilities using Ground Penetrating Radar (GPR) and Radio Detection, and paint and flag findings.

The DELIVERABLES shall include the cost of:

1. Locating utilities using Ground Penetrating Radar (GPR) and Radio Detection, and the paint and flags to indicate the findings.

EXHIBIT B ADDENDUM

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **PAYMENT OBLIGATION**: The Town will pay the Provider as follows for all services listed in each Work Order Ticket:

1. The Provider will provide utility locate services at the rate of **\$165.00/hr.**

The not-to-exceed amount of this contract amendment will

25-54, Earthview Second Amendment Final for signatures

Final Audit Report

2025-04-22

Created:	2025-04-14
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIkM_hx8J_K0Phadq0r-d-dqEz3s_ika8

"25-54, Earthview Second Amendment Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2025-04-14 - 2:48:05 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature
2025-04-14 - 2:48:11 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature
2025-04-14 - 2:48:11 PM GMT
-  Email viewed by Andrew Hyatt (andyhyatt@fmbgov.com)
2025-04-14 - 2:51:32 PM GMT
-  Document e-signed by Andrew Hyatt (andyhyatt@fmbgov.com)
Signature Date: 2025-04-14 - 2:51:46 PM GMT - Time Source: server
-  Email viewed by Dan Allers (allersd@fmbgov.com)
2025-04-14 - 4:56:45 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)
Signature Date: 2025-04-14 - 4:57:02 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)
2025-04-15 - 10:46:27 PM GMT

 Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)

Signature Date: 2025-04-15 - 10:46:56 PM GMT - Time Source: server

 Document e-signed by Amy Baker (AMY@FMBGOV.COM)

Signature Date: 2025-04-22 - 1:09:59 PM GMT - Time Source: server

 Agreement completed.

2025-04-22 - 1:09:59 PM GMT

RESOLUTION NUMBER 25-54

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO ADD 1) GROUND PENETRATING RADAR SERVICES IN A NOT-TO-EXCEED AMOUNT OF \$130,000.00; AND 2) STANDARD CONTRACT CLAUSES; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair”- in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), which was amended on the 20th day of June 2023 by Resolution 23-69, and

WHEREAS, the Town and the Firm desire to further amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of **\$130,000.00** retroactive to June 1, 2024.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Second Amendment to the Agreement attached hereto as “Exhibit A” between the Firm and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and is authorized to take all necessary steps to implement this Second Amendment to the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach, and shall be retroactive to June 1, 2024.

The foregoing Resolution was by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Mayor Allers, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 3rd day of February 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Apr 14, 2025 12:57 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Apr 22, 2025 09:09 EDT)

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

Nancy Stuparich

Nancy Stuparich (Apr 15, 2025 18:46 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 14th day of April 2025.

**SECOND AMENDMENT TO SERVICE PROVIDER AGREEMENT
EARTH VIEW LLC – STORMWATER MAINTENCE AND REPAIR**

THIS SECOND AMENDMENT is made and entered into this 3rd day of February 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Earthview, LLC hereinafter referred to as “Contractor”, to that certain Service Provider Agreement, dated January 9, 2023 (“Agreement”) for stormwater maintenance and repair.

WITNESSETH:

WHEREAS, the services provided by Contractor to date have been beneficial to the Town, and as a result, the parties desire to amend the Agreement to include Ground Penetrating Radar services for utility locates in a not-to-exceed amount of \$130,000.00 retroactive to June 1, 2024; and

WHEREAS, the parties further desire to include and/or modify existing terms and conditions in the initial Agreement as provided herein; and

WHEREAS, Section 119.0701, Fla. Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning a Contractor’s compliance with Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Statutes, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Statutes, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern” and any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Amendment amends and supplements the terms and conditions contained in the Agreement. In the event of a conflict between the terms and conditions of the Agreement and terms of this Amendment, the terms and conditions of this Amendment shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology systems of the Town.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain

a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name

and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

8. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

9. Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

10. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

11. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

12. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on the Contractor’s social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

13. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

14. Additional Terms. Notwithstanding any other provision to the contrary, the parties agree to amend the Scope of Services in the Agreement as provided in Exhibit A to this Amendment and the Town's Payment Obligation as provided in Exhibit B to this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Print Name: _____

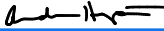
Company: Earthview, LLC

ATTEST:



Amy Baker (Apr 22, 2025 09:09 EDT)
Amy Baker, Town Clerk

Town of Fort Myers Beach



Andrew Hyatt (Apr 14, 2025 10:51 EDT)
Andrew Hyatt, Town Manager

APPROVED AS TO FORM & SUFFICIENCY



Nancy Stuparich (Apr 15, 2025 18:46 EDT)
Vose Law Firm, Town Attorney

EXHIBIT A ADDENDUM

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement as directed by the TOWN's representative through Work Order Tickets:

Provider shall locate utilities using Ground Penetrating Radar (GPR) and Radio Detection, and paint and flag findings.

The DELIVERABLES shall include the cost of:

1. Locating utilities using Ground Penetrating Radar (GPR) and Radio Detection, and the paint and flags to indicate the findings.

EXHIBIT B ADDENDUM

TO RESOLUTION 25-xx OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC (PROVIDER) DATED THIS 3RD day of FEBRUARY 2025.

1. **PAYMENT OBLIGATION:** The Town will pay the Provider as follows for all services listed in each Work Order Ticket:

1. The Provider will provide utility locate services at the rate of **\$165.00/hr.**

The not-to-exceed amount of this contract amendment will

25-54, Earthview Second Amendment Final for signatures

Final Audit Report

2025-04-22

Created:	2025-04-14
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIkM_hx8J_K0Phadq0r-d-dqEz3s_ika8

"25-54, Earthview Second Amendment Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2025-04-14 - 2:48:05 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature
2025-04-14 - 2:48:10 PM GMT
-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature
2025-04-14 - 2:48:11 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature
2025-04-14 - 2:48:11 PM GMT
-  Email viewed by Andrew Hyatt (andyhyatt@fmbgov.com)
2025-04-14 - 2:51:32 PM GMT
-  Document e-signed by Andrew Hyatt (andyhyatt@fmbgov.com)
Signature Date: 2025-04-14 - 2:51:46 PM GMT - Time Source: server
-  Email viewed by Dan Allers (allersd@fmbgov.com)
2025-04-14 - 4:56:45 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)
Signature Date: 2025-04-14 - 4:57:02 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)
2025-04-15 - 10:46:27 PM GMT



Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)

Signature Date: 2025-04-15 - 10:46:56 PM GMT - Time Source: server



Document e-signed by Amy Baker (AMY@FMBGOV.COM)

Signature Date: 2025-04-22 - 1:09:59 PM GMT - Time Source: server



Agreement completed.

2025-04-22 - 1:09:59 PM GMT



Adobe Acrobat Sign

RESOLUTION NUMBER 23-69

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN AND EARTHVIEW, LLC FOR STORMWATER MAINTENANCE AND REPAIRS TO CONTINUE SERVICES; AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, pursuant to a competitive procurement process in compliance with state law and Town Code – RFP-23-03-UT “Stormwater Maintenance and Repair” - in February of 2023 the Town and the (“Firm”), entered into a Service Provider Agreement for Stormwater Maintenance and Repair (“Agreement”), a copy of which is attached as Exhibit “A”; and

WHEREAS, the Town and the Firms desire to amend the Agreement to include additional continued services in a not to exceed total of up to \$664,250.00 more to continue services on all of the Town maintained stormwater infrastructure.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The First Amendment to the Agreements attached hereto as Exhibit “A”, between the Firms and the Town of Fort Myers Beach is approved. The Town Manager is authorized to execute the First Amendment on behalf of the Town is authorized to take all necessary steps to implement the First Amended Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was by the Town Council upon a motion by Mayor Allers and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	aye
Bill Veach, Council Member	aye
Karen Woodson, Council Member	aye

ADOPTED this 20th day of June 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

John R. Herin, Jr.

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21st day of June 2023.

Attachment 1

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

RFP Form C

Proposer: Earth View, LLC

PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL
TO BE DEEMED RESPONSIVE.***

Name of Proposer: E_a_r_t_h_V_i_e_w_,_L_L_cName of authorized representative of Proposer: Allison Murrell, President

Project Cost

Storm Drain	Linear feet for evaluation purposes only	Price Per Foot	OR Hourly Rate
Televis 10" to 15" Storm Drain	16,000 . /t, d d0	\$1.50	\$ 250 /Hour
Televis 18" to 24" Storm Drain	t&:000 03, OC o	\$2.00	\$250 /Hour
Televis 30" to 42" Storm Drain	1fy.000 j.J., t&0	\$3.50	\$250 /Hour
Clean 10" to 15" Storm Drain	16:000 ,, . 000	\$4.00	\$350 /Hour
Clean 18" to 24" Storm Drain	1-&,-000 ,:ti-,, MO	\$6.50	\$350 /Hour
Clean 30" to 42" Storm Drain	1.6,000 2-4 (Jt)tJ	\$8.00	\$350 /Hour
Total \$408,000' 5 S6tB,ooCJ	Ht;eoO	\$	\$__ /Hour
Outfall Barnacle Removal	Outfall numbers are for evaluation purposes Only	Price Per Outfall	OR Hourly Rate
Remove Barnacles 30" to 42" Storm Drain	29 □G	\$1,500.00	\$ 300 /Hour
Remove Barnacles 10"to 29"" Storm Drain	30 □>	\$1,250.00	\$300 /Hour
Total \$8+,600 , tq(, 2,□U	69	\$	\$__ /Hour
Total Project Cost:\$ 489,000.00 P CGJ.r,zS'o			

Instructions: Show the project cost for each deliverable your firm will provide per the requested

Signature: Dan Allers
Dan Allers (Jun 21, 2023 16:57 EDT)
Email: allersd@fmbgov.com

Signature: 
AMY BAKER (Jun 21, 2023 10:42 EDT)
Email: AMY@FMBGOV.COM

Signature: John R. Herin, Jr.
John R. Herin, Jr. (Jun 22, 2023 13:06 EDT)
Email: jherin@foxrothschild.com

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this 9th day of **January 2023**, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **Earth View, LLC** with an address of **3494 Shearwater St., Naples, FL 34117** (hereafter "Provider").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is **3 years (plus)** commencing on the 9th day of **January 2023**, and terminating on the 9th day of **January 2026**, with the option for two additional terms of one year each.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.

- c) **Non-Waiver.** Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
 - d) **Indemnity and Hold Harmless.** The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement..
 - e) **Non-Public Information.** The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) **Statutory Duties.** The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) **Disclosure.** The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. **Commencement and Completion of Work.** The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.

6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.
7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C";
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. Contractor is required to comply with the provision of F.S. 119.0701. Specifically, the Contractor is required to keep and maintain the records required the Town to perform the services. Upon request by the Town, Contractor is required to provide the Town with a copy of the requested records, or the ability to inspect and copy records, within a reasonable time and at a cost to the Town that does not exceed the costs established under F.S. chapter 119. Upon completion of the contract the Contractor must transfer, at no cost to the Town, all public records in a format compatible with the Town's information technology system, or, in the alternative, the Contract may retain the records in a manner consistent with F.S. 119.0701(2)(b)4.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, AMY@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. E-Verify. *As a condition precedent to entering into this AGREEMENT*, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
 - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
 - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
 - e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in

this section.

15. Prohibition Against Contracting with Scrutinized Companies. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

16. Miscellaneous Provisions.

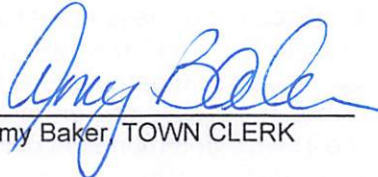
- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

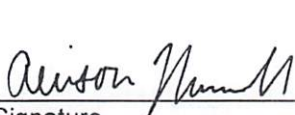
TOWN OF FORT MYERS BEACH

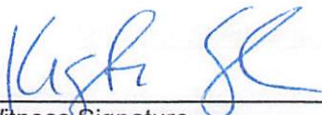
ATTEST:

BY: 
Keith Wilkins, Interim TOWN MANAGER

BY: 
Amy Baker TOWN CLERK

PROVIDER: EARTH VIEW, LLC.

BY: 
Signature


Witness Signature

Allison Murrell
Printed name of person signing

Krista Stone
Printed name of witness

President
Title (printed)

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS 9th day of January 2023
BETWEEN THE TOWN AND EARTH VIEW, LLC, PROVIDER.

1. SCOPE OF SERVICES: The Provider will perform the following services under this Agreement:

Provider shall furnish all materials, tools, supplies, heavy equipment, vehicles and labor necessary for the maintenance, repair and televising and video recording of all stormwater drains. The Provider shall bear all costs associated with the Project.

Stormwater cleaning shall be performed with hydraulically propelled or mechanically operated cleaning equipment. Selection of equipment shall be based on field conditions, taking into account all relevant factors such as, by example and not limitation, type and quantity of debris to be removed, size of pipe, depth of flow and the like.

Television inspection and video recording of all sewer and storm drains shall be required for the documentation of various field conditions and activities as directed by the TOWN's representative.

Stormwater pipe joint sealing shall be accomplished by the injection of chemical sealing materials into and/or through the joints from within the pipe.

The DELIVERABLES shall include the cost of:

1. Meetings with Town staff to discuss Stormwater drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Storm Drains.

EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED THIS **9th** day of **January 2023**
BETWEEN THE TOWN AND **EARTH VIEW, LLC**, PROVIDER.

PAYMENT OBLIGATION

1. The Town will pay the Provider as follows for all services listed in each Supplemental Authorization:

See Attachment 1

- i. Provider will receive reimbursement for out-of-pocket expenses from the Town as follows: None

EXHIBIT "C"

INSURANCE

Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract, shall include Contractual Liability and Products and Completed Operations Coverage, and shall be of the following forms and limits:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of \$10,000,000 each occurrence combined single limit or \$10,000,000 each occurrence/\$10,000,000 general aggregate;

Business Automobile Liability Insurance with minimum limits of \$1,000,000 each occurrence. Combined Single Limit or \$1,000,000 each occurrence/\$1,000,000 general aggregate; and

Professional Liability Insurance with minimum limits of \$1,000,000.00.

The establishment of minimum limits of insurance by Town does not reduce or limit the liability or responsibilities of Respondent.

Renewal shall be sent to the Town at least 60 days prior to any expiration date. Consultant shall ensure that its insurer provides a 60 day notification to the Town in the event of cancellation, renewal, or modification of any required insurance coverage requirements that the Consultant is required to meet. The Consultant shall provide the Town with certificates of insurance meeting the required insurance provisions.

EXHIBIT "D"

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the County for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the County and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The County may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Earth View, LLC

Date 11/17/2022

Authorized Signature 
Allison Murrell, President

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

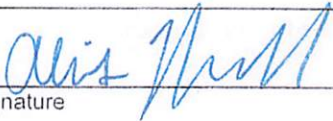
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Collier County, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

Earth View, LLC

By: 

Signature

Allison Murrell, President

Name and Title

3494 Shearwater Street

Street Address

Naples, FL 34117

City, State, Zip

Registered awaiting UEI

UEI Unique Entity Identifier (for SAM.gov verification)

11/17/2022

Date

Sub-Recipient Name: Collier County Board of County Commissioners

DEM Contract Number: TBD

FEMA Project Number: TBD

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

COLLIER COUNTY																					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FEID NUMBER		CONTRACT DOLLAR AMOUNT																	
Earth View, LLC		20-1083164		\$489,000.00																	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN? Y ☐ N ☒ DBE? Y ☐ N ☒ MBE? Y ☐ N ☒ WBE? Y ☐ N ☒ SDB SA? 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 M/WBE VETERAN	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE [See Below]	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
	N/A																				
TOTALS																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																	
Allison Murrell		11/17/2022		President																	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																	
amurrell@evllc.com		239-434-5200		239-435-7202																	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																					
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th>ETHNICITY</th> <th>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
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D. SECTION TO BE COMPLETED BY COLLIER COUNTY																					
DEPARTMENT NAME		COLLIER CONTRACT # (IFB/RFP or PO/REO)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:				DATE																	

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

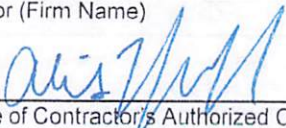
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Earth View, LLC

Contractor (Firm Name)


Signature of Contractor's Authorized Official

Allison Murrell, President

Name and Title of Contractor's Authorized Official

11/17/2022

Date

Attachment 1

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

RFP Form C

Proposer: Earth View, LLC

PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL
TO BE DEEMED RESPONSIVE.***

Name of Proposer: Earth View, LLC

Name of authorized representative of Proposer: Allison Murrell, President

Project Cost

Storm Drain	Linear feet for evaluation purposes only	Price Per Foot	OR Hourly Rate
Televis 10" to 15" Storm Drain	16,000	\$1.50	\$ <u>250</u> /Hour
Televis 18" to 24" Storm Drain	16,000	\$2.00	\$ <u>250</u> /Hour
Televis 30" to 42" Storm Drain	16,000	\$3.50	\$ <u>250</u> /Hour
Clean 10" to 15" Storm Drain	16,000	\$ 4.00	\$ <u>350</u> /Hour
Clean 18" to 24" Storm Drain	16,000	\$ 6.50	\$ <u>350</u> /Hour
Clean 30" to 42" Storm Drain	16,000	\$ 8.00	\$ <u>350</u> /Hour
Total \$408,000	200,000	\$	\$ ____ /Hour
Outfall Barnacle Removal	Outfall numbers are for evaluation purposes Only	Price Per Outfall	OR Hourly Rate
Remove Barnacles 30" to 42" Storm Drain	29	\$ 1,500.00	\$ <u>300</u> /Hour
Remove Barnacles 10" to 29" Storm Drain	30	\$ 1,250.00	\$ <u>300</u> /Hour
Total \$81,000	59	\$	\$ ____ /Hour
Total Project Cost: \$ <u>489,000.00</u>			

Instructions: Show the project cost for each deliverable your firm will provide per the requested

Appendix A

Town of Fort Myers Beach RFP-23-03-UT

scope of work. Include the fees associated with each proposed deliverable.

Fees should be detailed to the extent possible per deliverable.

The Total Unit Price Cost shall include all fees and reimbursements for out of pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

The Total Unit Price Cost shall include the cost of:

1. Meetings with Town staff to discuss Stormwater Drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Stormwater Drains.

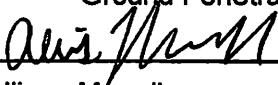
Payments will be made on each deliverable upon receipt and acceptance by the Town.

Additional Services

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, linear foot rate and staff positions available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Linear Foot Rate</u>
Grout Services	\$350.00/Hour
Add rows as necessary	
Ground Penetrating Radar	\$200.00/Hour

By: 

Date: 11/17/2022

Name: Allison Murrell

Title: President

Letter of Transmittal from Earthview's Proposal

Yadzia Roa, Contracts Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

NOVEMBER 17, 2022

DEAR MS. ROA AND COMMITTEE MEMBERS,

Earth View, LLC (EV) is pleased to submit this proposal for RFP Number 23-03-UT, *Stormwater Maintenance and Repairs* to the Town of Fort Myers Beach. We have received, reviewed, and understand the requirements of RFP #23-03-UT and are confident in our abilities to perform all work on time, within budget, and at high levels of quality.

Founded in Naples, Florida in 2004, Earth View, LLC (EV) is a leading Horizontal Directional Drilling (HDD) and Subsurface Utility Engineering (SUE) company that provides services in both private and public sectors nationwide. From ground and concrete penetrating radar, vacuum excavation, leak detection, and televising, to large-scale HDD's, Pipe Ramming, Pipe Bursting and Sheet Piling, EV maintains a unique industry position.

EV is equipped with a combination of cleaning trucks, telespection trucks, and a support staff consisting of managers, estimators, experienced operators/ technicians, and full-time, in-house mechanics so that repairs can be made correctly and in a timely manner. It is this combination that ensures project success. The company prioritizes the use of new and advanced technology in both the office and in the field, maintains a large equipment fleet, holds the required licenses and certifications for work under this RFP, and has extensive project experience in the local area. More information on the Firm's Qualifications and Resources is provided throughout this Proposal Package.

UNDERSTANDING OF SCOPE OF WORK

Earth View, LLC is qualified to perform Stormwater Maintenance and Repairs for the Town of Fort Myers Beach. EV's understanding of the scope of work for RFP #23-03-UT is as follows: The town desires to enter into a three (3) year agreement with two (2) additional one (1) year optional extension periods. If selected, EV will furnish all materials, tools, supplies, heavy equipment, vehicles and labor necessary for the maintenance, repair, televising and video recording of all stormwater drains, bearing all costs associated with the project.

The work includes approximately 59 curb inlets, 504 catch basins, 7 junction boxes, 6 skimmer boxes, 95 major outfalls (6" up to 30") and 9.12 miles of drainpipe (48.178 LF) including culverts. Stormwater cleaning will be performed with hydraulically propelled or mechanically operated cleaning equipment. Stormwater pipe joint sealing will be accomplished by the injection of chemical sealing materials into and/ or through the joints from within the pipe, and required television inspection and video recording of all sewer and storm drains will be directed by Town staff. EV staff is prepared to meet with Town staff to discuss Stormwater drain reports and will provide a written report and a DVD outlining all findings, including video recording of all Storm Drains.

AUTHORIZED REPRESENTATIVES

Persons authorized to make representations for or on behalf of Earth View, LLC, and therefore negotiate and execute a contract for the work in this RFP, are as follows:

- Howard J. Murrell, Jr., *Manager*
3494 Shearwater St. Naples, FL 34117
239.434.5200
- Allison B. Murrell, *President*
3494 Shearwater St. Naples, FL 34117
239.434.5200
- Stacey L. Murrell, *Secretary*
3494 Shearwater St. Naples, FL 34117
239.434.5200

EV'S COMMITMENT

Earth View, LLC confidently submits this proposal and ensures that all projects under RFP #23-03-UT will be performed in adherence to all requirements. The company makes a positive commitment to provide its services and highest quality products to the Town of Fort Myers Beach.

Respectfully,

Allison Murrell

Allison Murrell
President

Phone: 239.434.5200

Email: amurrell@evllc.com

THE TOWN OF FORT MYERS BEACH



REQUEST FOR PROPOSAL

Stormwater Maintenance and Repair

FOR THE TOWN OF FORT MYERS BEACH

RFP-23-03-UT

Issued: October 29, 2022

Proposals Due: THURSDAY, November 17, 2022

2:00 p.m. EST

Prepared by:

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

TOWN OF FORT MYERS BEACH, FLORIDA
RFP-23-03-UT

The Town of Fort Myers Beach, Florida invites qualified firms to submit proposals to provide:

Stormwater Maintenance and Repair

The Town intends to award a contract to a firm(s) to provide services necessary for the project (the "Project") described herein.

The Town of Fort Myers Beach, Florida (the "Town") will receive sealed proposals until **2:00 p.m.** (local), **Thursday, November 17, 2022** in Town Hall, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.

The Town's contact person for this RFP is:

Contracts Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Telephone: 239-765-0202
Email: Bids@fortmyersbeachfl.gov

RFP documents may be obtained via the Internet at the Town of Fort Myers Beach website at www.fortmyersbeachfl.gov and this RFP is posted on www.Demandstar.com. If you do not have internet access, you may obtain the documents by contacting the Contracts Manager (an additional charge will apply). See Part II, Section H of the RFP for information regarding submitting a proposal.

This solicitation may be cancelled, or any or all bids or proposal may be rejected in whole or in part with our without cause.

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PART I - STATEMENT OF WORK

A. *OBJECTIVE*

The Town of Fort Myers Beach is a seaside community with a permanent population of about 6,000 that increases to approximately 40,000 during the winter season. The Town is approximately 7 miles long with the Gulf of Mexico to the west and the Estero Bay to the east. The Town seeks to hire a contractor to perform stormwater maintenance and repair.

B. *GENERAL INFORMATION*

The Town is seeking to enter into a three (3) year agreement with two (2) additional one (1) year optional extension periods.

59 – curb inlets
504 – catch basins (various types)
7 – junction boxes
6 – skimmer box
95 – major outfalls (6” up to 30”)
9.12 miles of drain pipe/48.178 linear feet – includes culverts (majority of pipe is rcp material)

C. *SCOPE OF WORK*

The Proposer shall furnish all materials, tools, supplies, heavy equipment, vehicles and labor necessary for the maintenance, repair and televising and video recording of all stormwater drains. The Proposer shall bear all costs associated with the Project.

Stormwater cleaning shall be performed with hydraulically propelled or mechanically operated cleaning equipment. Selection of equipment shall be based on field conditions, taking into account all relevant factors such as, by example and not limitation, type and quantity of debris to be removed, size of pipe, depth of flow and the like.

Television inspection and video recording of all sewer and storm drains shall be required for the documentation of various field conditions and activities as directed by the TOWN’s representative.

Stormwater pipe joint sealing shall be accomplished by the injection of chemical sealing materials into and/or through the joints from within the pipe.

The DELIVERABLES shall include the cost of:

1. Meetings with Town staff to discuss Stormwater drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Storm Drains.

D. TECHNICAL REQUIREMENTS

Minimum Requirements

In order to be deemed responsive and considered for contract award, each Proposer shall satisfy the following mandatory minimum requirements:

- 1)The Proposer shall be authorized to do business in Florida and Lee County.
- 2)The Proposer shall have a minimum of (3) Years' Experience in the Storm Drain Cleaning Industry.
- 3)The Proposer shall have verified references from the past (2) Years' or present contracts for services similar to the services requested herein.

Means and Methods of Work

High-velocity jet (hydro cleaning) equipment: all high-velocity/storm cleaning equipment shall be constructed for ease and safety of operation. The equipment shall have a selection of two or more high-velocity nozzles. The nozzles shall be capable of producing a scouring action from 15 to 45 degrees in all size lines designated to be cleaned. Equipment shall also include a high-velocity gun for washing and scouring manhole walls and floor. The gun shall be capable of producing flows from a fine spray to solid stream. The equipment shall carry its own water tank, auxiliary engines, pumps, and hydraulically driven hose reel, with a minimum of 600 feet of jet hose.

During storm cleaning operations, satisfactory precautions shall be taken in the use of cleaning equipment. When hydraulically propelled cleaning tools (which depend upon water pressure to provide their cleaning force) or tools which retard the flow in the storm line are used, precautions shall be taken to ensure that the water pressure created does not damage or cause flooding of public or private property. When additional water from fire hydrants is necessary to avoid delay in normal work procedures, the water shall be conserved and not used unnecessarily. The Town of Fort Myers Beach will provide the fire hydrant and The Proposer will be required to pay for the water usage. No fire hydrant shall be obstructed in case of a fire in the area served by the hydrant.

Selection of the equipment used shall be based on the conditions of the lines at the time the work commences. The equipment and methods selected shall be satisfactory to the TOWN'S representative. The equipment shall be capable of moving dirt, grease, rocks, sand, and other materials and obstructions from the stormwater drains. If cleaning of an entire section cannot be successfully performed, the equipment shall be set up on the other end and cleaning again attempted. If successful cleaning cannot be performed or the equipment fails to traverse the entire pipe length proposed for cleaning, it will be assumed that a major blockage exists and the cleaning effort shall be abandoned.

Roots shall be removed in the designated sections where root intrusion is a problem. Special attention should be used during the cleaning operation to ensure almost complete removal of roots from the joints. Any roots which could prevent the seating of the packer or could prevent the proper application of chemical sealants shall be removed. Procedures may include the use of mechanical equipment such as rodding machines, bucket machines, winched using root cutters and porcupines, and equipment such as high-velocity jet cleaners. Chemical root treatment may be used at the option of the Proposer.

To aid in the removal of roots and at the option of the Proposer, sections that have root intrusion may be treated with an approved herbicide. The application of the herbicide to the root shall be done in accordance with the manufacturer's recommendations and specifications and in such a manner to preclude damage to surrounding vegetation. Any damaged vegetation so designated by the TOWN shall be replaced by the Proposer at no cost to TOWN. All safety precautions as recommended by the manufacturer shall be adhered to concerning handling and application of the herbicide.

All sludge, dirt, sand, rocks, grease, roots, and other solid or semisolid material resulting from the cleaning operation shall be removed at the downstream inlet or junction box of the section being cleaned. Passing material from section to section, which could cause line stoppages, accumulations of sand in wet wells, or damage pumping equipment, shall not be permitted.

All debris, whether solids or semisolids, resulting from the Work shall be removed from the site and disposed of by the Proposer in a legal and sanitary manner. Under no circumstances will the Proposer be allowed to accumulate debris on the Work site or in the area of the Work.

Televising: Proposer shall be capable of televising, recording and cleaning of stormwater pipes a minimum of 500 feet in length.

After cleaning, the sections shall be visually inspected by Proposer by means of closed-circuit television. The inspection will be done one section at a time and the flow in the section being inspected will be suitably controlled as specified.

The closed circuit television ("CCTV") camera system used for the inspection shall be one specifically designed and constructed for such inspection. Lighting for the CCTV camera shall be suitable to allow a clear bright sharp picture of the entire periphery of the pipe. The camera shall be operative in 100% humidity conditions. The CCTV camera, television monitor, and other components of the video system shall be capable of producing picture quality with a minimum of 460 lines for camera and 500 lines for monitor, with the line resolution free from distribution or any form of picture imperfection to the satisfaction of the TOWN; and if unsatisfactory, equipment shall be removed and no payment will be made for an unsatisfactory inspection. All of the CCTV and video system equipment shall be no older than five years old.

The camera shall be moved through the line in either direction at a moderate rate, stopping when necessary to permit proper documentation of the storm line condition. In no case will the CCTV camera be pulled at a speed greater than 30 feet per minute. Manual winches, power winches, TV cable and power rewinds or other devices that do not obstruct the camera view or interfere with proper documentation of the sewer/storm conditions shall be used to move the camera through the sewer/storm line. If, during the inspection operation, the television camera will not pass through the entire manhole section, the Proposer shall set up the equipment so that the inspection can be performed from the opposite end. On lines which have sags or dips, to an extent that the CCTV camera lens becomes submerged for three (3) or more feet during the television inspection, the Proposer shall pull double squeegee and/or sponges through the line in order to remove the water from those dips or sags. Water removal through squeegees and/or sponges shall be performed until the CCTV camera lens will no longer be submerged, except that this requirement may be waived by the TOWN if the water in which the camera lens is submerged is clear enough to allow the identification of pipe defects, cracks, holes and location of service connections.

Acceptance of stormwater drain cleaning shall be upon the successful completion of the television inspection and shall be to the satisfaction of the TOWN. If any inspection shows the cleaning to be unsatisfactory, the Proposer shall be required to re-clean and re-inspect the stormwater drain until the cleaning is shown to be satisfactory to the Town.

When manually operated winches are used to pull the camera through the line, telephones or other suitable means of communication shall be set up between the two manholes of the section being inspected to ensure good communications between members of the crew.

The importance of accurate distance measurements is emphasized. Measurement for location of defects shall be above ground by means of a meter device. Marking on the cable, or the like, which would require interpretation for depth will not be allowed. Accuracy of the distance meter shall be checked by use of a walking meter, roll-a-tape, or other suitable device, and the accuracy shall be satisfactory to the TOWN'S representative.

Television inspection logs: printed location records shall be kept by the Proposer and shall clearly show the location in relation to an adjacent inlet or junction box of each problem area observed during inspection. In addition, other points of significance such as locations of unusual conditions, roots, storm sewer/storm connections, broken pipe, presence of scale and other discernible features shall be recorded and a copy of such records shall be supplied to the TOWN.

Video Recordings: the purpose of video recording shall be to supply a visual and audio record of problem areas. Video recording playback shall be at the same speed that it was recorded. Slow motion or stop-motion playback features shall be supplied by the PROPOSER. Recordings shall be provided to the Town on DVD disks (2 copies) in protective hard plastic cases. All of the DVD disks shall become property of the TOWN.

Barnacle cleaning at storm drainage outfalls: When requested, the Contractor shall clean the barnacles from the designated pipe outfall extending 10 feet upstream from the outfall outlet point. Care shall be taken during the cleaning not to damage the existing pipe. Contractor is responsible for the means and methods to clean the barnacles to the satisfaction of the TOWN representative.

E. **INSURANCE AND LICENSES**

The successful Proposer shall maintain in full force and effect throughout the contract: (a) insurance coverage reflecting the minimum amounts and conditions required by the Town, and (b) any required licenses.

1. Workers' Compensation Insurance to comply for all employees for statutory limits in compliance with the applicable State and Federal laws;
2. Employer's Liability with a minimum limit per accident in accordance with statutory requirements;
3. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000;
4. Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

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 RFP. 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. Proposer, by submitting a Proposal, agrees to abide by such modifications.

F. **E-Verify. As a condition precedent to entering into this AGREEMENT**, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.

b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.

c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Public Records. Contractor is required to comply with the provision of F.S. 119.0701. Specifically, the Contractor is required to keep and maintain the records required the Town to perform the services. Upon request by the Town, Contractor is required to provide the Town with a copy of the requested records, or the ability to inspect and copy records, within a reasonable time and at a cost to the Town that does not exceed the costs established under F.S. chapter 119. Upon completion of the contract the Contractor must transfer, at no cost to the Town, all public records in a format compatible with the Town's information technology system, or, in the alternative, the Contract may retain the records in a manner consistent with F.S. 119.0701(2)(b)4.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract.

The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

END OF PART I

Stormwater Maintenance and Repair

Town of Fort Myers Beach RFP-23-03-UT

Part II –General Information

PART II: RFP GENERAL INFORMATION

A. **DEFINITIONS**

For the purposes of this Request for Proposals (RFP): **Proposer** shall mean the contractor, consultant, respondent, organization, firm, or other person submitting a response to this RFP. **Town** shall mean the Town of Fort Myers Beach, Town Manager, as applicable, and any officials, employees, agents and elected officials.

Contact Person for the purpose of this RFP shall mean:

Contracts Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Telephone: 239-765-0202 ext. 1401
Email: bids@fortmyersbeachfl.gov

B. **INVITATION TO PROPOSE: PURPOSE**

The Town solicits proposals from responsible Proposers to perform work for or provide goods and/or services to the Town as specifically described in Part I, Statement of Work.

C. **CONTRACT AWARDS**

The Town Council anticipates entering into a contract with the Proposer who submits the proposal judged by the Town to be most advantageous. The Town anticipates awarding one contract, but reserves the right to award more than one contract if in its best interest. If the Town selects a Proposal, the Town will provide a written notice of the award.

The Proposer understands that neither this RFP nor the notice of award constitutes an agreement or a contract with the Proposer. A contract or agreement is not binding until a written contract or agreement has been approved as to form by the Town Attorney and has been executed by both the Town (with Council approval, if applicable) and the successful Proposer.

D. **PROPOSAL COSTS**

Neither the Town nor its representatives shall be liable for any expenses incurred in connection with preparation of a response to this RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the Proposer's ability to meet the requirements of the RFP.

E. **INQUIRIES**

The Town will not respond to oral inquiries. Proposers may mail, email or fax written inquiries for interpretation of this RFP to the attention of the Contracts Manager at

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bids@fortmyersbeachfl.gov. Please mark the correspondence “RFP-23-03-UT QUESTION”.

The Town will respond to written inquiries received no later than 7 working days prior to the date scheduled for submission of the proposals. The Town will record its responses to inquiries and any supplemental instructions in the form of a written addendum. It is the sole responsibility of a Proposer to remain informed as to any changes to the RFP.

F. **DELAYS**

The Town may postpone scheduled due dates in its sole discretion. The Town will attempt to notify all registered Proposers of all changes in scheduled due dates by written addenda.

G. **PRE-PROPOSAL MEETING** No pre-proposal meeting is scheduled.

H. **PROPOSAL SUBMISSION**

Submit one (1) original and four (4) identical copies of the complete proposal, and an electronic copy of the same as a PDF on CD/DVD. Proposals must be submitted by mail or in person to Town of Fort Myers Beach, Town Hall, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, not later than **2:00 PM Eastern Standard Time, on Thursday, 17, 2022.**

All Proposals shall be in a sealed envelope clearly marked – “**Stormwater Maintenance and Repair, RFP-23-03-UT**”. For proper identification, Respondent’s complete name and address shall also appear on the exterior of the proposal package.

Proposals submitted after the specified time and date will not be considered and will remain unopened. Proposals received by telephone, telegraph and/or e-mail will not be accepted.

Proposals will be opened day, **Thursday, 17, 2022** at Town Hall, Council Chambers, 2525 Estero Boulevard, Fort Myers Beach, FL 33931. The Town’s selection meeting dates, if applicable, will be posted at Town Hall and/or listed on the Town website at www.fortmyersbeachfl.gov or contact the Town (239) 765-0202 ext. 1401.

It is the Respondent’s responsibility to insure the proposal is mailed or delivered by the due date. The Town will not be held responsible for proposals delayed by the U.S. Mail or any other courier. The Town shall not be held liable for any expenses incurred by the Respondent in preparing and submitting the proposal and/or attendance at any interviews, contract negotiations or site visits.

I. **PROPOSAL FORMAT**

In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified

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herein. Unless otherwise specified, Proposers shall use the proposal forms provided by the Town herein. These forms may be duplicated, but failure to use the forms may cause your proposal to be rejected. Any erasures or corrections on the form must be made in ink and initialed by Proposer in ink. All information submitted by the Proposer shall be printed, typewritten or competed in ink. Proposals shall be signed in ink. When an RFP requires multiple copies they may be included in a single envelope or package properly sealed and identified.

All proposals shall be submitted as specified in this RFP. Any attachments shall be clearly identified. In order to be deemed responsive and considered for contract award, the proposal must respond to all parts of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. If publications are supplied by a proposer to respond to a requirement, the response should include reference to the document number and page number. Proposals lacking this reference may be considered to have no reference material included in the additional documents.

Proposers shall prepare their proposals using the following format:

1. Letter of Transmittal (Statement of Qualifications)
This letter will summarize in a brief and concise manner, the Proposer's understanding of the scope of work and make a positive commitment to provide its services on behalf of the Town. The letter must name all of the persons authorized to make representations for or on behalf of the Proposer, and must include their titles, addresses, and telephone numbers. An official authorized to negotiate and execute a contract on behalf of the Proposer must sign the letter of transmittal.
2. Title Page
The title page shall show the name of Proposer's agency/firm, address, telephone number, name of contact person, date, and the RFP No. and the Project name.
3. Table of Contents
Include a clear identification of the material by section and by page number.
4. Organization Profile and Qualifications
This section of the proposal must describe the Proposer, including the size, range of activities, and experience providing similar services.

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Each Proposer must include:

- Documentation indicating that it is authorized to do business in the State of Florida and, if a corporation, is incorporated under the laws of one of the States of the United States.
- A description of the primary individuals responsible for supervising the work including the percentage of time each primary individual is expected to contribute to this work.
- Resumes and professional qualifications of all primary individuals and identify the person(s) who will be the Town's primary contact and provide the person(s)' background, training, experience, qualifications and authority.
- Completed RFP Forms A, B, C, and D. All RFP forms are included as exhibits to this document and are available on the Town website in Word format.

5. Experience

The Proposer must describe its expertise in and experience with providing goods and/or services similar to those required by this RFP. Describe previous experience relating to the Scope of Work requested in this RFP. Has the firm worked for other governmental entities, particularly municipalities? If so, please describe the work performed and include contact information for references, the time the firm was engaged and a list of accomplishment for each.

6. Approach to Providing Services

This section of the proposal should explain the Scope of Work as understood by the Proposer and detail the approach, activities and work products to be provided. This section shall also include a list of equipment the Proposer proposes to use to perform the Work in accordance with the requirements of this RFP.

7. Compensation

The proposal shall document the fee proposal for the goods and/or services on RFP Form C.

8. Additional Information

Any additional information which the Proposer considers pertinent for consideration should be included in a separate section of the proposal.

9. Addenda (if applicable)

The Proposer shall include acknowledgment of receipt of addenda (if any) in their sealed proposal. The Proposer should include a signed copy of each addendum in the proposal package.

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J. PROPOSAL – Procedural Information

1. **Interviews:**

The Town reserves the right to conduct personal interviews or require presentations prior to selection. The Town is not responsible for any expenses which Proposers may incur in connection with a presentation to the Town or related in any way to this RFP.

2. **Request for Additional Information:**

The Proposer shall furnish such additional information as the Town may reasonably require. This includes information, which indicates financial stability as well as ability to provide the services. The Town reserves the right to make investigations of the qualifications of the Proposer as it deems appropriate, including but not limited to, a background investigation. Failure to provide additional information requested may result in disqualification of the proposal.

3. **Proposals Binding:**

All proposals submitted shall be binding for at least one hundred twenty (120) calendar days following proposal opening. Town may desire to accept a proposal after the 120 day period. In such case, Proposer may choose whether or not to continue to honor the proposal terms.

4. **Alternate Proposals:**

An alternate proposal is viewed by the Town as a proposal describing an approach to accomplishing the requirements of this RFP which differs from the approach set forth in the solicitation. An alternate proposal may be a second proposal submitted by the same Proposer, which differs in some degree from the prior proposal or from this RFP. Alternate proposals may be in the area of technical approach, or other provisions or requirements of this RFP. The Town will, during the initial evaluation process, consider all alternate proposals submitted and reserves the right to award a contract based on an alternative proposal if the same is deemed to be in the Town's best interest.

5. **Proposer's Certification Form:**

Each proposer shall complete the "Proposer's Certification" form included as RFP Form D and submit the form with the proposal. This form must be acknowledged before a notary public with notary seal affixed on the document.

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K. **PUBLIC RECORDS**

Proposals are public documents and subject to public disclosure in accordance with Chapter 119, Florida Statutes (the Public Records Law).

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, AMY@FORTMYERSBEACHFL.GOV, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

L. **IRREGULARITIES; REJECTION OF PROPOSALS**

The Town reserves the right to reject proposals with or without cause and for any reason, to waive any irregularities or informalities, and to solicit and re-advertise for other proposals. Incomplete or non-responsive proposals may be rejected by the Town as non-responsive. The Town reserves the right to reject any proposal for any reason, including, but without limitation, if the Proposer fails to submit any required documentation, if the Proposer is in arrears or in default upon any debt or contract to the Town or has failed to perform faithfully any previous contract with the Town or with other governmental jurisdictions. All information required by this RFP must be supplied to constitute a proposal.

M. **EVALUATION METHOD AND CRITERIA**

1. **General**

The Town shall be the sole judge of its own best interests, the proposals, and the resulting negotiated contract or agreement, if any. The Town reserves the right to investigate the financial capability, reputation, integrity, skill, business experience and quality of performance under similar operations of each Proposer, including shareholders, principals and senior management, before making an award. Awards, if any, will be based on the evaluation criteria in this section. The Town's evaluation criteria may include, but is not limited to, consideration of the information required in this RFP and the following factors:

- A. ability to meet set standards;
- B. availability of qualified personnel;
- C. compensation;
- D. expertise of personnel;
- E. financial resources and capabilities;
- F. past contracts with other governmental jurisdictions;

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- G. past performance records;
- H. qualifications of Proposer;
- I. references;
- J. related experience in Florida;
- K. technical soundness of proposal;
- L. past history of meeting required time frames; and
- M. approach to work.

2. **Selection**

The Town Manager may conduct the selection process, or at the option of the Town Manager, it may be referred to a selection advisory committee (the "Committee"). Either the Town Manager or the Committee will review all proposals received and establish a list of selected Proposers deemed to be the most qualified to provide the service requested based in part on the criteria set forth above. The Town Manager may submit a recommended firm or a "short list" or a combination of a recommended firm and the "short list" to the Town Council and the Town Council shall make a final award. The Town Manager, the Committee or the Town Council may request oral presentations from the Proposers. Proposers are advised that the Town reserves the right to conduct negotiations with the most qualified Proposer, but may not do so. Therefore, each Proposer should endeavor to submit its best proposal initially.

N. **REPRESENTATIONS AND WARRANTIES**

In submitting a proposal, Proposer warrants and represents that:

- 1. Proposer has examined and carefully studied all data provided, and any applicable Addenda; receipt of which is hereby acknowledged.
- 2. Proposer has visited the relevant site, if any, and is familiar with and satisfied as to the general, local and "site" conditions that may affect cost, progress, and performance of goods and/or services in their proposal.
- 3. Proposer is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress and performance of the goods and/or services in their proposal.
- 4. If applicable, Proposer has obtained and carefully studied (or assumes responsibility for having done so) all documents available related to the subject of the RFP and performed any examinations, investigations, explorations, tests, studies and data concerning conditions that may affect cost, progress, or performance of the goods and/or services that relate to any aspect of the means, methods, techniques, sequences, and procedures to be employed by Proposer, including safety precautions and programs incident thereto.

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5. Proposer has given Town written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in this RFP and any addenda thereto, and the written resolution thereof by the Town is acceptable to Proposer.
6. The RFP is generally sufficient in detail and clarity to indicate and convey understanding of all terms and conditions for the performance of the proposal that is submitted.
7. No person has been employed or retained to solicit or secure award of the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and no employee or officer of the Town has any interest, financially or otherwise, in the RFP or contract.

O. Town Contract

The selected Proposer is expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney.

End of Part II

RFP FORM A

Proposer: _____

QUALIFICATIONS STATEMENT

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

1. State the full and correct name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
 - 1.1. The correct and full legal name of the Proposer is:
 - 1.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).
 - 1.3. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:
2. Please describe your company in detail.
3. The address of the principal place of business is:
4. Company telephone number and e-mail addresses:
5. Number of employees:
6. Name of employees to be assigned to this Project:
7. Company identification numbers for the Internal Revenue Service:
8. Provide Lee County business tax receipt number, if applicable, and expiration date:
9. How many years has your organization been in business? Does your organization have a specialty?
10. List the last three projects of this nature that the firm has completed? Please provide project description, reference and contact information and cost of work completed.
11. Have you ever failed to complete any work awarded to you? If so, where and why?

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12. Provide the following information concerning all contracts that are similar in nature or use the same project team proposed for this project that are **in progress** as of the date of submission of this Proposal for your company, division or unit as appropriate.

Name of Project	Contract with:	Contract Amount	Estimated Completion Date	% of Completion to Date

(Continue list as necessary)

13. Provide the following information for any sub-consultants you will engage if awarded the contract.

Subcontractor Name	Address	Work to be Performed

The foregoing list of subconsultants may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

Proposer: _____

Forms A, B & C are available in WORD format from the Contracts Manager upon request.

Give names, addresses and telephone numbers of four individuals, corporations, agencies, or institutions for which you have performed work similar to what is proposed in this RFP:

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RFP Form C

Proposer: _____

PRICE PROPOSAL FORM**Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.*****THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL
TO BE DEEMED RESPONSIVE.***

Name of Proposer: _____

Name of authorized representative of Proposer: _____

Project Cost

Storm Drain	Linear feet for evaluation purposes only	Price Per Foot	OR Hourly Rate
Televise 10" to 15" Storm Drain	16,000		\$____/Hour
Televise 18" to 24" Storm Drain	16,000		\$____/Hour
Televise 30" to 42" Storm Drain	16,000		\$____/Hour
Clean 10" to 15" Storm Drain	16,000	\$	\$____/Hour
Clean 18" to 24" Storm Drain	16,000	\$	\$____/Hour
Clean 30" to 42" Storm Drain	16,000	\$	\$____/Hour
Total	200,000	\$	\$____/Hour
Outfall Barnacle Removal	Outfall numbers are for evaluation purposes Only	Price Per Outfall	OR Hourly Rate
Remove Barnacles 30" to 42" Storm Drain	29	\$	\$____/Hour
Remove Barnacles 10" to 29" Storm Drain	30	\$	\$____/Hour
Total	59	\$	\$____/Hour
Total Project Cost: \$_____			

Instructions: Show the project cost for each deliverable your firm will provide per the requested

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scope of work. Include the fees associated with each proposed deliverable.

Fees should be detailed to the extent possible per deliverable.

The Total Unit Price Cost shall include all fees and reimbursements for out of pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

The Total Unit Price Cost shall include the cost of:

1. Meetings with Town staff to discuss Stormwater Drain repair reports.
2. A written report and a DVD outlining all findings and containing a video recording of all Stormwater Drains.

Payments will be made on each deliverable upon receipt and acceptance by the Town.

Additional Services

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, linear foot rate and staff positions available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Linear Foot Rate</u>
Add rows as necessary	

By: _____

Date: _____

Name: _____

Title: _____

Town of Fort Myers Beach RFP-23-03-UT

RFP FORM D

Proposer: _____

THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE. The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal referenced above ("RFP") and any other documents accompanying or made a part of this RFP.

I hereby propose to furnish the goods or services specified in the RFP. I agree that my proposal will remain firm for a period of 120 days in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal, which includes the TOWN required RFP forms A, B, C and D, is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

The firm and/or Proposer hereby authorizes the Town of Fort Myers Beach, its staff or consultants, to contact any of the references provided in the proposal and specifically authorizes such references to release, either orally or in writing, any appropriate data with respect to the firm offering this proposal.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Town or any other proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

If this proposal is selected, I understand that I will be expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. I further certify, under

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oath, that neither the entity submitting this sworn statement, not to my knowledge, any of its officers, directors, executives, partners, shareholder, employees, members or agents active in the management of the entity has been convicted of a public entity crime subsequent to July 1, 1989.

Name of Business

By:

Signature

Print Name and Title

Mailing Address

**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 (County) 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

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the County, 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 County 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 County, 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 County 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 County 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 County.

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.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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 County. 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 County, 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."

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the County 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 County or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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 County and understands and agrees that the County 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 County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The County 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 County 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/County/permittee/engineering consultant.** The County's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the County'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 County shall provide access to any location or facility on which County is performing work, or storing or staging equipment, materials or documents.
- ii. The County shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The County 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

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the County, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The County 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.

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the County for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the County and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The County may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Collier County, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Collier County Board of County Commissioners

DEM Contract Number: TBD

FEMA Project Number: TBD

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

COLLIER COUNTY ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FEID 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 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SDB 8A? 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 M/WBE VETERAN	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="margin: 10px auto; width: 50%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">ETHNICITY</th> <th style="padding: 5px;">CODE</th> </tr> </thead> <tbody> <tr><td style="padding: 5px;">Black American</td><td style="padding: 5px;">BA</td></tr> <tr><td style="padding: 5px;">Hispanic American</td><td style="padding: 5px;">HA</td></tr> <tr><td style="padding: 5px;">Native American</td><td style="padding: 5px;">NA</td></tr> <tr><td style="padding: 5px;">Subcont. Asian American</td><td style="padding: 5px;">SAA</td></tr> <tr><td style="padding: 5px;">Asian-Pacific American</td><td style="padding: 5px;">APA</td></tr> <tr><td style="padding: 5px;">Non-Minority Women</td><td style="padding: 5px;">NMW</td></tr> <tr><td style="padding: 5px;">Other: not of any other group listed</td><td style="padding: 5px;">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 COLLIER COUNTY																					
DEPARTMENT NAME		COLLIER CONTRACT # (IFB/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY: _____					DATE _____																

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, UNDER THE EMERGENCY PROCUREMENT POLICY TO APPROVE A PROPSAL FROM ANDREW SITEWORK LLC WITH THE TOWN'S CONTRACT ADDENDUM FOR THE INSTALLATION OF STORMWATER PIPING ON PALERMO CIRCLE FOR A NOT TO EXCEED PRICE OF \$36,171.60 TO ALLEVIATE THE FLOODING ON ESTERO BLVD BY DIVERTING ESTERO STORMWATER TO THE OUTFALL ON SANTOS BLVD VIA PALERMO CIRCLE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE EMERGENCY PURCHASE; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$36,171.60 is over the threshold of \$20,000 for an emergency purchase that requires 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 \$20,000.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager,
Jeff Hauge, Community
Services Director

5. **Background:**

The drainage in that part of Estero (Palermo, Primo, Lani Kai) has always been inadequate, causing major flooding. Slowing down traffic and emergency vehicles. During a recent construction project, drainage structures were discovered (not on any of our maps and buried) that will allow us to connect the Estero Drainage structures down Palermo Circle to the stormwater system on Santos Rd. Then to the outfall on Santos Road. The Santos outfall has a duckbill, so no tidal water will flow back to Estero and is sized to handle the additional stormwater flow. Currently, the drainage on Estero does not connect to any outfall close by. This construction will help alleviate a large amount of flooding in that area, allowing for a safe and effective roadway. The emergency is due to the hurricane and the rainy season in effect.

Attachments:

1. Emergency Form ASW palermo signed
2. ASW Proposal - Palermo Circle 8-2025
3. Contruction Contract - ASW - Executed Palermo
4. Final 25-269, Palermo Cir Stormwater Drainage

Financial Impact:

The total expenditure will be funded through Stormwater Department 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:

Mark Ashton, Utilities Manager
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/27/2025
Approved - 8/28/2025
Approved - 8/28/2025
Approved - 8/29/2025
Approved - 9/2/2025
Final Approval - 9/2/2025

REQUEST/JUSTIFICATION FOR EMERGENCY PURCHASE
(ATTACH ADDITIONAL PAGES IF NECESSARY)

REQUESTER NAME: Mark Ashton DATE: 8-21-2025
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.

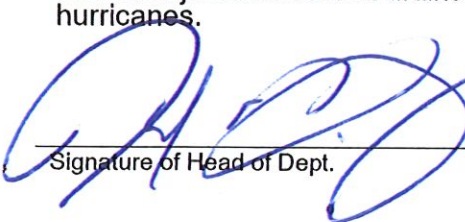
The continued flooding of Estero Blvd. around Palermo and Primo. Causing unsafe conditions for traffic and emergency vehicles.

FINANCIAL/OPERATIONAL DAMAGE TO THE TOWN. Explain the financial or operational damage that will occur if this purchase is not made immediately

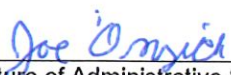
The operational damage will be flooded cars, impassable roads, and delays in traffic patterns.

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.

We have just discovered drains that will help to alleviate the flooding. To install the pipe ahead of possible hurricanes.


Signature of Head of Dept.

9-2-25
Date


Signature of Administrative Services/Finance Director

9-3-25
Date


Signature of Town Manager

9-3-25
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 _____



ANDREW SITEWORK LLC.

TO



JOB

Tier 1 Side Streets

Palermo Circle

CONTACT: Mark Ashton
PHONE: (239) 765-0202
EMAIL: mashton@fmbgov.com
TERMS: As Stated in Contract

DATE: August 22, 2025
PROPOSAL TO BE VALID FOR 30 Days

PROJECT SUMMARY PER ATTACHED SCHEDULE:

PROJECT TOTAL:

\$36,171.60

PROPOSED BY:

Andrew Sitework

Ralph C Andrew III
Project Manager

ACCEPTED BY:

SIGN: _____
NAME: _____
TITLE: _____
DATE: _____

**PALERMO CIRCLE
STORM IMPROVEMENTS**

Item No.	Description	Quantity	Unit	Unit Price	Extended Price
1	Tie into Existing Inlet (New pipe into existing structure)	2	EA	\$4,014.00	\$ 8,028.00
2	18" SD Side Drain	140	LF	\$161.00	\$ 22,540.00
3	Restoration	140	LF	\$12.00	\$ 1,680.00
4	Replace Asphalt Pavement (Full Depth)	20	SY	\$70.00	\$ 1,400.00
5	Locate Utilities in Advance of Construction	2.50%	%	\$33,648.00	\$ 841.20
6	Maintenance of Traffic	2.50%	%	\$33,648.00	\$ 841.20
7	Dewatering	2.50%	%	\$33,648.00	\$ 841.20
PROJECT TOTAL:				\$	36,171.60



PART E
FMB:006 - AGREEMENT FORM
(1 of 9 Pages)

CONSTRUCTION CONTRACT AGREEMENT

Contract No. ITB-23-18-UTCouncil Award Date: November 20th 2023

AGREEMENT

THIS CONTRACT is made this 18 day of January 2024 by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "TOWN," and Andrew Sitework LLC, 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 TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS, ITB-23-18-UT, 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:

Twenty Three Million, Nine Thousand, One Hundred Seventy Nine 0/100--- (\$23,009,179.00)

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 percent (90%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) 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.



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- 3.1.1 At the discretion of the Project Manager and final authorization by the Public Works Director, once the project reaches 50% completion, the retainage shall be reduced to five percent (5%) of the total contract amount, provided the project is on schedule. At any time the project falls behind schedule, the TOWN retains the exclusive right to revert back to the original contract terms by withholding 10% retainage until the project is back on schedule or the project is completed.
- 3.2. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

The Term “**Contract Documents**” shall include 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.



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FMB:006 - AGREEMENT FORM
(3 of 9 Pages)

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.



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FMB:006 - AGREEMENT FORM
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ARTICLE 7. GENERAL CONDITIONS

7.1 RESPONSIBILITY OF THE CONTRACTOR.

7.1.1 PROSECUTION OF THE WORK.

The CONTRACTOR shall be responsible for the good 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. PROJECT 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.



PART E
FMB:006 - AGREEMENT FORM
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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, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

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 SUBCONTRACTOR(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.
- 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.



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- 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, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be conducted in Lee County, Florida. In the event of any litigation and/or binding arbitration arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 10.10. TOWN reserves unto itself 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 Pursuant to existing laws and procedures in the State of Florida, and if approved and authorized by the TOWN's Council, any dispute arising out of or relating to any of the contract documents or this Agreement shall be submitted to binding arbitration in Lee County, Florida, before a single lawyer arbitrator having at least ten (10) years' experience in similar matters, and who is mutually acceptable to the parties, or approved as selected by the Lee County Court Mediation/ Arbitration Office. The parties shall equally divide the expenses of such arbitration, and the prevailing party in such arbitration shall be entitled to award of reasonable attorney fees and costs (exclusive of the actual cost of arbitration to be shared equally by the parties) incurred in the preparation for arbitration of such dispute and further such prevailing party shall also be entitled to reasonable attorney fees and costs incurred in any proceedings to enforce or compel its arbitration rights or obtain order(s) confirming such arbitration or award or any attorney fees or cost incurred in proceeding thereafter to enforce such rights in addition to the above and foregoing rights.
- 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.

ARTICLE 11. E-VERIFICATION

- 11.1. As a condition precedent to entering into this AGREEMENT, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- 11.2. A contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of the AGREEMENT.

PART E
FMB:006 - AGREEMENT FORM
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- 11.3. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
- 11.4. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
- 11.5. A contractor terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that the Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
- 11.6. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 12. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

- 12.1. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

In witness whereof, TOWN and CONTRACTOR have signed this agreement. One counterpart has been retained by the Town Clerk, one to the Project Sponsoring Department, and one part each has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

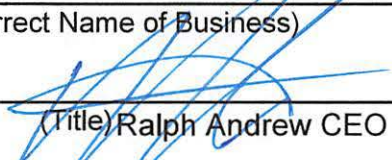
PART E
FMB:006 - AGREEMENT FORM
(8 of 9 Pages)

Signed, sealed, and delivered in the presence of:


(Secretary) Janna Dale

(Corporate Seal)

Andrew Sitework LLC.
(Correct Name of Business)

BY: 
(Title) Ralph Andrew CEO

Date: 1/17/24

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

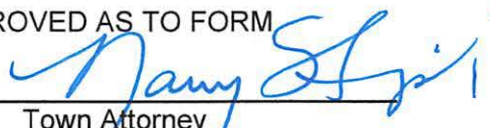
BY: 
Town Clerk

Date: January 18, 2024

BY: 
Town Manager

Date: January 18, 2024

APPROVED AS TO FORM

BY: 
Town Attorney

PART II
WATER TREATMENT PLANT

(Page 1 of 1)

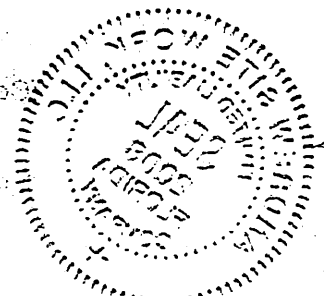
For complete and detailed information of

Andrew Shewell, LLC
(Owner Name & Address)
10000 Highway 100
Suite 100
Austin, Texas 78758

(Contractor Name & Address)

(Contractor Name & Address)

Contractor Name



TOWN OF FORT MYERS BEACH, FLORIDA
PORT MYERS BEACH, FLORIDA

(Town Engineer)

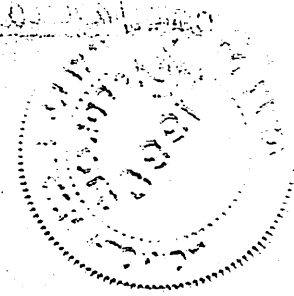
(Town Clerk)

(Date of Approval)

(Date of Approval)

APPROVED AS TO FORM

(City Engineer)





PART E
FMB:006 - AGREEMENT FORM
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EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS 18 day of January, 2024
BETWEEN THE TOWN AND Andrew Sitework LLC., PROVIDER.

1. SCOPE OF SERVICES: The Provider will perform the following services under this Agreement:

TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

PART D
FMB:001 - OFFICIAL BID FORM
(3 of 17 Pages)

SCHEDULE OF VALUES TOWN OF FORT MYERS BEACH

TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS – GROUP A

All Bid items shall include all materials, equipment, labor, permit fees, taxes, tests, miscellaneous costs of all types, overhead, and profit for the item to be complete, in place, and ready for operation in the manner contemplated by the Contract Documents.

Contractor shall provide accurate pricing for all bid items listed.

Item No.	Description	Quantity	Unit	Unit Price	Total Price
Tier 1 Side Streets Water and Stormwater Improvements – Group A [Estrellita Drive, Bahia Via, Williams Drive, Minimum Improvements]					
<i>General</i>					
1	Mobilization/Demobilization	1	LS	\$159,534.00	\$ 159,534.00
2	General Requirements, Bonds, Permits	1	LS	\$268,568.00	\$ 268,568.00
3	Indemnification	1	LS	\$1,000.00	\$1,000.00
4	Pre- and Post-Construction Video	1	LS	\$7,062.00	\$ 7,062.00
5	Locate Utilities in Advance of Construction	1	LS	\$45,350.00	\$ 45,350.00
6	Survey & Layout and As-Built Survey	1	LS	\$47,080.00	\$ 47,080.00
7	Maintenance of Traffic	1	LS	\$151,851.00	\$ 151,851.00
8	Erosion and Sediment Control	1	LS	\$153,526.00	\$ 153,526.00
9	Replace Asphalt Pavement (Full Depth)	1,930	SY	\$79.80	\$ 154,014.00
10	Mill Existing Asphalt Pavement	5,438	SY	\$4.20	\$ 22,839.60
11	Asphalt Pavement (SP-12.5)	746	TN	\$200.10	\$ 149,274.60
12	Remove and Replace Concrete Curb/Gutter and Driveway	5,860	SF	\$18.30	\$ 107,238.00
13	Removed and Replace Pavers Driveway	5,117	SF	\$24.00	\$ 122,808.00
14	Remove & Replace Asphalt Driveway	768	SF	\$32.00	\$ 24,576.00
15	Remove & Replace Unpaved Driveway	8,238	SF	\$5.05	\$ 41,601.90
16	Clear and Grub	1	LS	\$162,217.00	\$ 162,217.00
17	Restoration	3,612	LF	\$19.50	\$ 70,434.00
18	Contingency Allowance	1	ALL	\$285,000.00	\$285,000.00
<i>Water Distribution</i>					
19	Furnish and Install 8" C900 DR-14 PVC WM	3,524	LF	\$92.00	\$ 324,208.00
20	Furnish and Install 6" C900 DR-14 PVC WM	88	LF	\$128.00	\$ 11,264.00
21	Connection to Existing 8" Water Main	3	EA	\$3,970.00	\$ 11,910.00
22	Connection to Existing 6" Water Main	0	EA		
23	Reconnect/Install New Water Meters	77	EA	\$471.00	\$ 36,267.00
24	1" Water Service (Short)	51	EA	\$1,626.00	\$ 82,926.00
25	1" Water Service (Long with Road Crossing)	25	EA	\$2,158.00	\$ 53,950.00
26	6" Wet Tap and Valve Assembly	0	EA		
27	8" Wet Tap and Valve Assembly	0	EA		

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
28	10" Wet Tap and Valve Assembly	0	EA		
29	12" Wet Tap and Valve Assembly	0	EA		
30	16" Wet Tap and Valve Assembly	0	EA		
31	8" x 8" Tee/Wye	2	EA	\$1,842.00	\$ 3,684.00
32	8" x 6" Tee/Wye	0	EA		
33	8" x 6" Reducer	2	EA	\$1,257.00	\$ 2,514.00
34	8" x 8" Reducer	0	EA		
35	8"x10" Reducer	0	EA		
36	8" Cap	0	EA		
37	6" Cap	2	EA	\$770.00	\$ 1,540.00
38	8" Vertical Deflection	4	EA	\$5,702.00	\$ 22,808.00
39	8" Horizontal Deflection	4	EA	\$3,741.00	\$ 14,964.00
40	8" Gate Valve with Valve Box Assembly	4	EA	\$3,412.00	\$ 13,648.00
41	6" Gate Valve with Valve Box Assembly	0	EA		
42	Fire Hydrant Assemblies	8	EA	\$8,682.00	\$ 69,456.00
43	Blowoff	0	EA		
44	Grout and Abandon Existing 16" Water Main	0	LF		
45	Grout and Abandon Existing 12" Water Main	0	LF		
46	Grout and Abandon Existing 8" Water Main	0	LF		
47	Grout and Abandon Existing 6" Water Main	0	LF		
48	Grout and Abandon Existing 3" Water Main	0	LF		
49	Grout and Abandon Existing 2" Water Main	0	LF		
Stormwater					
50	Tie into Existing Inlet (New pipe into existing structure)	3	EA	\$4,250.00	\$ 12,750.00
51	Clean Existing SD	2,076	LF	\$4.00	\$ 8,304.00
52	Clean Existing Inlet	12	EA	\$850.00	\$ 10,200.00
53	12" SD Cross Drain	0	LF		
54	15" SD Cross Drain	69	LF	\$139.00	\$ 9,591.00
55	18" SD Cross Drain	61	LF	\$167.00	\$ 10,187.00
56	24" SD Cross Drain	821	LF	\$170.00	\$ 139,570.00
57	30" SD Cross Drain	0	LF		
58	6" SD Side Drain	5	LF	\$515.00	\$ 2,575.00
59	12" SD Side Drain	9	LF	\$356.00	\$ 3,204.00
60	12"x18" SD Side Drain	139	LF	\$176.00	\$ 24,464.00
61	15" SD Side Drain	42	LF	\$166.00	\$ 6,972.00
62	18" SD Side Drain	47	LF	\$166.00	\$ 7,802.00
63	24" SD Side Drain	980	LF	\$194.25	\$ 190,365.00
64	Concrete Collar	20	EA	\$1,720.00	\$ 34,400.00
65	Type "C" Drainage Inlet	7	EA	\$5,434.00	\$ 38,038.00
66	Type "D" Drainage Inlet	0	EA		
67	Type "E" Drainage Inlet	29	EA	\$7,257.00	\$ 210,453.00
68	Grate Inlet Skimmer	5	EA	\$4,558.00	\$ 22,790.00
69	Storm Manhole	0	EA		
70	Yard Drain	1	EA	\$1,875.10	\$ 1,875.10
71	Mitered End Section	4	EA	\$4,180.00	\$ 16,720.00
72	Baffle Box (Pipe Diameters 18" or Less)	6	EA	\$59,100.00	\$ 354,600.00

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
73	Baffle Box (Pipe Diameters 24" and 30")	5	EA	\$80,115.00	\$ 400,575.00
74	Seawall Replacement/Installation	42	LF	\$2,943.00	\$ 123,606.00
75	Duckbill Backflow Prevention Valve	8	EA	\$12,978.00	\$ 103,824.00
76	In-Line Backflow Prevention Valve	8	EA	\$8,603.00	\$ 68,824.00
77	Swale Grading & Restoration	0	LF		
78	Rip Rap	35	TN	\$249.00	\$ 8,715.00
79	Dewatering	1	LS	\$301,638.00	\$ 301,638.00
Williams Drive Stormwater Improvements (Separated for the Town's convenience, unit price to match above)					
80	Mill Existing Asphalt Pavement	4,189	SY	\$4.20	\$ 17,593.80
81	Asphalt Pavement (SP-12.5)	525	TN	\$189.00	\$ 99,225.00
82	Remove and Replace Concrete Curb/Gutter and Driveway	831	SF	\$23.00	\$ 19,113.00
83	Removed and Replace Pavers Driveway	600	SF	\$24.00	\$ 14,400.00
84	Remove & Replace Asphalt Driveway	1,418	SF	\$21.00	\$ 29,778.00
85	Remove & Replace Unpaved Driveway	1,882	SF	\$7.00	\$ 13,174.00
86	Clear and Grub	1	LS	\$31,803.00	\$ 31,803.00
87	15" SD Cross Drain	102	LF	\$138.00	\$ 14,076.00
88	24" SD Cross Drain	120	LF	\$174.00	\$ 20,880.00
89	24" SD Side Drain	1,143	LF	\$212.00	\$ 242,316.00
90	Type "C" Drainage Inlet	3	EA	\$5,390.00	\$ 16,170.00
91	Type "E" Drainage Inlet	12	EA	\$6,880.00	\$ 82,560.00
92	Yard Drain	2	EA	\$2,500.00	\$ 5,000.00
93	Baffle Box (Pipe Diameters 24" and 30")	2	EA	\$80,400.00	\$ 160,800.00
94	Seawall Replacement/Installation	11	LF	\$2,943.00	\$ 32,373.00
95	Duckbill Backflow Prevention Valve	3	EA	\$13,107.00	\$ 39,321.00
96	Swale Grading & Restoration	378	LF	\$22.00	\$ 8,316.00
97	Rip Rap	24	TN	\$255.00	\$ 6,120.00
Sanitary Sewer					
98	Conflict Manhole	3	EA	\$10,300.00	\$ 30,900.00
99	4" Sewer Service Lateral (Without Cleanout)	23	EA	\$1,800.00	\$ 41,400.00
100	Adjust Manhole Frame and Cover	16	EA	\$1,520.00	\$ 24,320.00
101	Cleanouts Complete	23	EA	\$851.00	\$ 19,573.00

TOTAL BASE BID – GROUP A

Five Million Seven hundred Four Thousand Three Hundred Sixty-Seven dollars & Zero Cents

(In Words)

\$ 5,704,367.00

(In Figures)

Bid items shall follow section 01026 of the project Technical Specifications.

Detail for steel sheet piling at outfalls is not included. All new seawall installations are bid as concrete seawall panels with tie-backs. All existing seawall refurbishments are bid as vinyl seawall panels.

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

PART D
FMB:001 - OFFICIAL BID FORM
(6 of 17 Pages)

SCHEDULE OF VALUES TOWN OF FORT MYERS BEACH

TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS – GROUP B

All Bid items shall include all materials, equipment, labor, permit fees, taxes, tests, miscellaneous costs of all types, overhead, and profit for the item to be complete, in place, and ready for operation in the manner contemplated by the Contract Documents.

Contractor shall provide accurate pricing for all bid items listed.

Item No.	Description	Quantity	Unit	Unit Price	Total Price
Tier 1 Side Streets Water and Stormwater Improvements – Group B					
[Albatross, Fairview, Clearview, Sunview, Palmview]					
General					
1	Mobilization/Demobilization	1	LS	\$163,290.00	\$ 163,290.00
2	General Requirements, Bonds, Permits	1	LS	\$276,469.00	\$ 276,469.00
3	Indemnification	1	LS	\$1,000.00	\$1,000.00
4	Pre- and Post-Construction Video	1	LS	\$18,832.00	\$ 18,832.00
5	Locate Utilities in Advance of Construction	1	LS	\$45,585.00	\$ 45,585.00
6	Survey & Layout and As-Built Survey	1	LS	\$111,815.00	\$ 111,815.00
7	Maintenance of Traffic	1	LS	\$171,980.00	\$ 171,980.00
8	Erosion and Sediment Control	1	LS	\$127,041.00	\$ 127,041.00
9	Replace Asphalt Pavement (Full Depth)	3,158	SY	\$77.00	\$ 243,166.00
10	Mill Existing Asphalt Pavement	20,096	SY	\$4.20	\$ 84,403.20
11	Asphalt Pavement (SP-12.5)	2,509	TN	\$186.00	\$ 466,674.00
12	Remove and Replace Concrete Curb/Gutter	14,505	SF	\$21.22	\$ 307,796.10
13	Removed and Replace Pavers Driveway	10,978	SF	\$18.05	\$ 198,152.90
14	Remove & Replace Asphalt Driveway	0	SF		
15	Remove & Replace Unpaved Driveway	1,172	SF	\$6.00	\$ 7,032.00
16	Clear and Grub	1	LS	\$190,361.00	\$ 190,361.00
17	Restoration	7,175	LF	\$17.00	\$ 121,975.00
18	Contingency Allowance	1	ALL	\$200,000.00	\$200,000.00
Water Distribution					
19	Furnish and Install 8" C900 DR-14 PVC WM	7,175	LF	\$83.00	\$ 595,525.00
20	Furnish and Install 6" C900 DR-14 PVC WM	100	LF	\$67.00	\$ 6,700.00
21	Connection to Existing 8" Water Main	2	EA	\$4,206.00	\$ 8,412.00
22	Connection to Existing 6" Water Main	0	EA		
23	Reconnect/Install New Water Meters	141	EA	\$471.00	\$ 66,411.00
24	1" Water Service (Short)	81	EA	\$1,600.00	\$ 129,600.00
25	1" Water Service (Long with Road Crossing)	60	EA	\$2,123.00	\$ 127,380.00
26	6" Wet Tap and Valve Assembly	0	EA		
27	8" Wet Tap and Valve Assembly	0	EA		

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
28	10" Wet Tap and Valve Assembly	0	EA		
29	12" Wet Tap and Valve Assembly	0	EA		
30	16" Wet Tap and Valve Assembly	0	EA		
31	8" x 8" Tee/Wye	6	EA	\$1,520.00	\$ 9,120.00
32	8" x 6" Tee/Wye	0	EA		
33	8" x 6" Reducer	0	EA		
34	8" x 8" Reducer	0	EA		
35	8"x10" Reducer	0	EA		
36	8" Cap	4	EA	\$850.00	\$ 3,400.00
37	6" Cap	0	EA		
38	8" Vertical Deflection	7	EA	\$5,531.00	\$ 38,717.00
39	8" Horizontal Deflection	9	EA	\$3,520.00	\$ 31,680.00
40	8" Gate Valve with Valve Box Assembly	3	EA	\$3,680.00	\$ 11,040.00
41	6" Gate Valve with Valve Box Assembly	2	EA	\$2,500.00	\$ 5,000.00
42	Fire Hydrant Assemblies	9	EA	\$8,731.00	\$ 78,579.00
43	Blowoff	2	EA	\$3,148.00	\$ 6,296.00
44	Grout and Abandon Existing 16" Water Main	0	LF		
45	Grout and Abandon Existing 12" Water Main	0	LF		
46	Grout and Abandon Existing 8" Water Main	0	LF		
47	Grout and Abandon Existing 6" Water Main	0	LF		
48	Grout and Abandon Existing 3" Water Main	0	LF		
49	Grout and Abandon Existing 2" Water Main	0	EA		
Stormwater					
50	Tie into Existing Inlet (New pipe into existing structure)	6	EA	\$4,192.00	\$ 25,152.00
51	Clean Existing SD	1,068	LF	\$8.50	\$ 9,078.00
52	Clean Existing Inlet	11	EA	\$990.00	\$ 10,890.00
53	12" SD Cross Drain	0	LF		
54	15" SD Cross Drain	192	LF	\$134.00	\$ 25,728.00
55	18" SD Cross Drain	0	LF		
56	24" SD Cross Drain	353	LF	\$173.00	\$ 61,069.00
57	30" SD Cross Drain	0	LF		
58	6" SD Side Drain	0	LF		
59	12" SD Side Drain	0	LF		
60	12"x18" SD Side Drain	20	LF	\$184.00	\$ 3,680.00
61	15" SD Side Drain	1,339	LF	\$141.00	\$ 188,799.00
62	18" SD Side Drain	141	LF	\$159.00	\$ 22,419.00
63	24" SD Side Drain	748	LF	\$190.00	\$ 142,120.00
64	Concrete Collar	10	EA	\$1,800.00	\$ 18,000.00
65	Type "C" Drainage Inlet	16	EA	\$5,320.00	\$ 85,120.00
66	Type "D" Drainage Inlet	1	EA	\$7,200.00	\$ 7,200.00
67	Type "E" Drainage Inlet	16	EA	\$7,100.00	\$ 113,600.00
68	Grate Inlet Skimmer	4	EA	\$5,600.00	\$ 22,400.00
69	Storm Manhole	0	EA		
70	Yard Drain	0	EA		
71	Mitered End Section	0	EA		
72	Baffle Box (Pipe Diameters 18" or Less)	9	EA	\$58,400.00	\$ 525,600.00

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
73	Baffle Box (Pipe Diameters 24" and 30")	2	EA	\$80,000.00	\$ 160,000.00
74	Seawall Replacement/Installation	32	LF	\$2,950.00	\$ 94,400.00
75	Duckbill Backflow Prevention Valve	10	EA	\$9,205.00	\$ 92,050.00
76	In-Line Backflow Prevention Valve	3	EA	\$9,430.00	\$ 28,290.00
77	Swale Grading & Restoration	0	LF		
78	Rip Rap	0	TN		
79	Dewatering	1	LS	\$321,680.80	\$ 321,680.80
Williams Drive Stormwater Improvements (Separated for the Town's convenience, unit price to match above)					
80	Mill Existing Asphalt Pavement	0	SY		
81	Asphalt Pavement (SP-12.5)	0	TN		
82	Remove and Replace Concrete Curb/Gutter and Driveway	0	SF		
83	Remove and Replace Pavers Driveway	0	SF		
84	Remove & Replace Asphalt Driveway	0	SF		
85	Remove & Replace Unpaved Driveway	0	SF		
86	Clear and Grub	0	LS		
87	15" SD Cross Drain	0	LF		
88	24" SD Cross Drain	0	LF		
89	24" SD Side Drain	0	LF		
90	Type "C" Drainage Inlet	0	EA		
91	Type "E" Drainage Inlet	0	EA		
92	Yard Drain	0	EA		
93	Baffle Box (Pipe Diameters 24" and 30")	0	EA		
94	Seawall Replacement/Installation	0	LF		
95	Duckbill Backflow Prevention Valve	0	EA		
96	Swale Grading & Restoration	0	LF		
97	Rip Rap	0	TN		
Sanitary Sewer					
98	Conflict Manhole	0	EA		
99	4" Sewer Service Lateral (Without Cleanout)	25	EA	\$1,700.00	\$ 42,500.00
100	Adjust Manhole Frame and Cover	20	EA	\$1,520.00	\$ 30,400.00
101	Cleanouts Complete	25	EA	\$851.00	\$ 21,275.00

TOTAL BASE BID – GROUP B

Five Million Nine Hundred Four Thousand Eight Hundred Eighty-Three Dollars & Zero Cents

(In Words)

\$ 5,904,883.00

(In Figures)

Bid items shall follow section 01026 of the project Technical Specifications.

Detail for steel sheet piling at outfalls is not included. All new seawall installations are bid as concrete

seawall panels with tie-backs. All existing seawall refurbishments are bid as vinyl seawall panels.

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

PART D
FMB:001 - OFFICIAL BID FORM
 (9 of 17 Pages)

SCHEDULE OF VALUES TOWN OF FORT MYERS BEACH

TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS – GROUP C

All Bid items shall include all materials, equipment, labor, permit fees, taxes, tests, miscellaneous costs of all types, overhead, and profit for the item to be complete, in place, and ready for operation in the manner contemplated by the Contract Documents.

Contractor shall provide accurate pricing for all bid items listed.

Item No.	Description	Quantity	Unit	Unit Price	Total Price
Tier 1 Side Streets Water and Stormwater Improvements – Group C					
[Shell Mound, Madison, Andre Mar, Mandalay, Gulfview]					
<i>General</i>					
1	Mobilization/Demobilization	1	LS	\$164,000.00	\$ 164,000.00
2	General Requirements, Bonds, Permits	1	LS	\$356,508.00	\$ 356,508.00
3	Indemnification	1	LS	\$1,000.00	\$1,000.00
4	Pre- and Post-Construction Video	1	LS	\$21,186.00	\$ 21,186.00
5	Locate Utilities in Advance of Construction	1	LS	\$45,585.00	\$ 45,585.00
6	Survey & Layout and As-Built Survey	1	LS	\$113,581.00	\$ 113,581.00
7	Maintenance of Traffic	1	LS	\$194,458.00	\$ 194,458.00
8	Erosion and Sediment Control	1	LS	\$170,046.00	\$ 170,046.00
9	Replace Asphalt Pavement (Full Depth)	3,886	SY	\$70.00	\$ 272,020.00
10	Mill Existing Asphalt Pavement	13,430	SY	\$5.50	\$ 73,865.00
11	Asphalt Pavement (SP-12.5)	1,904	TN	\$216.00	\$ 411,264.00
12	Remove and Replace Concrete Curb/Gutter	14,715	SF	\$19.40	\$ 285,471.00
13	Removed and Replace Pavers Driveway	7,449	SF	\$16.00	\$ 119,184.00
14	Remove & Replace Asphalt Driveway	2,017	SF	\$17.00	\$ 34,289.00
15	Remove & Replace Unpaved Driveway	13,645	SF	\$5.00	\$ 68,225.00
16	Clear and Grub	1	LS	\$103,830.00	\$ 103,830.00
17	Restoration	6,035	LF	\$12.00	\$ 72,420.00
18	Contingency Allowance	1	ALL	\$200,000.00	\$200,000.00
<i>Water Distribution</i>					
19	Furnish and Install 8" C900 DR-14 PVC WM	6,035	LF	\$89.00	\$ 537,115.00
20	Furnish and Install 6" C900 DR-14 PVC WM	100	LF	\$67.00	\$ 6,700.00
21	Connection to Existing 8" Water Main	7	EA	\$4,356.00	\$ 30,492.00
22	Connection to Existing 6" Water Main	0	EA		
23	Reconnect/Install New Water Meters	143	EA	\$471.00	\$ 67,353.00
24	1" Water Service (Short)	72	EA	\$1,600.00	\$ 115,200.00
25	1" Water Service (Long with Road Crossing)	70	EA	\$2,123.00	\$ 148,610.00
26	6" Wet Tap and Valve Assembly	6	EA	\$6,980.00	\$ 41,880.00
27	8" Wet Tap and Valve Assembly	0	EA		

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EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
28	10" Wet Tap and Valve Assembly	0	EA		
29	12" Wet Tap and Valve Assembly	0	EA		
30	16" Wet Tap and Valve Assembly	0	EA		
31	8" x 8" Tee/Wye	10	EA	\$2,100.00	\$ 21,000.00
32	8" x 6" Tee/Wye	5	EA	\$1,530.00	\$ 7,650.00
33	8" x 6" Reducer	2	EA	\$1,260.00	\$ 2,520.00
34	8" x 8" Reducer	0	EA		
35	8"x10" Reducer	2	EA	\$1,432.00	\$ 2,864.00
36	8" Cap	7	EA	\$806.00	\$ 5,642.00
37	6" Cap	0	EA		
38	8" Vertical Deflection	17	EA	\$5,000.00	\$ 85,000.00
39	8" Horizontal Deflection	12	EA	\$3,520.00	\$ 42,240.00
40	8" Gate Valve with Valve Box Assembly	15	EA	\$3,634.00	\$ 54,510.00
41	6" Gate Valve with Valve Box Assembly	5	EA	\$2,500.00	\$ 12,500.00
42	Fire Hydrant Assemblies	12	EA	\$8,617.00	\$ 103,404.00
43	Blowoff	3	EA	\$2,515.00	\$ 7,545.00
44	Grout and Abandon Existing 16" Water Main	0	LF		
45	Grout and Abandon Existing 12" Water Main	0	LF		
46	Grout and Abandon Existing 8" Water Main	0	LF		
47	Grout and Abandon Existing 6" Water Main	0	LF		
48	Grout and Abandon Existing 3" Water Main	0	LF		
49	Grout and Abandon Existing 2" Water Main	0	EA		
Stormwater					
50	Tie into Existing Inlet (New pipe into existing structure)	2	EA	\$4,014.00	\$ 8,028.00
51	Clean Existing SD	539	LF	\$8.00	\$ 4,312.00
52	Clean Existing Inlet	5	EA	\$1,035.00	\$ 5,175.00
53	12" SD Cross Drain	0	LF		
54	15" SD Cross Drain	614	LF	\$148.00	\$ 90,872.00
55	18" SD Cross Drain	84	LF	\$161.00	\$ 13,524.00
56	24" SD Cross Drain	379	LF	\$175.00	\$ 66,325.00
57	30" SD Cross Drain	35	LF	\$357.00	\$ 12,495.00
58	6" SD Side Drain	0	LF		
59	12" SD Side Drain	0	LF		
60	12"x18" SD Side Drain	0	LF		
61	15" SD Side Drain	0	LF		
62	18" SD Side Drain	1,097	LF	\$168.00	\$ 184,296.00
63	24" SD Side Drain	3,144	LF	\$191.00	\$ 600,504.00
64	Concrete Collar	0	EA		
65	Type "C" Drainage Inlet	21	EA	\$5,434.00	\$ 114,114.00
66	Type "D" Drainage Inlet	2	EA	\$7,665.00	\$ 15,330.00
67	Type "E" Drainage Inlet	38	EA	\$6,860.00	\$ 260,680.00
68	Grate Inlet Skimmer	0	EA	\$10,000.00	\$0.00
69	Storm Manhole	1	EA	\$6,335.00	\$ 6,335.00
70	Yard Drain	0	EA		
71	Mitered End Section	0	EA		
72	Baffle Box (Pipe Diameters 18" or Less)	2	EA	\$58,100.00	\$ 116,200.00

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
73	Baffle Box (Pipe Diameters 24" and 30")	6	EA	\$79,000.00	\$ 474,000.00
74	Seawall Replacement/Installation	53	LF	\$2,950.00	\$ 156,350.00
75	Duckbill Backflow Prevention Valve	7	EA	\$10,913.00	\$ 76,391.00
76	In-Line Backflow Prevention Valve	0	EA		
77	Swale Grading & Restoration	4,745	LF	\$13.00	\$ 61,685.00
78	Rip Rap	59	TN	\$250.00	\$ 14,750.00
79	Dewatering	1	LS	\$456,884.00	\$ 456,884.00
Williams Drive Stormwater Improvements (Separated for the Town's convenience, unit price to match above)					
80	Mill Existing Asphalt Pavement	0	SY		
81	Asphalt Pavement (SP-12.5)	0	TN		
82	Remove and Replace Concrete Curb/Gutter	0	SF		
83	Remove and Replace Pavers Driveway	0	SF		
84	Remove & Replace Asphalt Driveway	0	SF		
85	Remove & Replace Unpaved Driveway	0	SF		
86	Clear and Grub	0	LS		
87	15" SD Cross Drain	0	LF		
88	24" SD Cross Drain	0	LF		
89	24" SD Side Drain	0	LF		
90	Type "C" Drainage Inlet	0	EA		
91	Type "E" Drainage Inlet	0	EA		
92	Yard Drain	0	EA		
93	Baffle Box (Pipe Diameters 24" and 30")	0	EA		
94	Seawall Replacement/Installation	0	LF		
95	Duckbill Backflow Prevention Valve	0	EA		
96	Swale Grading & Restoration	0	LF		
97	Rip Rap	0	TN		
Sanitary Sewer					
98	Conflict Manhole	4	EA	\$10,800.00	\$ 43,200.00
99	4" Sewer Service Lateral (Without Cleanout)	54	EA	\$1,731.00	\$ 93,474.00
100	Adjust Manhole Frame and Cover	23	EA	\$1,520.00	\$ 34,960.00
101	Cleanouts Complete	54	EA	\$851.00	\$ 45,954.00

TOTAL BASE BID – GROUP C

Six Million Nine Hundred Fifty-Four Thousand Nine Hundred Ninety-Five Dollars & Zero Cents

(In Words)

\$ 6,954,995.00

(In Figures)

Bid items shall follow section 01026 of the project Technical Specifications.

Detail for steel sheet piling at outfalls is not included. All new seawall installations are bid as concrete seawall panels with tie-backs. All existing seawall refurbishments are bid as vinyl seawall panels.

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

PART D
FMB:001 - OFFICIAL BID FORM
 (12 of 17 Pages)

SCHEDULE OF VALUES TOWN OF FORT MYERS BEACH

TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS – GROUP D

All Bid items shall include all materials, equipment, labor, permit fees, taxes, tests, miscellaneous costs of all types, overhead, and profit for the item to be complete, in place, and ready for operation in the manner contemplated by the Contract Documents.

Contractor shall provide accurate pricing for all bid items listed.

Item No.	Description	Quantity	Unit	Unit Price	Total Price
Tier 1 Side Streets Water and Stormwater Improvements – Group D					
[Mid Island, Bayland, Seminole, Sterling, Pepita]					
General					
1	Mobilization/Demobilization	1	LS	\$163,290.00	\$ 163,290.00
2	General Requirements, Bonds, Permits	1	LS	\$218,610.00	\$ 218,610.00
3	Indemnification	1	LS	\$1,000.00	\$1,000.00
4	Pre- and Post-Construction Video	1	LS	\$16,478.00	\$ 16,478.00
5	Locate Utilities in Advance of Construction	1	LS	\$45,585.00	\$ 45,585.00
6	Survey & Layout and As-Built Survey	1	LS	\$100,045.00	\$ 100,045.00
7	Maintenance of Traffic	1	LS	\$129,723.00	\$ 129,723.00
8	Erosion and Sediment Control	1	LS	\$83,091.00	\$ 83,091.00
9	Replace Asphalt Pavement (Full Depth)	1,702	SY	\$95.00	\$ 161,690.00
10	Mill Existing Asphalt Pavement	7,819	SY	\$6.50	\$ 50,823.50
11	Asphalt Pavement (SP-12.5)	1,047	TN	\$238.00	\$ 249,186.00
12	Remove and Replace Concrete Curb/Gutter and Driveway	12,536	SF	\$19.00	\$ 238,184.00
13	Removed and Replace Pavers Driveway	6,279	SF	\$18.00	\$ 113,022.00
14	Remove & Replace Asphalt Driveway	1,993	SF	\$15.00	\$ 29,895.00
15	Remove & Replace Unpaved Driveway	13,319	SF	\$2.00	\$ 26,638.00
16	Clear and Grub	1	LS	\$89,756.00	\$ 89,756.00
17	Restoration	4,061	LF	\$17.00	\$ 69,037.00
18	Contingency Allowance	1	ALL	\$200,000.00	\$200,000.00
Water Distribution					
19	Furnish and Install 8" C900 DR-14 PVC WM	4,061	LF	\$87.00	\$ 353,307.00
20	Furnish and Install 6" C900 DR-14 PVC WM	100	LF	\$70.00	\$ 7,000.00
21	Connection to Existing 8" Water Main	5	EA	\$3,971.00	\$ 19,855.00
22	Connection to Existing 6" Water Main	2	EA	\$3,824.00	\$ 7,648.00
23	Reconnect/Install New Water Meters	77	EA	\$471.00	\$ 36,267.00
24	1" Water Service (Short)	40	EA	\$1,600.00	\$ 64,000.00
25	1" Water Service (Long with Road Crossing)	37	EA	\$2,125.00	\$ 78,625.00
26	6" Wet Tap and Valve Assembly	4	EA	\$7,249.00	\$ 28,996.00
27	8" Wet Tap and Valve Assembly	0	EA		

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
28	10" Wet Tap and Valve Assembly	0	EA		
29	12" Wet Tap and Valve Assembly	0	EA		
30	16" Wet Tap and Valve Assembly	0	EA		
31	8" x 8" Tee/Wye	5	EA	\$1,841.00	\$ 9,205.00
32	8" x 6" Tee/Wye	4	EA	\$1,527.00	\$ 6,108.00
33	8" x 6" Reducer	0	EA		
34	8" x 8" Reducer	0	EA		
35	8"x10" Reducer	0	EA		
36	8" Cap	6	EA	\$752.00	\$ 4,512.00
37	6" Cap	0	EA		
38	8" Vertical Deflection	6	EA	\$5,000.00	\$ 30,000.00
39	8" Horizontal Deflection	4	EA	\$3,000.00	\$ 12,000.00
40	8" Gate Valve with Valve Box Assembly	12	EA	\$3,412.00	\$ 40,944.00
41	6" Gate Valve with Valve Box Assembly	4	EA	\$2,483.00	\$ 9,932.00
42	Fire Hydrant Assemblies	8	EA	\$8,893.00	\$ 71,144.00
43	Blowoff	2	EA	\$2,850.00	\$ 5,700.00
44	Grout and Abandon Existing 16" Water Main	0	LF		
45	Grout and Abandon Existing 12" Water Main	0	LF		
46	Grout and Abandon Existing 8" Water Main	0	LF		
47	Grout and Abandon Existing 6" Water Main	0	LF		
48	Grout and Abandon Existing 3" Water Main	0	LF		
49	Grout and Abandon Existing 2" Water Main	0	EA		
Stormwater					
50	Tie into Existing Inlet (New pipe into existing structure)	0	EA		
51	Clean Existing SD	1,719	LF	\$5.00	\$ 8,595.00
52	Clean Existing Inlet	13	EA	\$475.00	\$ 6,175.00
53	12" SD Cross Drain	38	LF	\$102.00	\$ 3,876.00
54	15" SD Cross Drain	76	LF	\$104.00	\$ 7,904.00
55	18" SD Cross Drain	125	LF	\$112.00	\$ 14,000.00
56	24" SD Cross Drain	593	LF	\$170.00	\$ 100,810.00
57	30" SD Cross Drain	0	LF		
58	6" SD Side Drain	0	LF		
59	12" SD Side Drain	0	LF		
60	12"x18" SD Side Drain	0	LF		
61	15" SD Side Drain	124	LF	\$165.00	\$ 20,460.00
62	18" SD Side Drain	351	LF	\$190.00	\$ 66,690.00
63	24" SD Side Drain	1,289	LF	\$187.00	\$ 241,043.00
64	Concrete Collar	7	EA	\$2,350.00	\$ 16,450.00
65	Type "C" Drainage Inlet	3	EA	\$5,806.00	\$ 17,418.00
66	Type "D" Drainage Inlet	0	EA		
67	Type "E" Drainage Inlet	33	EA	\$7,454.00	\$ 245,982.00
68	Grate Inlet Skimmer	0	EA		
69	Storm Manhole	0	EA		
70	Yard Drain	2	EA	\$2,035.00	\$ 4,070.00
71	Mitered End Section	0	EA		
72	Baffle Box (Pipe Diameters 18" or Less)	1	EA	\$58,250.50	\$ 58,250.50

EXHIBIT A



TOWN of FORT MYERS BEACH

BID NO. ITB-23-18-UT

Item No.	Description	Quantity	Unit	Unit Price	Total Price
73	Baffle Box (Pipe Diameters 24" and 30")	4	EA	\$80,000.00	\$ 320,000.00
74	Seawall Replacement/Installation	32	LF	\$2,950.00	\$ 94,400.00
75	Duckbill Backflow Prevention Valve	5	EA	\$10,371.00	\$ 51,855.00
76	In-Line Backflow Prevention Valve	1	EA	\$14,000.00	\$ 14,000.00
77	Swale Grading & Restoration	820	LF	\$20.00	\$ 16,400.00
78	Rip Rap	35	TN	\$270.00	\$ 9,450.00
79	Dewatering	1	LS	\$276,171.00	\$ 276,171.00
Williams Drive Stormwater Improvements (Separated for the Town's convenience, unit price to match above)					
80	Mill Existing Asphalt Pavement	0	SY		
81	Asphalt Pavement (SP-12.5)	0	TN		
82	Remove and Replace Concrete Curb/Gutter	0	SF		
83	Removed and Replace Pavers Driveway	0	SF		
84	Remove & Replace Asphalt Driveway	0	SF		
85	Remove & Replace Unpaved Driveway	0	SF		
86	Clear and Grub	0	LS		
87	15" SD Cross Drain	0	LF		
88	24" SD Cross Drain	0	LF		
89	24" SD Side Drain	0	LF		
90	Type "C" Drainage Inlet	0	EA		
91	Type "E" Drainage Inlet	0	EA		
92	Yard Drain	0	EA		
93	Baffle Box (Pipe Diameters 24" and 30")	0	EA		
94	Seawall Replacement/Installation	0	LF		
95	Duckbill Backflow Prevention Valve	0	EA		
96	Swale Grading & Restoration	0	LF		
97	Rip Rap	0	TN		
Sanitary Sewer					
98	Conflict Manhole	0	EA		
99	4" Sewer Service Lateral (Without Cleanout)	18	EA	\$1,800.00	\$ 32,400.00
100	Adjust Manhole Frame and Cover	21	EA	\$1,520.00	\$ 31,920.00
101	Cleanouts Complete	18	EA	\$851.00	\$ 15,318.00

TOTAL BASE BID – GROUP D

Four Million Four Hundred Forty-Four Thousand Nine Hundred Thirty-Four Dollars & Zero Cents

(In Words)

\$ 4,444,934.00

(In Figures)

Bid items shall follow section 01026 of the project Technical Specifications.

Detail for steel sheet piling at outfalls is not included. All new seawall installations are bid as concrete seawall panels with tie-backs. All existing seawall refurbishments are bid as vinyl seawall panels.

RESOLUTION NUMBER 25-269

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, UNDER THE EMERGENCY PROCUREMENT POLICY TO APPROVE A PROPSAL FROM ANDREW SITEWORK LLC WITH THE TOWN'S CONTRACT ADDENDUM FOR THE INSTALLATION OF STORMWATER PIPING ON PALERMO CIRCLE FOR A NOT TO EXCEED PRICE OF \$36,171.60 TO ALLEVIATE THE FLOODING ON ESTERO BLVD BY DIVERTING ESTERO STORMWATER TO THE OUTFALL ON SANTOS BLVD VIA PALERMO CIRCLE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE EMERGENCY PURCHASE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for an emergency purchase for the Town Manager to make, or authorize others to make, for purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances; and

WHEREAS, there is significant flooding on Estero Blvd around the Palermo Street intersection and

WHEREAS, Andrew SiteWork is currently doing similar work on other parts of the island and has the manpower, equipment, and materials to quickly complete the project as the Town weathers the 2025 hurricane season; and

WHEREASE, Andrew SiteWork has provided a proposal for the contracted purchase; and

WHEREAS, completion of this project will connect the Estero Blvd stormwater system with the stormwater system on Santos Blvd. via Palermo Circle. This will allow Estero Blvd to have additional drainage and reduce the flooding that is occurring on Estero Blvd; and

WHEREAS, the contract with Andrew SiteWork is for a not-to-exceed amount of \$36,171.60 which requires ratification by the Town Council as an emergency purchase in excess of \$25,000; and

WHEREAS, approval of this contract is in the interest of safeguarding the residents of Fort Myers Beach and visitors to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution approves an emergency contract with Andrew SiteWork to provide, and install stormwater piping, connecting the drainage on Estero Blvd. to the Santos Blvd outfall via Palermo Circle, as provided in Exhibit A and the Addendum attached as Exhibit B, in an amount not to exceed \$36,171.60, and authorizes the Town Manager to sign the contract and addendum to complete the emergency procurement.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor _____
Jim Atterholt, Vice Mayor _____
John R. King, Council Member _____
Scott Safford, Council Member _____
Karen Woodson, Council Member _____

ADOPTED this ____ day of ____ 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.

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #17 WITH AXIS INFRASTRUCTURE, INC. IN AN AMOUNT NOT TO EXCEED \$195,000, RETROACTIVE TO MAY 1, 2025, FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 20-22-AD TO CLOSE OUT THE FY2025 FOR THE CONTINUATION OF PLANNING SERVICES ; AUTHORIZING THE TOWN MANAGER TO SIGN STA #17 AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary for the continuation of services with a total expenditure of \$195,000, retroactive to May 1, 2025 added to the RFQ-20-22-AD.

What the action accomplishes:

This enables the Town to continue development review activities.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Community
Development Director,
Georgina Cid, Community
Development Manager

5. **Background:**

Axis Infrastructure, Inc. in conjunction with Town Staff assists in managing the Planning and Zoning workload. This STA is a continuation of the original contract for the services for the remainder of 2025, retroactive to May 1, 2025: Technical Support, GIS, and Special Project Management.

Attachments:

1. 25-272, STA 17 Axis Infrastructure, Inc. Planning and Zoning Services
2. Exhibit A to Resolution - STA 17 Axis Infrastructure FY25 Planning Services Extension May2025 until Sept 2025

Financial Impact:

The total expenditure will be funded through 10.20.515.53401.000.

6. **Alternative Action**

7. **Management Recommendations:**

Management recommends approval of these expenditures.

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 8/29/2025
Approved - 8/29/2025
Approved - 8/29/2025
Approved - 8/29/2025
Approved - 9/2/2025

RESOLUTION NUMBER 25-272

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AUTHORIZATION (STA) #17 WITH AXIS INFRASTRUCTURE, INC. IN AN AMOUNT NOT TO EXCEED \$195,000.00 FOR A CUMULATIVE TOTAL OF PAYMENT FOR SERVICES UNDER RFQ 20-22-AD IN THE AMOUNT OF \$1,583,395.00 FOR THE CONTINUATION OF PLANNING SERVICES; AUTHORIZING THE TOWN MANAGER TO SIGN STA #17 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 get additional assistance for planning and zoning services up to date as required by the Town's Comprehensive Plan and Land Development Code; and

WHEREAS, the Town has an existing contract with Axis Infrastructure, Inc. for planning and zoning professional services, which to date have been reliable and beneficial to the Town; and

WHEREAS, the Town requested, and Axis Infrastructure, Inc. provided a quote to complete the Town's need in an amount not to exceed \$195,000.00, retroactive to May 1st, 2025, which requires approval by the Town Council since the cumulative amount of the Town's contract with Manager's approval, Inc. exceeds the Town Manager's approval authority; and

WHEREAS, approval of STA #17 is in the best interest of the Town and its residents by providing a professional planning and zoning process as well as compliance with Town's Comprehensive Plan and Land Development Code.

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 #17 is hereby approved and the Town Manager is authorized to execute STA #17, 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 September, 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 - _____.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

 X Supplemental Task Authorization

NO.: STA # 17

CONTRACT/PROJECT NAME: Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year

CONSULTANT: Axis Infrastructure

PROJECT NO.: _____

SOLICIT NO.: RFQ-20-22-AD

CONTRACT NO.: _____

REQUESTED BY: Judith Frankel DATE OF REQUEST: June 12, 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: June 12, 2025

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: June 12, 2025

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: June 12, 2025

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: June 12, 2025

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____

Department Director

Date

By: _____

Contracts Manager

Date

ACCEPTED: Axis Infrastructure

By: _____

Consultant/Provider

Date

TOWN APPROVAL:

By: _____

Town Manager

Date

By: _____

Town Attorney

Date

Date to Proceed: _____

Cost of STA: N.T.E. \$ 195,000

Date: June 12, 2025

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year

Overview

STA NO. 17: Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year dating from May 2025.

The following services will be provided by Axis Infrastructure for fiscal year 2024/2025:

1. Planning and Zoning staff, permit review, and technical analysis as required by the Comprehensive Plan and Land Development Code.
2. Coordination with Town departments and staff, advisory boards, and public hearings.
3. Coordinate special projects, manage Comprehensive Plan and LDC rewrite, manage GIS resource and other assets.
4. Coordinate with Town Management and Town Council and serve at their direction.
5. Transportation reviews and coordination when appropriate.

Hourly Breakdown:

Planner Hourly @ \$110/ hour
Senior Planner @ \$130/hour
Senior GIS Analysis @ 185/hour

Total Cost (of Job): N.T.E. \$195,000.00

COMPENSATION AND METHOD OF PAYMENT FOR
Technical Support, GIS, and Special Project Management for
FY24/25 Extension of Services for the remainder of the fiscal year
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.)
#1	Technical Support Community Development		NTE	WIPP
TOTAL (Unless list is continued on next page)		195,000.00	NTE	

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 September 27, 2021, 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 September 27, 2021, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

Date: June 12, 2025

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR

Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year

Consultant or Sub-consultant Name: Axis Infrastructure
(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)
Senior Planner / Manager	\$56.52	2.3	\$130
Planner	\$37.93	2.97	\$110
GIS Analyst	61.66	3.0	\$185
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: June 12, 2025

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR

Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Standard Rate Schedule As Included with Proposal	
Travel to requested meetings	As outlined in Proposal
Items as directed by the Town, backup provided.	
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: June 12, 2024

TIME AND SCHEDULE OF PERFORMANCE FOR

JOB NAME – Fiscal 2023 Technical Support, GIS, and Special Project Management

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
#1-5	Technical Support, GIS, Special Project Management for FY 24/25	FY 2025	FY 2025

EXHIBIT DDate: June 12, 2025

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Technical Support, GIS, and Special Project Management for FY24/25 Extension of Services for the remainder of the fiscal year 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
Planning /Transportation	Planning Analytics LLC					
GIS/Planning	Exp					

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/DENYING THE BID PROTEST FOR THE WATER METER REPLACEMENT PROJECT, ITB-25-05-PW RECEIVED FROM UTILITIES ONE PURSUANT TO SECTION 2-486(a) OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because a notice of bid protest was received by the Town from Utilities One.

What the action accomplishes:

This action resolves the bid protest consistent with Section 2-486(a)1 of the Town of Fort Myers Beach Code of Ordinances .

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Deborah Glavin, Contracts & Procurement Specialist

5. **Background:**

On August 19, 2025, an email was received from Utilities One through the Town's bid portal at DemandStar (bids@fmbgov.com) protesting the Town's Notice of Intent to Recommend Award for Water Meter Replacement Program (ITB-25-05-PW) to National Metering Service.

Through clerical error, a Notice of Intent to Recommend Award for Water Meter Replacement Program (ITB-25-05-PW) was posted on August 5, 2025, after the Town Council had already awarded the bid for Water Meter Replacement at its public meeting held on August 4, 2025, to National Metering Service. Although the erroneous Notice of Intent to Recommend stated that an award would be made at a future Town Council meeting, ITB-25-05-PW identified August 4, 2025, as the award date. The advertised notice for ITB-25-05-PW also identified August 4, 2025, as the award date. All bidders responding to bids are required to understand and comply with the information requested and contained in the bid documents.

The incorrect notice posted on August 5, 2025, also included information related to the ability to protest as set forth in Section 2-486(a). After its initial bid protest was received by the Town on August 19, 2025, Utilities One filed a formal protest containing additional details related to its bid and a bid bond.

Section 2-486 (3) of the Town's Code of Ordinances provides that bid protests may be heard by the Town Council or by a hearing officer if the subject of the protest is not resolved by mutual agreement after receipt of notice of a formal written protest. Reference to the requirements for filing a bid protest was also included In ITB 25-05-PW on Page 15, Paragraph 13.

Section 2-486 (2)(c) requires that written notice of an intent to protest a bid must be filed with the Town Clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later. Although it was incorrect, the Town did post a notice on August 5, 2025, following action by the Town Council awarding the bid to the National Metering Service

as provided in Resolution 25-235. Pursuant to Section 2-486(3), the deadline to notify the Town of a bid protest would be seventy-two hours (72) from August 5, 2025, at 5:00pm (excluding weekends and holidays), to August 11, 2025, at 5:00pm. The bid protest received via email addressed to the Town Clerk from Utilities One was sent on August 19, 2025, which is beyond the deadline to file a bid protest and thus untimely based on Section 2-486(c). Section 2-486(d) provides that the failure to timely file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed is a waiver of the right to protest.

In addition, Section 2-486(e) provides that a protestor must post a bond payable to the Town of Fort Myers Beach for an amount equal to five percent of the total bid or \$20,000, whichever is greater, but not to exceed the amount of the bid. Utilities One has not posted a bid bond to date.

Notwithstanding the waiver of the bid protest due to untimely filing, Resolution 25-235 and the agenda materials contained Town staff's reasons for the non-selection of Utilities One based on reference to concerns with the number of change orders in prior projects. Section 2-480(a)(7) sets forth how bids would be evaluated.

Bids will be evaluated based on a bidder's ability to satisfy the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for the award must be objectively measurable, such as discounts, transportation costs, and the total or life cycle costs. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid.

ITB 25-05-PW included broad criteria for evaluation of 5 bid response received. Price was not the sole criteria. Staff's evaluation upon which the Town Manager's recommendation to awarded the bid to National Metering Service was placed greater weight on three of the nine pricing requests that were critical to complete the project, i.e., 5/8in and 1in meters and antennas. National Metering Services was lowest bid for these three essential items.

Attachments:

1. NS Res 25-257 Bid Protest Resolution - Utilities One (Meters)
2. Utilities One Notice of Bid Protest - Dated August 27, 2025
3. Utilities One Notice of Bid Protest (Email)
4. Utilities One TC Letter of Acknowledgement
5. Sec. 2-486 Appeals and remedies
6. Notice of Intent to Recommend Award of ITB-25-05-PW at a Future Date - Posted August 5, 2025
7. Res 25-235, ITB-25-05-PW Water Meter Replacement
8. August 4, 2025 ITB 25-05-PW Award Blue Sheet
9. ITB-25-05-PW (Water Meters)
10. Staff Selection Recommendation (1)
11. Ranking Sheet of Bid Responses
12. Ranking Sheet of Project Costs (1)
13. National Metering Services, Inc. Response to Bid
14. Bond with ITB

Financial Impact:

None

6. **Alternative Action**

Rescind Resolution 25-235 and award the bid to another bidder.

7. **Management Recommendations:**

Deny the protest as untimely, improperly submitted, and meritless.

8. **Recommended Approval:**

Deborah Glavin, Contracts & Procurement Specialist
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/28/2025
Approved - 9/2/2025
Approved - 9/3/2025
Approved - 9/3/2025
Final Approval - 9/4/2025

RESOLUTION NUMBER 25- 257

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/DENYING THE BID PROTEST FOR THE WATER METER REPLACEMENT PROJECT, ITB-25-05-PW RECEIVED FROM UTILITIES ONE PURSUANT TO SECTION 2-486(a) OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on August 4, 2025, the Town Council of Fort Myers Beach awarded a bid for Water Meter Replacement to National Metering Service pursuant to an Invitation to Bid originally issued June 6, 2025; and

WHEREAS, the awarded bid was evaluated under a multitude of broad criteria, including but not limited exclusively to price; and

WHEREAS, on August 5, 2025, a Notice of Intent to Recommend Award for Water Meter Replacement Program (ITB-25-05-PW) (“Notice of Intent”) was erroneously posted after the Town Council had already awarded the bid to National Metering Service; and

WHEREAS, on August 19, 2025, Utilities One, a company that had submitted a response to the bid, sent an email through the Town’s bid portal at DemandStar, protesting the Town’s Notice of Intent and representing itself as the lowest bidder for the project; and

WHEREAS, a decision on this bid protest is in the best interest of the Town in order to maintain compliance with the Town’s competitive procurement practices and code.

NOW THEREFORE, BE IT 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. In addition, the Town Council finds/does not find the bid protest was timely submitted to the Town Clerk as well as in/not in compliance with the procedural requirements for a bid protest.

Section 2. The Town Council hereby approves/denies bid protest filed by Utilities One.

Section 3. The Town Council upholds/invalidates the bid award granted August 4, 2025 to National Metering Service.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process. 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 5. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach and shall constitute final agency action.

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.

ATTEST: Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day _____ 2025.

August 27, 2025

Town of Fort Myers Beach
Attn: Town Clerk
2731 Oak S
Fort Myers Beach, FL 33931
via overnight mail and e-mail to bids@fmbgov.com

RE: Notice of Bid Protest regarding Water Meter Replacement Program (ITB-25-05-PW)

Good morning:

Please accept this Notice of Bid Protest of our contention to Protest the recommendation to Award the aforementioned project to National Metering Service, as Utilities One is a very experienced Water Industry service and metering installation and replacement contractor that complied with the proposed time frame allocation to complete the project and demonstrated comparable past performance and was the Low Bidder on the project.

We have demonstrated our capabilities in our response to the RFP and have proven our ability to complete the project on time and on budget. If you need an additional water meter project reference, please contact:

Mr. Jeff Brigham, Manager
Town of Dover, Tennessee
jbrigham@dovertn.com
(931) 627-2615

The facts of the situation are that Utilities One fully meets the qualifications of the project in terms of experience and understanding, which we are happy to discuss at your convenience anytime you would like, which is based on our proven past performance, our willingness and ability to meet the time frame and budget requirements, and have demonstrated that we are the most responsive and responsible proposer.

A bid bond payable to the Town of Fort Myers Beach has been provided.

Please let us know when you would like to discuss this matter as we are available at your convenience.

Sincerely,

Kevin M. Brophy

Kevin Brophy
Director - Water Utilities

Phone: (484) 431-7497
Email: kevinb@utilitiesone.com
Web: www.utilitiesone.com

300 W Somerdale Rd, Suite 5, Voorhæes Township, NJ 08043

Town of Fort Myers Beach

AUG 28 2025

Received by: _____

Deb Glavin

From: Kevin Brophy <kevinb@utilitiesone.com>
Sent: Tuesday, August 19, 2025 2:29 PM
To: Bids
Cc: Kirill Kondratiev; Joseph DiMelis; Burke Cowley; Bryce Walat
Subject: Notice of Bid Protest to Notice of Intent to Recommend Award for Water Meter Replacement Program (ITB-25-05-PW)

Town of Fort Myers Beach
Attn: Town Clerk
2731 Oak S
Fort Myers Beach, FL 33931
via e-mail to bids@fmbgov.com

Good afternoon:

Please accept this email as formal Notice of Bid Protest of our contention to Protest the recommendation to Award the aforementioned project to National Metering Service, as Utilities One is a very experienced Water Industry service and metering installation and replacement contractor that complied with the proposed time frame allocation to complete the project and demonstrated comparable past performance and was the Low Bidder on the project.

A formal written protest will be filed within 10 days (by 8/29/25) after this Notice of Bid Protest, and will outline with particularity the facts and laws / regulations upon which our Protest is based.

Thank you confirming receipt of this Notice and we look forward to demonstrating our evidence of Utilities One being the approved service provider for this project.

Sincerely,

Kevin M. Brophy



Kevin Brophy

Director - Water Utilities

Phone: (484) 431-7497
Email: kevinb@utilitiesone.com
Web: www.utilitiesone.com

300 W Somerdale Rd, Suite 5, Voorhees Township, NJ 08043





August 29, 2025

Mr. Kevin Brophy
Utilites One
300 W. Somerdale Road, Suite 5
Voorhees Township, NJ 08043

Subject: Acknowledge of Bid Protest, ITB-25-05-PW, Water Meter Replacement Project

VIA: Email, August 29, 2025

Dear Mr. Brophy

This letter acknowledges receipt of your e-mail bid protest, dated August 19, 2025, concerning Invitation to Bid (ITB), ITB-25-05-PW, Water Meter Replacement Project.

Your bid protest will be heard by the Town of Fort Myers Beach, Florida, Town Council on September 11, 2025, as provided in Section 2-486(a) of the Town of Fort Myers Beach Code of Ordinances. The Town Council meeting starts promptly at 9:00 am and will take place at the Town of Fort Myers Beach Town Hall, 6231 Estero Blvd, Fort Myers Beach, FL 33931. The hearing on your protest is identified as Item J in the agenda, which will be distributed and available on September 3, 2025, on the Town's website. In the event your bid bond is not received prior to the start of the September 11, 2025 meeting, your bid protest will be denied for failure to post the required bond.

If you have any additional questions, please do not hesitate to contact Deb Glavin at dglavin@fmbgov.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Amy Baker', written over a blue circular stamp.

Amy Baker
Town Clerk

Cc: National Meter Service
Will McKannay, Town Manager
Joe Onzick, Finance Director
Jeff Hauge, Director of Community Service
Nancy Stuparich, Town Attorney

(a) *Bid protests.*

(1) *Right to protest.* Any person or firm who is affected adversely by the town's decision may protest to the town council.

(2) *Time limits and form of protest.*

- a. A protest with respect to an invitation to bids or request for proposals must be submitted in writing to the town clerk prior to the opening of bids or the closing date of proposals.
- b. Written notice of intent to a protest a bid be filed with the town clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later.
- c. A formal written protest must be filed within ten calendar days after the filing of the initial written notice of intent to protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
- d. Failure to file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
- e. The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000.00, whichever is greater, but not to exceed the value of the bid.
- f. The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

(3) *Hearing.*

- a. If the subject of a protest is not resolved by mutual agreement within 14 calendar days after receipt of a formal written protest, the matter may, at the option of the town council, be referred to a hearing officer who will conduct a hearing within 15 calendar days of receipt of the referred formal written protest.
- b. The hearing officer will render a written recommended order within 30 calendar days after the hearing. The recommended order will be scheduled on the next council agenda for final action.
- c. If council so elects, the protest may be heard directly by the town council.

(b) *Stay of action.* Upon receipt of a formal written protest that has been timely filed, the town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by town council action, unless the town manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

(c) *Appeal of decision.* If a protest is denied, the protestor will have 30 calendar days to file for relief in Circuit Court in Lee County, Florida.



NOTICE OF INTENT TO RECOMMEND AWARD

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

NOTICE IS HEREBY GIVEN that the Town Manager intends to recommend to the Town Council that the award of the above-referenced proposal be given to the firm that's qualifications were based on experience and understanding. The determination for recommendation was based on past performance and willingness to meet time frame and budget requirements as well as being the most responsive and responsible proposer. The Town Manager will make the recommendation at the next Town Council Meeting, **National Metering Service.**

A copy of this Intent to Recommend Award as well as the Bid Tabulation Sheet is posted on the Town of Fort Myers Beach web site, www.fmbgov.com

Any person who is adversely affected by this recommended action must file a written Notice of Bid Protest with the Town Clerk within seventy-two (72) hours (excluding Saturdays, Sundays and Legal Holidays) after the posting of the bid tabulation or after receipt of the Notice of Intent to Recommend Award, whichever is later. A formal written protest must then be filed within ten (10) days after the filing of the initial written Notice of Bid Protest. The formal written protest must state with particularity the facts and law upon which the protest is based. Failure to file a Notice of Protest or failure to file a formal written protest within the time limits set forth herein shall constitute a waiver of the right to protest. Any person filing a protest must post a bond, payable to the Town of Fort Myers Beach, in an amount equal to five percent (5%) of the total bid or Twenty Thousand Dollars (\$20,000), whichever is greater, but not to exceed the value of the bid. (Town Ordinance 24-11).

Posted Aug 5th

2294
1406

[Faint, mostly illegible text, possibly bleed-through from the reverse side of the page.]

2-14-74 JWA JSTOF

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 NOT 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 Council Member King and seconded by Council Member Safford and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

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

Dan Allers (Aug 19, 2025 09:57:42 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Aug 19, 2025 14:50:01 EDT)

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Nancy Stuparich

Nancy Stuparich (Aug 19, 2025 12:37:55 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Aug 19, 2025.



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 C. 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)

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 Coda
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)



TOWN of FORT MYERS BEACH

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



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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:



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- 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.



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4. TOWN INTERPRETATION / ADDENDA

- 4.1. No interpretation or clarification of the meaning of the plans, specifications, or other contract documents will be binding if made to any BIDDER orally. Every such request must be in writing, addressed to Town of Fort Myers Beach, Attn: Town Clerk, 2731 Oak St, Fort Myers Beach, FL 33931 or via e-mail to bids@fmbgov.com 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



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\$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.



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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.



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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.



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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



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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



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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



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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



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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 or 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



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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.



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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,



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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



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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	IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																
		DBE?		Y	N																	
		MBE?		Y	N																	
		WBE?		Y	N																	
		SDB BA?		Y	N																	
IS THIS SUBMISSION A REVISION?		Y	N	IF YES, REVISION NUMBER																		
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																						
DBE 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; margin-top: 10px;"> <thead> <tr> <th>ETHNICITY</th> <th>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
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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:	ACCEPTED	TOWN APPROVAL:
By: _____	By: _____	By: _____
Consultant (if applicable) Date	Contractor	Finance Director (Under \$75,000)
By: _____	Date Accepted: _____	Date
Department Director Date		Approved: _____
Contracts Management	(CORPORATE SEAL)	By: _____
APPROVED:		Town Manager (Under \$75,000)
		Date
		Approved: _____
Town Attorney Date		By: _____
		Mayor, Town Council
		(Over \$25,000)

PART E
FMB:012 - CONSTRUCTION CONTRACT
FIELD DIRECTIVE CHANGE
(1 of 2 Pages)

NO.: _____

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name: _____

Contractor: _____

Request By: _____ Date of Request: _____

1. DIRECTIVE: The TOWN hereby directs and authorizes the following change(s) in the work required by the contract documents be made and the CONTRACTOR is hereby directed to proceed promptly. In the event that as a result of the CONTRACTOR accepting this Field Directive Change, there are determined to be change(s) in the Contract (1) scope, (2) cost, or (3) time. Subsequent to the CONTRACTOR finalizing the change(s) in the work required, and upon receipt and acceptance by the TOWN of a written and documented claim by the CONTRACTOR, such changes shall be incorporated in a Change Order which is subject to approval by the TOWN and the CONTRACTOR.
2. Description of the change(s):

3. Purpose or Intent of Field directive Change:

4. Attachments: (List documents supporting change)

5. Not-to-exceed limits applicable to this Field Directive Change:
Unless specifically authorized by the TOWN by a written amendment to this Field Directive Change, the CONTRACTOR shall not exceed the following limits:
 - A. Estimated not-to-exceed increase (decrease) in the contract price: _____
 - B. Estimated not-to-exceed increase (decrease) in completion time in calendar days: _____
6. Claim(s) resulting from Field Directive Change
In the event that, as a result of the CONTRACTOR providing or performing the change(s) in the required construction work as set forth in this Field Directive Change, the CONTRACTOR determines that consideration should be given to (1) changing the contract scope, (2) increasing the CONTRACTOR'S compensation, or (3) increasing the contract time; the CONTRACTOR shall in accordance with the provisions of Articles 11, 12 and 13 of the Contract Document, submit a written claim to the TOWN requesting that a Change Order be executed incorporating changes in the (1) contract scope, (2) CONTRACTOR compensation, or (3) contract time as appropriate. Such a claim shall include documentation to support the claim.

PART E
FMB:012 - CONSTRUCTION CONTRACT
FIELD DIRECTIVE CHANGE
(2 of 2 Pages)

It is understood and agreed by the TOWN in authorizing and by the CONTRACTOR in accepting this Field Directive Change that the following methods shall be used as the basis for considering the issuance of a contract Change Order or any CONTRACTOR claim arising out of this Field Directive Change:

A. Method of Determining Change in Contract Price:

- ☐ Time and Materials
- ☐ Unit Prices
- ☐ Cost plus fixed fee
- ☐ Other

B. Method of Determining Change in Contract Time:

- ☐ Contractor's Records
- ☐ Consultant's Records
- ☐ Other

7. ACCEPTANCE:

TOWN AUTHORIZATION

By _____
Printed Name

By _____
Signature

Title/Position _____

Date _____

CONTRACTOR AUTHORIZATION

By _____
Contractor's Business Name

By _____
Print Name

By _____
Signature

Witness

Title/Position _____

Date _____

Corporate Seal (Affix if applicable, if not enter "None")

Copies Distributed to:

- ☐ Contractor (Signed Original)
- ☐ Director Project Sponsoring Department (Signed Original)
- ☐ Project Manager
- ☐ Consultant (if applicable)
- ☐ Contracts Management

PART E
FMB:013 - CONSTRUCTION CONTRACT
ESTIMATE AND REQUISITION FOR PAYMENT
(1 of 3 Pages)

Date: _____

Bid No.: _____ Contract No.: _____ Project No.: _____

Estimate No.: _____ (☐ Partial ☐ Final) for Period _____ to _____

Project Name: _____

PAYEE: Contractor's Name: _____
Mailing Address: _____
City & State _____ ZIP CODE _____

Deliver Warrant: _____
Special Instructions - If Other than Mail _____

Attach a list of names and addresses of all Sub-Contractors, material men, or suppliers that are to be paid from this requisition.

CONTRACTUAL FINANCIAL DATA

Date of Original Contract: _____

Total Amount of Original Contract \$ _____

PLUS:	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____

Total Change Orders ADDING to cost of Contract \$ _____

LESS:	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____
	Change Order # _____	dated _____	\$ _____

Total Change Orders SUBTRACTING from cost of Contract \$ _____

Less Total Unit Price Amount Not Used Per Final Field Measurements \$ _____

TOTAL OF ABOVE \$ _____

SPECIAL NOTE: Any change orders which affect the contract not previously transmitted to the Town's Finance Office or to Contracts Mgmt must be properly executed and attached to this form before payment will be made.

Total Completed this Requisition	\$ _____	Retainage	\$ _____
Total Complete to Date (Column F, Sheet 3)	\$ _____		
Retainage % (Percent required in Contract Documents)	\$ _____		
Total Earned Less Retainage	\$ _____		
Less Prior Payments Made	\$ _____		
Less Liquidated Damages	\$ _____		
Amount of this Requisition	\$ _____		
Total Amount Paid to DBE's from above	\$ _____		

PART E

**FMB:013 - CONSTRUCTION CONTRACT
PROGRESS PAYMENT CERTIFICATION**
(2 of 3 Pages)

Project Name: _____

Bid No.: _____
Contract No.: _____
Estimate No.: _____
Project No.: _____
Requisition Date: _____
Period From: _____
To: _____

I do hereby certify that all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed, and materials delivered. I further certify that all Sub-Contractors, material men or suppliers listed to be paid from this requisition will be paid prior to any future payment request for this particular project. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for a progress payment.

Signed: _____

Contractor

Date: _____
(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by
means

of () physical presence or () online notarization, personally appeared _____
as

_____ of _____,

() who personally known to me of () who has produced _____ as
identification.

NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and documents shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for progress payment.

Signed: _____
Owner's Rep. Preparing Estimate

Signed: _____
Department/Division Director

Date: _____

Date: _____

PART E
FMB:013 - CONSTRUCTION CONTRACT
FINAL PAYMENT CERTIFICATION AND CONTRACTORS AFFIDAVIT
(3 of 3 Pages)

Project Name: _____

Bid No.: _____
Contract No.: _____
Estimate No.: _____
Project No.: _____
Requisition Date: _____
Period From: _____
To: _____

I do hereby certify that all items and amounts shown in the requisition for payment are correct and all work has been performed and materials delivered. This waiver and release of lien is conditioned upon payment of the consideration specified herein. It is not effective until said payment is received. I further certify that the consideration received in exchange for this final waiver and release of lien, when received is designated by the Contractor to be applied to the payment of subcontractors, material men, and suppliers who have furnished such services, labor, materials and supplies for which this request for payment is being made.

For warranty and guarantee start date, it is understood and agreed that the date of the final completion of the Work shall apply unless otherwise provided in the Certificate of substantial completion at which time the TOWN initiates occupancy or utilizes the Work or designated portion thereof for the use for which it is intended, which ever is first.

Signed: _____

Contractor

Date: _____

CORPORATE SEAL

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by
means

of () physical presence or () online notarization, personally appeared _____
as

_____ of _____,

() who personally known to me of () who has produced _____ as
identification.

NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for final payment.

Substantial Completion Date: _____

Final Completion Date: _____

Signed: _____

Owner's Rep. Preparing Estimate

Date: _____

Signed: _____

Department/Division Director

Date: _____

APPROVAL RECOMMENDED

By: _____

Town Attorney

Date: _____

PART E
FMB:014 - CONSTRUCTION CONTRACT
CERTIFICATE OF SUBSTANTIAL COMPLETION
(2 of 2 Pages)

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name(s): _____

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

RESPONSIBILITIES:

OWNER: _____

CONTRACTOR: _____

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Project Inspector _____ Date _____,
Name

Executed by OWNER'S REP. On

Date: _____,

CONTRACTOR accepts this Certificate of Substantial Completion on

Date: _____,

OWNER'S REPRESENTATIVE (Print)

By _____
Signature

CONTRACTOR (Print)

By _____
Signature

TOWN accepts this Certificate of Substantial Completion on

Date: _____,

DIRECTOR (Print)

By _____
Signature

cc: Project Manager
Town of Fort Myers Beach Sponsoring Department
CONTRACTOR
Contracts Management

PART E
FMB:015 - CONSTRUCTION CONTRACT
WARRANTY

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

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



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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.



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4. TOWN INTERPRETATION / ADDENDA

- 4.1. No interpretation or clarification of the meaning of the plans, specifications, or other contract documents will be binding if made to any BIDDER orally. Every such request must be in writing, addressed to Town of Fort Myers Beach, Attn: Town Clerk, 2731 Oak St, Fort Myers Beach, FL 33931 or via e-mail to bids@fmbgov.com 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



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\$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.



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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.



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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.



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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



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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



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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



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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 or 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



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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.



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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,



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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



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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
Years of related construction experience, type of work, position or capacity and cost
 - 11.3 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																					
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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 with 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 <u>ADDING</u> 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 <u>SUBTRACTING</u> from cost of Contract		\$ _____
Less Total Unit Price Amount Not Used Per Final Field Measurements		\$ _____
TOTAL OF ABOVE		<u>\$ _____</u>
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



(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

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



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

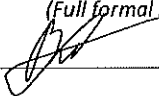
Fax Number

ATTEST:

Secretary John Castle

(Seal)

BID BOND (PENAL SUM FORM)

Bidder Name: Utilities One Address (principal place of business): 300 W Somerdale Rd, unit 5, Voorhees Township NJ 08043	Surety Name: TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA Address (principal place of business): Hartford, Connecticut 06183
Owner Name: Town of Fort Myers Beach Address (principal place of business): 6231 Estero Blvd, Fort Myers Beach, FL 33931	Bid Project (name and location): Water Meter Replacement Program Project No. ITB-25-05-PW Residential areas within Fort Myers Beach, Florida Bid Due Date:
Bond Penal Sum: 5% of the bid amount Date of Bond: 7th day of July, 2025	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder Utilities One (Full formal name of Bidder)	Surety TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA (Full formal name of Surety) (corporate seal)
By:  (Signature)	By:  (Signature) (Attach Power of)
Name: Serghei Busmachiu (Printed or typed)	Name: Mingchen Chi (Printed or typed)
Title: President	Title: Attorney-in-Fact
Attest: _____ (Signature)	Attest:  (Signature)
Name: _____ (Printed or typed)	Name: Roger Gochuico (Printed or typed)
Title: Indemnitor	Title:
Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and the Companies do hereby make, constitute and appoint **Roger Gochuico** of **AUSTIN**, **Texas**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **16th** day of **February, 2024**.



State of Connecticut

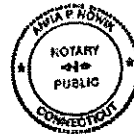
By: 
Bryce Grissom, Senior Vice President

City of Hartford ss.

On this the **16th** day of **February, 2024**, before me personally appeared **Bryce Grissom**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

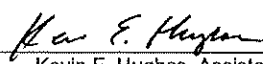
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **7th** day of **July**, **2025**




Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

1. **Request:**

Meeting Date: September 11, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT FROM THE LEO J. DIBIASI AND VALERI J. DIBIASI REVOCABLE LIVING TRUST DATED AUGUST 20, 2014 ("THE TRUST") AND DIRECTING THE FINANCE DIRECTOR TO MAKE A PAYMENT OF \$85,000 UPON RECORDING OF THE UTILITY EASEMENT AS AGREED TO BY THE TOWN IN A SETTLEMENT AGREEMENT DATED APRIL 7, 2025; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is anticipated and required under a previously approved and executed settlement agreement between the Town and the Leo J. Dibiasi and Valeri J. Dibiasi Revocable Living Trust.

What the action accomplishes:

This action grants a utility easement over certain real property to and for the benefit of the Town, as anticipated by previous settlement agreement.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

A settlement agreement was entered into between the Town and the Leo J. Dibiasi and Valeri J. Dibiasi Trust dated August 20, 2014, under which the Trust agreed to grant a utility easement to the Town for \$85,000.00. The utility easement will allow the Town to keep its utility infrastructure (pipes), which are located on the Trust's property. The utility easement is presented to the Town for acceptance. Payment for the easement will follow as provided in the Settlement Agreement.

Attachments:

1. Final Res 25-271, Accepting Utility Easement & Directing Payment (2)
2. Exhibit A to Resolution - Utility Easement (To be provided at the meeting)
3. Exhibits A, A-1, B, and C to Utility Easement

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

nancy stuparich, Town Attorney
nancy stuparich, Town Attorney
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/26/2025
Approved - 8/27/2025
Approved - 8/28/2025
Approved - 8/28/2025
Approved - 8/28/2025
Final Approval - 8/28/2025

RESOLUTION NUMBER 25-271

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT FROM THE LEO J. DIBIASI AND VALERI J. DIBIASI REVOCABLE LIVING TRUST DATED AUGUST 20, 2014 (“THE TRUST”) AND DIRECTING THE FINANCE DIRECTOR TO MAKE A PAYMENT OF \$85,000 UPON RECORDING OF THE UTILITY EASEMENT AS AGREED TO BY THE TOWN IN A SETTLEMENT AGREEMENT DATED APRIL 7, 2025; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Leo J. Dibiasi is the Trustee of the Leo J. Dibiasi and Valeri J. Dibiasi Revocable Living Trust (“Grantor”), which is the owner of that certain parcel of real property located in the Town of Fort Myers Beach, Lee County, Florida, more particularly described in the legal description and sketch in that certain Utility Easement, a copy of which is attached as Exhibit A with exhibits; and

WHEREAS, as part of a Settlement Agreement between the Town of Fort Myers Beach and Grantor, Grantor has delivered a utility easement to the Town’s use for its utility improvements located in the easement area; and

WHEREAS, pursuant to a previously approved Settlement Agreement, the Town Council has determined that acceptance of the Utility Easement is in the best interests of the Town and its residents and in accordance with the Settlement Agreement.

NOW THEREFORE, BE IT 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 Utility Easement, a copy of which is attached as Exhibit A.

Section 3. The Town Clerk is directed to record the Utility Easement in the Official Records of Lee County, Florida and the Finance Director is directed to make payment to the Grantor of the Utility Easement upon recording of the Utility Easement.

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.

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day _____ 2025.

**SIGNED UTILITY
EASEMENT FOR
ACCEPTANCE TO BE
PROVIDED PRIOR TO
TOWN COUNCIL
MEETING**

EXHIBIT "A"

A parcel of land upon which infrastructure owned, operated and maintained by the Town of Fort Myers Beach which is shown in Exhibit A-1 and which is located within the following described property:

Description of a Parcel of Land
Lying in
Government Lot 2, Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Portion of Outlot A, El Sol, Unit No. 1)

A parcel of land lying in the State of Florida, County of Lee, Town of Fort Myers Beach, situated in Government Lot 2, Section 33, Township 46 South, Range 24 East, being that portion of Outlot A as shown in the Plat of El Sol Unit No. 1, a subdivision as recorded in Plat Book 11 at Page 63, public records of Lee County, lying adjacent to Lazy Way, 50.00 foot Right-of-Way as described in Miscellaneous Book 35 at page 459 and more particularly described as follows:

Beginning at the northwest corner of said Outlot A, thence N89°14'15"E along the north line of said Outlot A for 10.00' to the westerly line of a 60.00' wide canal as shown on said subdivision Plat of El Sol Unit No. 1, thence S00°46'21"E for 66.00 feet to the southerly line of said Outlot A; thence S89°14'15"W, along said southerly line for 10.00 feet to the westerly line of said Outlot A and the Easterly Right-of-Way line of Lazy Way, a 50.00 foot wide Right-of-Way as described in Miscellaneous Book 35 at Page 459, thence N00°46'21"W, along said westerly line for 66.00 feet to the Point of Beginning.

Containing 660 square feet (0.02 acres), more or less.

Bearings are based on the State plane co-ordinate system Florida West Zone NAD83/2007.

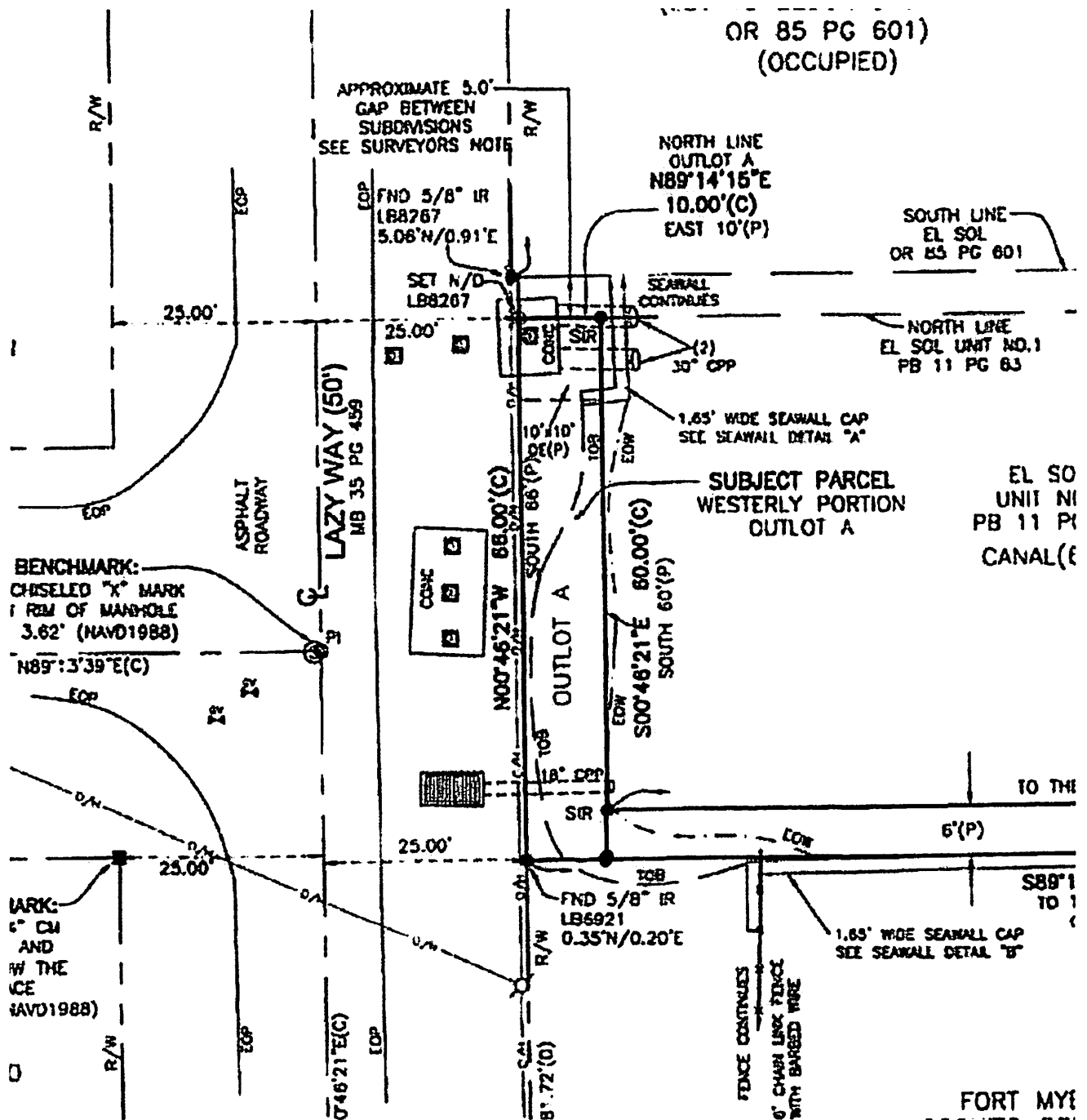
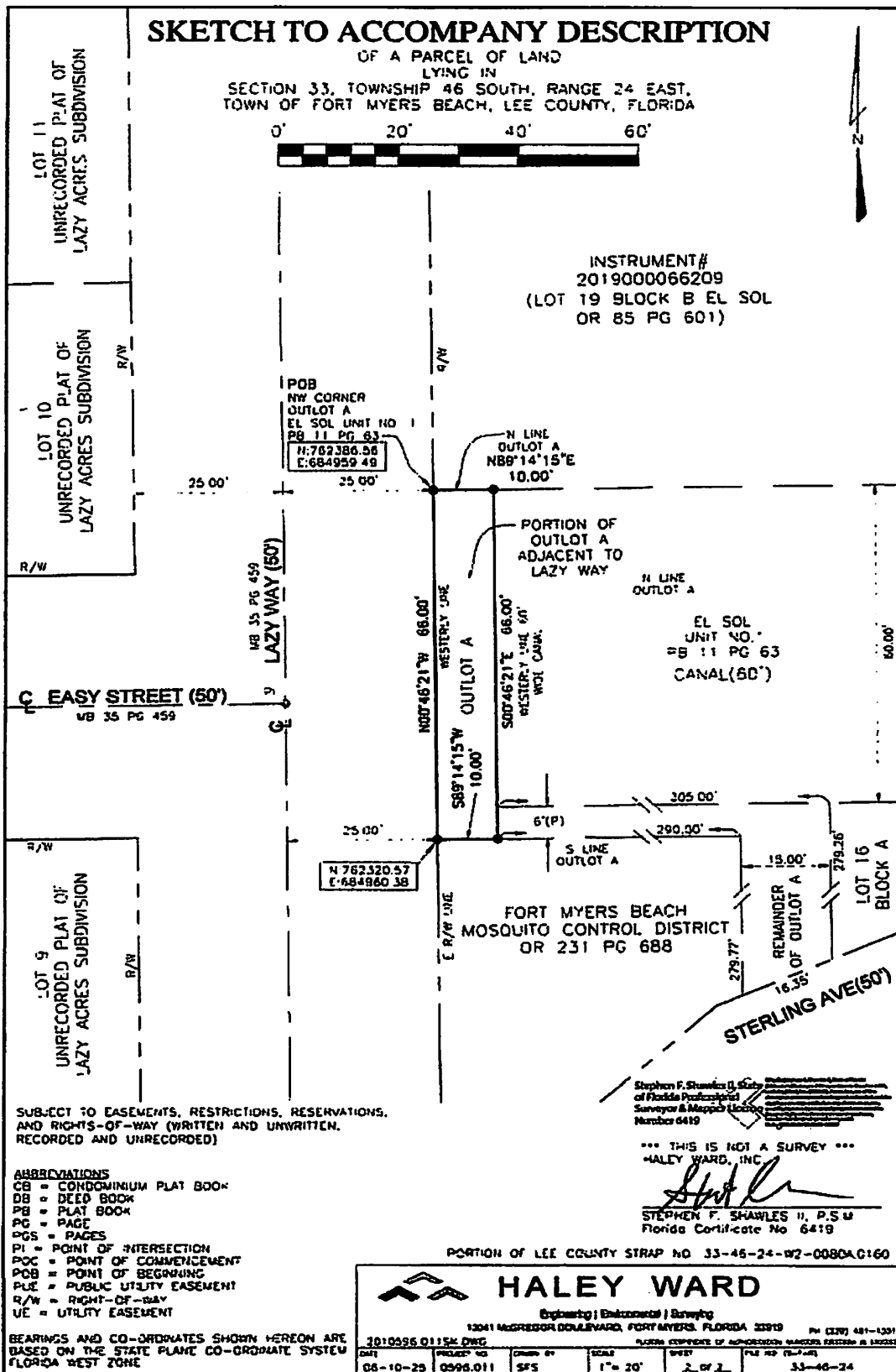
EXHIBIT A-1

EXHIBIT "B"



Settlement Agreement

LEO J. DIBIASI, TRUSTEE OF THE LEO J. DIBIASI and VALERI J. DIBIASI REVOCABLE LIVING TRUST, dated August 19, 2014 (collectively "Dibiasi"), and the TOWN OF FORT MYERS BEACH, hereby enter into this Settlement Agreement to formalize the agreements reached by the parties as resolution of Case No. 23-CA-005377 filed in the Circuit Court in the 20th Judicial Circuit in and for Lee County, Florida as follows:

1. The undersigned have agreed to settle all claims upon the following terms:

- (a) The Town will pay Dibiasi the total sum of \$85,0000 which includes compensation to Dibiasi and all attorney's fees and costs (inclusive of expert costs) following recording of the easement further described in Paragraph 1(b) below.
- (b) Dibiasi will grant the Town an easement for the drainage structures and an easement for the pipe which currently runs through the property together with rights to access the easement area. The Town shall be responsible for maintenance of the easement area. Prior to delivery, the easement shall be released from any and all existing encumbrances, unless otherwise accepted by the Town, with the exception of any existing mortgage(s), which will be subordinated to the Town's easement. The easement will be prepared by the Town and subject to review and approval by the Dibiasi's Attorney. The Town will be responsible and pay for the cost of a survey identifying the easement area. The Town shall be responsible for obtaining a

title report prior to delivery of the easement. Thereafter, the easement shall be presented to the Town Council for acceptance into the Town's records and recorded in the Official Records of Lee County, Florida at the Town's expense.

- (c) The Town will pay the mediator costs. Each party shall pay their own attorney fees.
- (d) Dibiasi will execute a specific release of any and all claims against the Town emanating from the inverse claim which shall be provided prior to recording of the easement. Such release shall be drafted by the Town and subject to the review of Dibiasi's attorney.

2. Upon execution of this Settlement Agreement and the Town's receipt of the specific release, the parties shall file a joint dismissal of this lawsuit with prejudice.

3. The parties agree and acknowledge that the foregoing terms of settlement are acceptable and have been approved the Town Council at a public meeting on the 17th day of March, 2025.

Signed, sealed, and delivered in the presence of:

Print Name: Charles [Signature]
Witness

Print Name: Leanne [Signature]
Witness

[Signature]
LEO J. DIBIASI, as TRUSTEE OF THE
LEO J. DIBIASI and VALERI J.
DIBIASI REVOCABLE LIVING TRUST,
dated August 19, 2014

Date: 4-3-2025

TOWN COUNCIL OF FORT MYERS
BEACH, FLORIDA

ATTEST:

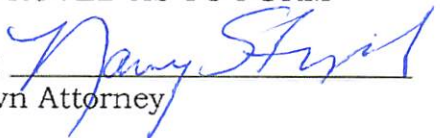
BY: 
Town Clerk

Date: April 7, 2025

BY: 
Dan Allers, Mayor

Date: 4/7/2025

APPROVED AS TO FORM

BY: 
Town Attorney

1. **Request:**

Meeting Date: September 11, 2025

Pursuant to Section 286.011(8), Florida Statutes, the Town Council of the Town of Fort Myers Beach, Florida, will commence a Litigation Executive Session closed to the public at 12:00 p.m. on September 11, 2025, to discuss settlement negotiations and strategy related to litigation expenditures regarding

Town of Fort Myers Beach, Florida vs. White Sand Properties of Fort Myers Beach, LLC and FGC Associates, LLC, Case No. 2025-CA-004261, 20th Judicial Circuit, Lee County, Florida. Persons attending the Executive Session include: Mayor Dan Allers, Vice-Mayor Jim Atterholt, Council Members John R. King, Scott Safford, and Karen Woodson, Town Manager William McKannay, Town Attorneys Nancy Stuparich, Becky Vose (by Zoom), Chloe Berryman, and Paul Waters (by Zoom), and a court reporter from Dines Court Reporting to be announced prior to the commencement of the Executive Session.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Executive Session is expected to last 1 hour. The purpose of the Executive Session is to discuss settlement negotiations and strategy related to litigation expenditures. The Town Council may take action concerning settlement negotiations once the Executive Session is concluded and the public meeting is reopened.

Attachments:

1. Town Hall Board Public_Notice_Litigation_Executive_Session_White Sands
2. White Sand Properties Complaint 2025 - Final

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 8/27/2025
Approved - 8/28/2025
Approved - 8/28/2025
Final Approval - 8/28/2025

PUBLIC NOTICE RELATED TO A LITIGATION EXECUTIVE SESSION OF THE FORT MYERS BEACH TOWN COUNCIL

Notice is hereby given that, pursuant to Section 286.011(8), Florida Statutes, the Town Council of the Town of Fort Myers Beach, Florida, will commence a Litigation Executive Session closed to the public at 12:00 p.m. on September 11, 2025, to discuss settlement negotiations and strategy related to litigation expenditures regarding the following case:

Town of Fort Myers Beach, Florida vs. White Sand Properties of Fort Myers Beach, LLC and FGC Associates, LLC, Case No. 2025-CA-004261, 20th Judicial Circuit, Lee County, Florida

Persons attending the Executive Session include: Mayor Dan Allers, Vice-Mayor Jim Atterholt, Council Members John R. King, Scott Safford, and Karen Woodson, Town Manager William McKannay, Town Attorneys Nancy Stuparich, Becky Vose (by Zoom), Chloe Berryman, and Paul Waters (by Zoom), and a court reporter from Dines Court Reporting.

The session is expected to last 1 hour. The purpose of the Executive Session is to discuss settlement negotiations and strategy related to litigation expenditures. The Town Council may take action concerning settlement negotiations once the Executive Session is concluded and the public meeting is reopened.

Posted: Town Hall Bulletin Board

IN THE CIRCUIT COURT OF THE TWENTIETH CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

TOWN OF FORT MYERS BEACH,
FLORIDA,

Plaintiff,

vs.

CASE NO.:

WHITE SAND PROPERTIES OF FORT
MYERS BEACH, LLC,

Defendant.

_____ /

COMPLAINT TO FORECLOSE MUNICIPAL LIENS

Plaintiff, Town of Fort Myers Beach, a Florida municipal corporation (the “TOWN”), by and through its undersigned counsel, sues Defendant, White Sand Properties of Fort Myers Beach, LLC (“DEFENDANT”) and alleges:

Subject Matter, Parties, and Venue

1. This is an action to foreclose two (2) municipal code enforcement liens on real property and/or personal property located in Lee County, Florida.

2. The TOWN is a Florida municipal corporation located in Lee County, Florida, and organized under the laws of the State of Florida.

3. The TOWN is authorized by the State of Florida to create a code enforcement board or code enforcement special magistrate position, to establish a code enforcement system, to hold code enforcement hearings, to assess fines against violators of the Town of Fort Myers Beach Code of Ordinances, and to record and foreclose liens for unpaid fines, consistent with its obligation to promote, protect, and improve the health, safety, and welfare of the residents of the TOWN and the public.

See Chapter 162, Florida Statutes.

4. The real property and personal property to be foreclosed in this matter is located at 80 Avenue E, Fort Myers Beach, Florida 33931, which is legally described as follows:

Lot 2, Block "A", CRESCENT BEACH SUBDIVISION, according to the Plat thereof, recorded in Plat Book 4, Page 45, of the Public Records of Lee County, Florida. ("SUBJECT PROPERTY").

5. DEFENDANT is a Florida limited liability company having a principal address in Lee County, Florida.

6. DEFENDANT is made a party defendant since it the owner of the SUBJECT PROPERTY.

7. FCG Associates, LLC ("FCG") is a Florida limited liability company having a principal address in Lee County, Florida.

8. FCG may have claimed some interest in the SUBJECT PROPERTY by virtue of that certain Mortgage recorded on February 18, 2020, as Official Records Instrument No. 2020000042330 in the Public Records of Lee County, Florida ("FCG Mortgage"). However, any claimed interest that FCG may have had in the SUBJECT PROPERTY has been satisfied and extinguished by virtue of the Stipulated Final Judgment between FGC and DEFENDANT recorded on July 11, 2023, as Official Records Instrument No. 2023000236853 in the Public Records of Lee County, Florida (outlining payment terms to satisfy the FCG Mortgage) and the Satisfaction of Stipulated Final Judgment recorded on January 24, 2024, as Official Records Instrument No. 2024000020689 in the Public Records of Lee County, Florida.

9. Venue properly lies in Lee County, Florida pursuant to Section 47.011, Florida Statutes, because the SUBJECT PROPERTY is located in Lee County, Florida, and the causes of action arose or accrued in Lee County.

10. This Court has subject matter jurisdiction over this action pursuant to Sections

26.012 and 162.30, Florida Statutes.

11. This Court has personal jurisdiction over DEFENDANT under Section 48.193, Florida Statutes.

12. The TOWN's validly recorded liens encumbering the SUBJECT PROPERTY are superior in dignity and right to any subsequently recorded interest, mortgage, claim, or lien attaching to the SUBJECT PROPERTY through the DEFENDANT and any of its mortgagors, lienholders, claimants, and successors, assigns, and tenants.

13. The SUBJECT PROPERTY is not a homestead under the laws of the State of Florida.

14. All conditions precedent to the bringing of this action have been performed, have been waived, have been executed, or have occurred.

15. The TOWN is obligated to pay its attorneys a reasonable fee for their services and DEFENDANT is responsible for payment of the liens and all costs of foreclosure, including reasonable attorney's fees, incurred by the TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Sec. 2-427(d).

Background Facts

16. From on or about October 3, 2014, until on or about December 2, 2015, the owner of record of the SUBJECT PROPERTY was Leo J. Dibiasi, individually and as Trustee of the Leo J. Dibiasi and Valerie J Dibiasi Revocable Living Trust ("DIBIASI").

17. During DIBIASI's ownership of the SUBJECT PROPERTY, DIBIASI was the sole member and president of Absolute Best Rate Rentals LLC, a Florida limited liability company ("ABSOLUTE").

18. From on or about December 2, 2015, until on or about July 15, 2016, the owner of

record of the SUBJECT PROPERTY was ABSOLUTE.

19. The Trustee's Deed conveying ownership of the SUBJECT PROPERTY to ABSOLUTE was recorded on December 4, 2015, at Official Records Instrument No. 2015000260051, in the public records of Lee County, Florida.

20. On April 12, 2016 during ABSOLUTE's ownership of the SUBJECT PROPERTY, a municipal lien for code enforcement violations ("Lien 1") was recorded against the SUBJECT PROPERTY, as described in more detail in Count 1 below.

21. ABSOLUTE conveyed the SUBJECT PROPERTY to Joseph B. ORLANDINI ("ORLANDINI") by Warranty Deed.

22. The Warranty Deed conveying ownership of the SUBJECT PROPERTY to ORLANDINI was recorded on July 20, 2016, Official Records Instrument No. 2016000153777, in the public records of Lee County, Florida.

23. ORLANDINI acquired the SUBJECT PROPERTY subject to and encumbered by Lien 1. At the time ORLANDINI acquired the SUBJECT PROPERTY, none of the existing code violations on the SUBJECT PROPERTY had been corrected, and the fines set forth in Lien 1 continued to accrue.

24. On July 26, 2017, during ORLANDINI's ownership of the SUBJECT PROPERTY, an additional municipal code enforcement lien ("Lien 2") was recorded against the SUBJECT PROPERTY for new code violations, as described in more detail in Count 2 below.

25. Section 162.09(3) provides "A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator."

26. As such, upon recording, Lien 2 constituted a lien upon the SUBJECT PROPERTY and upon any other real or personal property owned by ORLANDINI.

27. Over two years later, on December 9, 2019, DEFENDANT attended a TOWN Council meeting (“December 2019 Meeting”) and explained to the TOWN Council that DEFENDANT intended to buy one of ORLANDINI’s other properties, located at 1560 I Street, Fort Myers Beach, Florida (“I Street Property”).

28. DEFENDANT explained that the I Street Property “has some lien issues, it’s kind of under blanket umbrella of violations” and “we would like to pledge that \$50,000.00 towards his liens ... to get [the I Street Property] off of the liens.”

29. ORLANDINI also spoke at the December 2019 meeting, stating “there is a particular property I have at 80 Avenue E (the SUBJECT PROPERTY) that is has some encumbrances on it of liens... we're looking to close a property at 1560 I Street and that is the one that is in the umbrella of the parcels that got encumbered from the 80 Avenue E violation” and “ungluing this property helps tremendously with getting rid of debt.”

30. At the time of this meeting, the I Street Property had no known code enforcement violations.

31. However, because the I Street Property was owned by ORLANDINI, all code enforcement liens recorded in the public records against the SUBJECT PROPERTY during ORLANDINI’s ownership of the SUBJECT PROPERTY also encumbered the I Street Property.

32. As a result, the I Street Property was also encumbered by Lien 2.

33. At the December 2019 meeting, the Town Council agreed to DEFENDANT’s request to pay the \$50,000.00 to pull the I Street Property out of the “umbrella” of the code enforcement liens on the SUBJECT PROPERTY.

34. At the December 2019 meeting, DEFENDANT did not indicate that it also intended to purchase the SUBJECT PROPERTY from ORLANDINI.

35. At the December 2019 meeting, the Town Council did not consider a request to release the SUBJECT PROPERTY from the liens encumbering the SUBJECT PROPERTY.

36. On or about December 12, 2019, DEFENDANT delivered a check to the TOWN for \$50,000.00 in exchange for a partial release of the code enforcement liens encumbering the I Street Property only. A copy of the check is attached hereto as **Exhibit “A.”**

37. On January 29, 2020, the TOWN recorded three partial releases to release the I Street Property from the code enforcement liens recorded against the SUBJECT PROPERTY during ORLANDINI’s ownership of the SUBJECT PROPERTY, including Lien 2.

38. Each partial release provided, “[i]n accordance to the decision by Town Council on December 9, 2019 to release [the I Street Property] from this lien for the amount of \$50,000.00 has been satisfied in full and that the undersigned hereby releases the lien as to the whole of [the I Street Property] . . . This Partial Release of Lien releases only the property mentioned herein. All other properties attached as a result of [this lien] remain.” [Emphasis added.]

39. Because the partial releases only released the I Street Property from the “umbrella” of the code enforcement liens against the SUBJECT PROPERTY, Liens 1 and 2 remained unsatisfied and valid encumbrances upon the SUBJECT PROPERTY.

40. Lien 1 was recorded before ORLANDINI became record owner of the SUBJECT PROPERTY; therefore, Lien 1 did not encumber the I Street Property.

41. As such, the Town did not record a partial release to release the I Street Property from Lien 1.

42. On or about March 20, 2020, DEFENDANT acquired the I Street Property from

ORLANDINI.

43. When DEFENDANT acquired the I Street Property, DEFENDANT's \$50,000.00 payment to pull the I Street Property out of the "umbrella" of the code enforcement liens on the SUBJECT PROPERTY was credited toward the purchase price of the I Street Property.

44. On or about March 25, 2020, DEFENDANT acquired the SUBJECT PROPERTY, 80 Avenue E, from ORLANDINI.

45. When DEFENDANT, acquired the SUBJECT PROPERTY on or about March 25, 2020, it did so with the knowledge that Liens 1 and 2 were recorded, that the fines continued to accrue as provided in the recorded liens, and there were no recorded releases of the SUBJECT PROPERTY from Liens 1 and 2.

46. At the time the SUBJECT PROPERTY was acquired by DEFENDANT, there were no pending cases before the Special Magistrate for any subsequent code violations on the SUBJECT PROPERTY.

47. Thus, when DEFENDANT acquired the SUBJECT PROPERTY on or about March 25, 2020, it did so with the knowledge that the SUBJECT PROPERTY remained encumbered by the liens and subject to foreclosure as authorized by Florida law in Chapter 162 and Sections 2-427(c) and 2-425(e) of the Town of Fort Myers Beach Code of Ordinances.

48. Pursuant to Section 162.09(3), Florida Statutes, and Section 2-425(e) of the Town of Fort Myers Beach Code of Ordinances, recorded code enforcement liens "run with the land" and are binding upon subsequent purchasers.

49. As of the date of this Complaint, no releases or satisfactions have been recorded releasing the SUBJECT PROPERTY from the code enforcement liens subject to this foreclosure action.

50. As of the date of this Complaint, there exists no agreement between DEFENDANT and the TOWN Council, the TOWN Manager or any other duly authorized TOWN representative that obligates the TOWN to release the SUBJECT PROPERTY from Liens 1 and 2.

51. As of the date of this Complaint, there exists no agreement between ORLANDINI and the TOWN Council, the TOWN Manager or any other duly authorized TOWN representative that obligates the TOWN to release the SUBJECT PROPERTY from Liens 1 and 2.

52. To the extent any conditions for the release of Liens 1 and 2 have been proposed, no such conditions were ever accepted or satisfied.

53. At a regularly scheduled meeting of the TOWN Council on April 18, 2022 (“April 2022 meeting”), the Town Council authorized the TOWN Attorney to enforce and foreclose Liens 1 and 2.

54. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order which authorized the TOWN Attorney to foreclose Liens 1 and 2 on the SUBJECT PROPERTY.

55. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

56. At the May 6, 2024, public hearing before the TOWN Council, Defendant, DEFENDANT, alleged that the \$50,000.00 check paid by DEFENDANT, released the SUBJECT PROPERTY from the recorded lien. A copy of the check is attached hereto as **Exhibit “A.”**

57. The \$50,000.00 check DEFENDANT claimed released the SUBJECT PROPERTY

from the recorded lien is the same check DEFENDANT delivered to the Town in exchange for a partial release of the code enforcement liens encumbering the I Street Property only.

58. At the May 6, 2024 hearing, DEFENDANT offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$595,150.00 attributable to Liens 1 and 2).

59. The TOWN Council offered to reduce the liens if DEFENDANT paid \$247,000.00.

60. The reduced amount of \$247,000 included a credit for the \$50,000 previously paid to the Town by DEFENDANT on December 12, 2019.

61. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, "Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall become null and void and the full amount of the lien shall be due and payable."

62. The TOWN did not receive any of the reduced payment amount by June 5, 2024, and no release has been recorded by the TOWN. As a result of the non-payment of the offered reduced lien amount, such lien reduction became null and void

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE15-0167)

63. The TOWN repeats and realleges Paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. This is an action to foreclose a municipal code enforcement lien imposed on the SUBJECT PROPERTY by a Special Magistrate in Code Enforcement Case No. CE15-0167.

65. On or about April 16, 2015, a Fort Myers Beach Code Enforcement Officer

inspected the SUBJECT PROPERTY and observed one or more violations of Section 6-111 of the Fort Myers Beach Land Development Code (incorporating Section 103.5 of the Florida Building Code), to wit: Unsafe buildings or systems (“Violation 1”) on the SUBJECT PROPERTY

66. At the time Violation 1 was observed, the record owner of the SUBJECT PROPERTY was DIBIASI.

67. On or about July 15, 2015, the TOWN issued a Notice of Violation regarding Violation 1 on the SUBJECT PROPERTY, pursuant to Section 162.12, Florida Statutes, to DIBIASI. The Notice of Violation was mailed to DIBIASI via certified mail and posted on the SUBJECT PROPERTY in accordance with Section 2-429, TOWN of Fort Myers Beach Code of Ordinances. The Notice of Violation required the premises to be vacated and other corrective actions to be completed by August 4, 2015, and notified DIBIASI that the matter would be scheduled for hearing before the TOWN of Fort Myers Beach Special Magistrate if Violation 1 remained uncorrected after August 4, 2015. True and correct copies of the Notice of Violation and proof of mailing are attached hereto as **Exhibit “B.”**

68. The property was inspected on or about October 29, 2015, and the violations remained in effect.

69. On December 4, 2015, deed was recorded transferring the SUBJECT PROPERTY from DIBIASI to DIBIASI’s business, ABSOLUTE.

70. On or about January 13, 2016, the TOWN mailed a Notice of Hearing to Leo Dibiasi as agent for ABSOLUTE via certified mail, advising that a public hearing concerning Violation 1 would be conducted by the Code Enforcement Special Magistrate on February 24, 2016. True and correct copies of the Notice of Hearing and proof of mailing is attached hereto as **Exhibit “C.”**

71. On February 24, 2016, the Special Magistrate for the TOWN held a duly noticed public hearing related to Lien 1. ABSOLUTE was not present at the hearing. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the SUBJECT PROPERTY was occupied and did not have a permit for the replacement of the main ingress/egress in violation of Fort Myers Beach Land Development Code Section 6-111 (adopting the Florida Building Code 103.5) and assessed \$150.00 in administrative costs. The Special Magistrate ordered correction of Violation 1 before March 25, 2016, and ordered that failure to comply would result in a fine of \$250.00 per day beginning on March 25, 2016, and continuing for each day the violation continues to exist. A true and correct copy of the Order is attached hereto as **Exhibit “D.”**

72. The corrective action ordered by the Special Magistrate was to “Obtain a permit for remodel work and pass all inspections” and “Obtain a permit for stairwell build and pass all subsequent inspections.”

73. On March 25, 2016, the TOWN conducted a re-inspection of the SUBJECT PROPERTY, and issued an Affidavit of Non-Compliance, providing competent, substantial evidence that the corrective action ordered by the Special Magistrate had not been taken. A true and correct copy of the Affidavit of Non-Compliance is attached hereto as **Exhibit “E.”**

74. On or about March 28, 2016, the Affidavit of Non-Compliance was provided to the Special Magistrate.

75. On March 30, 2016, the Special Magistrate executed a Code Enforcement Order Imposing Lien on the SUBJECT PROPERTY. The Special Magistrate found that the violations still existed on the SUBJECT PROPERTY and that ABSOLUTE failed to comply with its February 24, 2016 Order and failed to pay the \$150.00 in administrative costs. The Special Magistrate ordered

ABSOLUTE to pay the TOWN a fine of \$250.00 per day, beginning on March 25, 2016, and continuing to accrue for each day the violations continued to exist on the SUBJECT PROPERTY.

76. The Code Enforcement Order Imposing Lien further ordered that, upon recording in the Public Records, the order would constitute a lien against the SUBJECT PROPERTY and any other real or personal property owned by ABSOLUTE for the fine amount and prosecution costs.

77. The Code Enforcement Order Imposing Lien was recorded on April 12, 2016, as Official Records Instrument No. 2016000076124¹, in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit “F.”**

78. ABSOLUTE did not appeal the Code Enforcement Order Imposing Lien to the Circuit Court within the thirty days allowed pursuant to Section 162.11, Florida Statutes. Therefore, the Code Enforcement Order Imposing Lien is a final, non-appealable order.

79. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 1,” constitutes a valid and enforceable lien against the SUBJECT PROPERTY.

80. Lien 1 was recorded in the public records and attached to the SUBJECT PROPERTY at the time ABSOLUTE was the owner of record of the SUBJECT PROPERTY. Lien 1 is considered to “run with the land” pursuant to Fla. Stat. § 162.09(3) and Florida law. Despite the subsequent change in ownership of the SUBJECT PROPERTY, Lien 1 still encumbers the SUBJECT PROPERTY and is thus enforceable against DEFENDANT.

¹ A certified copy of the same was recorded on the same day as No. 2016000076145.

81. On April 16, 2024, the TOWN issued an Affidavit of Compliance finding the SUBJECT PROPERTY was in compliance as of September 28, 2022, as a result of Hurricane Ian and the SUBJECT PROPERTY being demolished. A copy of the Affidavit of Compliance is attached hereto as **Exhibit “G.”**

82. Fines accrued between March 25, 2016, and September 28, 2022, for the violation in the amount of \$250.00 per day for 2,378 days, equaling a total fine of \$594,500.00 plus \$150.00 in administrative fees for a total amount of \$594,650.00 due under Lien 1. Pursuant to Section 162.10, Florida Statutes, the total amount due to satisfy the lien is the amount of the fine, together with, but not limited to, the cost of serving notice, advertising, recording the Final Order, reasonable attorney’s fees and costs, and collection cost.

83. Section 162.09(3), Florida Statutes, provides that after three months from the filing of any code enforcement lien which remains unpaid, such lien may be foreclosed upon authorization from a code enforcement board or special magistrate.

84. On January 30, 2024, a Notice of Hearing was mailed via certified mail to the current owner, DEFENDANT, and a copy of the Notice was posted on the SUBJECT PROPERTY, advising that a public hearing to authorize the TOWN to foreclose and collect the outstanding monies owed for Lien 1 would be held before the Special Magistrate on February 12, 2024. True and correct copies of the Notice of Hearing and an Affidavit of Mailing and Posting of Notice of Hearing are attached hereto as **Exhibit “H.”**

85. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order which authorized the TOWN to foreclose Lien 1 on the SUBJECT PROPERTY.

A copy of the Order is attached hereto as **Exhibit “I.”**

86. No appeal of the Special Magistrate’s Order was filed.

87. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

88. At the May 6, 2024, public hearing before the TOWN Council, DEFENDANT alleged that the \$50,000.00 check paid by DEFENDANT released the SUBJECT PROPERTY from the recorded lien. A copy of the check is attached hereto as **Exhibit “A.”**

89. The \$50,000.00 check DEFENDANT claimed released the SUBJECT PROPERTY from the recorded lien is the same check DEFENDANT delivered to the Town in exchange for a partial release of the code enforcement liens encumbering the I Street Property only.

90. At the May 6, 2024 hearing, DEFENDANT offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$594,650.00 attributable to Lien 1).

91. The TOWN Council offered to reduce the liens if DEFENDANT paid \$247,000.00.

92. The reduced amount of \$247,000.00 included a credit for the \$50,000.00 previously paid to the Town by DEFENDANT on December 12, 2019.

93. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, “TOWN council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall become null and void and the full amount of the lien shall be due and payable.”

94. No payment was received by June 5, 2024, and no release has been recorded by the TOWN.

95. Accordingly, the TOWN declares that the fines under the above-referenced Lien 1 remain due and payable and hereby demands payment of the full amount, together with interest, attorney fees, administrative costs, recording, title search expenses for ascertaining necessary parties to this action, and such other expenses as this Court deems just and proper.

96. The TOWN exercises its right to foreclose Lien 1 on the referenced SUBJECT PROPERTY in Code Enforcement Case No. CE15-0167.

97. The interests of DEFENDANT are subordinate and inferior to the right, title, and interest of the TOWN's lien under the above-referenced code compliance case.

WHEREFORE, the TOWN respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the SUBJECT PROPERTY for the full amount due and owing the TOWN pursuant to Lien 1, including the principal, all accrued interest, attorney's fees and costs, and other expenses, minus any credits for payments previously received by TOWN from DEFENDANT, and if such sums are not paid within the time set by the Court, that the SUBJECT PROPERTY be sold to satisfy the amounts owed to the TOWN;

(b) Order that DEFENDANT, and all persons, partnerships, corporations, or entities claiming by, through or under the DEFENDANT since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the SUBJECT PROPERTY;

(c) That the proceeds of any sale resulting therefrom, if any, be applied to reduce the indebtedness due under Lien 1;

(d) Order that DEFENDANT is responsible for Lien 1 and all costs of foreclosure

including reasonable attorney's fees incurred by TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Article V, Sec. 2-427(d); and

- (e) Provide such other and further relief as the Court deems just and proper.

COUNT II

FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE17-0065)

98. Plaintiff repeats and realleges Paragraphs 1 through 62 of the Complaint as if fully set forth herein.

99. This is an action to foreclose on a municipal code enforcement lien entered against the SUBJECT PROPERTY in Case No. CE17-0065.

100. On or about February 3, 2017, the TOWN observed that the SUBJECT PROPERTY had one or more violations of the Fort Myers Beach Land Development Code, to wit: Work without permit – building C (“Violation 2”).

101. At the time of the observed Violation 2, the record owner of the SUBJECT PROPERTY was Joseph B. ORLANDINI (“ORLANDINI”).

102. On or about February 9, 2017, the TOWN issued a Notice of Violation regarding Violation 2 on the SUBJECT PROPERTY, 80 Avenue E, pursuant to Section 162.12, Florida Statutes, to ORLANDINI. The Notice of Violation was mailed via certified mail posted on the SUBJECT PROPERTY in accordance with Section 2-429, TOWN of Fort Myers Beach Code of Ordinances. The Notice of Violation required corrective action by securing the appropriate permits and associated inspections within 14 days of receipt of the Notice and notified ORLANDINI that the matter would be scheduled for hearing before the TOWN of Fort Myers Beach Special Magistrate if Violation 2 remained uncorrected after 14 days. A true and correct copy of the Notice of Violation is attached hereto as **Exhibit “J.”**

103. On or about June 16, 2017, the TOWN mailed a Notice of Hearing to

ORLANDINI via certified mail, advising that a public hearing concerning Violation 2 would be conducted by the Code Enforcement Special Magistrate on July 26, 2017. A true and correct copy of the Notice of Hearing is attached hereto as **Exhibit “K.”**

104. At the July 26, 2017, hearing, following the presentation of evidence and testimony from the Code Enforcement Officer and ORLANDINI, The Special Magistrate entered a Code Enforcement Order finding that paver work had been done on the SUBJECT PROPERTY without a permit in violation of Fort Myers Beach Land Development Code Section 1—101(a). A true and correct copy of the Code Enforcement Order is attached hereto as **Exhibit “L.”**

105. The July 26, 2017, Code Enforcement Order required ORLANDINI to correct Violation 2 by securing the required permits, passing the required inspections, and obtaining a Limited Development Review Order before August 30, 2017, and ordered that failure to comply would result in a fine of \$150.00 per day beginning on August 30, 2017, and continuing for each day the violation continued to exist. The July 26, 2017, Code Enforcement Order also assessed \$175.00 in administrative costs.

106. The July 26, 2017, Code Enforcement Order was recorded on March 1, 2018, at Official Records Instrument No. 2018000049665, in the public records of Lee County, Florida.

107. On or about May 30, 2019, the TOWN mailed a Notice of Hearing to ORLANDINI via certified mail and posted a Notice of Hearing on the SUBJECT PROPERTY. The Notice of Hearing advised that a public hearing to consider entering an order imposing a fine and lien against the SUBJECT PROPERTY for the uncorrected Violation 2 would be conducted by the Code Enforcement Special Magistrate on June 20, 2019. True and correct copies of the Notice of Hearing and proof of mailing is attached hereto as **Exhibit “M.”**

108. At the June 20, 2019, hearing, following the presentation of evidence and testimony

from the Code Enforcement Officer and ORLANDINI, the Special Magistrate executed a Code Enforcement Order Imposing Lien. The Special Magistrate found that it took ORLANDINI 310 days to comply with the Code Enforcement Order and bring the SUBJECT PROPERTY into compliance, and that ORLANDINI failed to pay the accrued fine in the amount of \$46,500.00 and the \$175.00 in administrative costs.

109. Although the Special Magistrate certified that a fine of \$46,675.00 had accrued, the Special Magistrate reduced the fine to \$500.00 based on evidence of mitigating circumstances presented by ORLANDINI.

110. The Code Enforcement Order Imposing Lien ordered that, upon recording in the Public Records, the order would constitute a lien against the SUBJECT PROPERTY and any other real or personal property owned by ORLANDINI for the fine amount of \$500.00.

111. The Code Enforcement Order Imposing Lien was recorded on July 9, 2019, as Official Records Instrument No. 2019000160404 in the public records of Lee County, Florida. A true and correct copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit “N.”**

112. ORLANDINI did not appeal the Code Enforcement Order Imposing Lien to the Circuit Court within the thirty days allowed pursuant to Section 162.11, Florida Statutes. Therefore, the Code Enforcement Order Imposing Lien is a final, non-appealable order.

113. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 2,” constitutes a valid and enforceable lien against the SUBJECT PROPERTY.

114. Lien 2 was recorded in the public records and attached to the SUBJECT PROPERTY at the time ORLANDINI was the owner of record of the SUBJECT PROPERTY.

Lien 2 is considered to “run with the land” pursuant to Fla. Stat. § 162.09(3) and Florida law. Despite the subsequent change in ownership of the SUBJECT PROPERTY, Lien 2 still encumbers the SUBJECT PROPERTY and is thus enforceable against DEFENDANT.

115. On April 16, 2024, the TOWN issued an Affidavit of Compliance finding the SUBJECT PROPERTY to be in compliance as of September 28, 2022, as a result of Hurricane Ian and the SUBJECT PROPERTY being demolished. A copy of the Affidavit of Compliance is attached hereto as **Exhibit “O.”**

116. As of the date of this Amended Complaint, the total amount owed on Lien 2 is \$500.00.

117. The amount due for Lien 2 remains unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

118. Section 162.09(3), Florida Statutes, provides that after three months from the filing of any code enforcement lien which remains unpaid, such lien may be foreclosed upon authorization from a code enforcement board or special magistrate.

119. On January 30, 2024, a Notice of Hearing was mailed via certified mail to the current owner, DEFENDANT, and posted a copy of the Notice on the SUBJECT PROPERTY, advising that a public hearing to authorize the TOWN to foreclose and collect the outstanding monies owed for Lien 2 would be held before the Special Magistrate on February 12, 2024. True and correct copies of the Notice of Hearing and an Affidavit of Mailing and Posting of Notice of Hearing are attached hereto as **Exhibit “H.”**

120. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about

February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order in which the TOWN authorized to foreclose Lien 2 on the SUBJECT PROPERTY.

A copy of the Order is attached hereto as **Exhibit “I.”**

121. No appeal of the Special Magistrate’s Order was filed.

122. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

123. At the May 6, 2024 public hearing before the TOWN Council, DEFENDANT alleged that the \$50,000.00 check paid by DEFENDANT released the SUBJECT PROPERTY from the recorded lien and offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$500.00 attributable to Lien 2).

124. The TOWN Council offered to reduce the lien if DEFENDANT paid \$247,000.00.

125. The reduced amount of \$247,000 included a credit for the \$50,000 previously paid to the Town by DEFENDANT on December 12, 2019.

126. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, “TOWN council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.”

127. No payment was received by June 5, 2024, and no release has been recorded by the TOWN.

128. Accordingly, the TOWN declares that the fines under the above-referenced Lien 2

remains due and payable and hereby demands payment of the full amount, together with interest, attorney fees, administrative costs, recording, title search expenses for ascertaining necessary parties to this action, and such other expenses as this Court deems just and proper.

129. The TOWN exercises its right to foreclose the Lien 2 on the referenced SUBJECT PROPERTY in Code Enforcement Case No. CE17-0065.

130. The interest of DEFENDANT is subordinate and inferior to the right, title, and interest of the TOWN's lien under the above-referenced code compliance case.

WHEREFORE, the TOWN respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the SUBJECT PROPERTY for the full amount due and owing the TOWN pursuant to Lien 2, including the principal, all accrued interest, attorney's fees and costs, and other expenses, minus any credits for payments previously received by the TOWN from DEFENDANT, and if such sums are not paid within the time set by the Court, that the SUBJECT PROPERTY be sold to satisfy the amounts owed to the TOWN;

(b) Order that DEFENDANT, and all persons, partnerships, corporations or entities claiming by, through, or under the DEFENDANT since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the SUBJECT PROPERTY;

(c) That the proceeds of any sale resulting therefrom, if any, be applied to reduce the indebtedness due under Lien 2;

(d) Order that DEFENDANT is responsible for Lien 2 and all costs of foreclosure including reasonable attorney's fees incurred by TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Provide such other and further relief as the Court deems just and proper.

Dated this 8th day of August, 2025.

/s/ Gretchen R.H. Vose

GRETCHEN R.H. VOSE, ESQ.

Florida Bar No. 169913

NANCY STUPARICH, ESQ.

Florida Bar No. 0646342

CHLOE BERRYMAN, ESQ.

Florida Bar No. 1032129

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Attorneys for Town of Fort

Myers Beach, Florida



Account Number: [REDACTED]
Capture Date: December 13, 2019
Item Number: 5250001234270
Posted Date: December 13, 2019
Posted Item Number: 600219
Serial Number: 2265
Amount: 50,000.00
BOFD Return RT: 067016325
BOFD Sequence: 461154912

SCHMIDY'S MACHINERY
5293 BUSINESS US 51
CLINTON IL 61727

	SCHMIDY'S MACHINERY COMPANY JESSE SCHMID 5293 BUSINESS US 51 CLINTON, IL 61727 (217) 935-2244 217-433-8978	DE WITT SAVINGS BANK 302 W MAIN ST CLINTON, IL 61727 70-7181/2711	2265
PAY TO THE ORDER OF <i>Fifty thousand and 00/100</i>		DATE <i>12-12-19</i>	AMOUNT <i>\$50,000.00</i>
<i>Town of Fort Myers Beach</i>		<i>Godwin Hannon</i> AUTHORIZED SIGNATURE	
Partial Release for 1500 I Street		[REDACTED]	
⑈002265⑈ ⑆271171616⑆			

Details on Back
Security Features Included

PAY TO THE ORDER OF
FIRST FLORIDA INTEGRITY BANK
067016325
FOR DEPOSIT ONLY
TOWN OF FORT MYERS BEACH
OPERATING ACCT 1101666



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0591

7/14/2015

DIBIASI LEO J + DIBIASI LEO J
12071 MCGREGOR BLVD
FORT MYERS, FL 33919

CASE NUMBER: **CE15-0167**

Certified Mail: 7014 2870 0000 6232 3267

Posted Property: 7/14/15

SITE ADDRESS: **80 AVENUE E**
PARCEL STRAP NO: **194624W40070A0020**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **4/16/15** by Lee County Building Inspector, William Sammons, per 2013-2015 interlocal agreement with Lee County, indicates that violation(s) of the following Town Codes currently exist on said property (see attached report):

➤ **Town of Fort Myers Beach LDC, Chapter 6 Section 111:**
Adoptions; amendments, adopting the Florida Building
Code as amended. Florida Building Code section:

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

You are hereby directed to abate or remedy these violations on or before **8/4/15 (15 Days)**.

The violation(s) can be abated or corrected by taking the following actions:

- Premises must be vacated.
- Remove ladder.
- Obtain a permit to replace deck and stairs and pass all subsequent inspections.



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0591

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 765-0202 if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

80 Ave E
CE15-0167
Unsafe Deck

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage		

Sent To: **Leo Dibiasi**
Street & Apt. No.
or PO Box No.
City, State, ZIP: **12071 McGregor Blvd
Fort Myers, FL 33919**

PS Form 3800, July 2011

7014 2870 0000 6232 3267

Stamp: FORT MYERS BEACH, JUL 14 2015, 2-15-15

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>[Signature]</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) _____ C. Date of Delivery 7-15-15 D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below: _____	
1. Article Addressed to: Leo Dibiasi 12071 McGregor Blvd Fort Myers, FL 33919		3. Service Type ☐ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery	
2. Article Number (Transfer from service label) 7014 2870 0000 6232 3267		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, July 2013 Domestic Return Receipt			

7-16-15



Town of Fort Myers Beach

NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

1/13/2016

TOWN OF FORT MYERS BEACH
Petitioner

Case Number:	CE15-0167
Certified Mail:	7015 2660 0000 4352 0477
Regular Mail:	1/13/16

vs.

Absolute Best Rate Rentals LLC
12071 McGregor Ave.
Fort Myers Beach, FL 33919

SITE ADDRESS: 80 Ave E, Fort Myers Beach
PARCEL STRAP NO: 19-46-24-W4-0070A.0020

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you, exists on the above-described property. A Hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for:

the 24th day of February, 2016 at 9:00 A.M. in the Council Chambers at Town Hall, locate at 2525 Estero Boulevard, Fort Myers Beach, Florida.

A copy of the previously issued **NOTICE OF VIOLATION** was sent to the previous owner and is attached hereto and incorporated herein by reference.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. If you believe you have come into compliance, it is **your** responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.



Town of Fort Myers Beach

NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Notice of Hearing, has been furnished by certified mail, posting at Town Hall, and regular mail to Absolute Best Rate Rentals LLC.

A handwritten signature in blue ink, appearing to read "Molly Jacobs", is written over a horizontal line.

Molly Jacobs
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931, TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

80 Ave E
CE15-0167
NOH
Unsafe Dec

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com™

OFFICIAL USE

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage
\$

Total Postage
\$

Sent To
Leo Dibiasi
Agent For: Absolute Best Rate Rentals
12071 McGregor Blvd
Fort Myers, FL 33919

Street and Apt
City, State, Zip

PS Form 3800, April 2015 PSN 7530-02-000-9017 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Leo Dibiasi
Agent For: Absolute Best Rate Rentals
12071 McGregor Blvd
Fort Myers, FL 33919

2. Article Number (Transfer from service label)
7015 1660 0000 4352 0477

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X 

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
1-16-16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below ☐ No

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☐ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Mail Restricted Delivery	

Domestic Return Receipt

PARCEL #: 19-46-24-W4-0070A.0020

SPACE ABOVE RESERVED FOR RECORDING

BEFORE THE SPECIAL MAGISTRATE FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA,

CASE NO. CE15-0167

Petitioner,

v.

ABSOLUTE BEST RATE RENTALS, LLC,

Respondent(s)

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on February 24, 2016, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, ABSOLUTE BEST RATE RENTALS, LLC, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and decides as follows:

A. FINDINGS OF FACT

1. The Respondent is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property.
2. The Respondent received notice of the alleged existence of a certain condition on the property described herein, and that such condition constituted a violation of a Town of Fort Myers Beach Ordinance.
3. The notice given to the Respondent specified that certain actions to abate the alleged violation were to be taken by a time certain, but Respondent failed to complete such actions timely.
4. The following condition exists on the subject property, as reported by Petitioner, at 80 Avenue East, Bldg B, Fort Myers Beach, FL 33931:

PROPERTY IS OCCUPIED AND DOES NOT HAVE A PERMIT FOR REPLACEMENT OF MAIN INGRESS/EGRESS IN VIOLATION OF TOWN OF FORT MYERS BEACH LDC 6-111 (ADOPTING THE FLORIDA BUILDING CODE 103.5).

5. Petitioner has incurred administrative costs and expenses in the amount of **\$150.00** in the prosecution of this case.

B. CONCLUSION OF LAW

1. Respondent, by reason of the foregoing, is in violation of Town of Fort Myers Beach LDC 6-111 (ADOPTING THE FLORIDA BUILDING CODE 103.5).
2. The costs incurred herein shall constitute a legal debt against the Respondent, pursuant to Section 162.09, Florida Statutes, which is due and owing to the Petitioner as of the date of this Order.

C. ORDER

WHEREFORE IT IS ORDERED that Respondent shall:

1. Correct or abate the aforesaid violation in the following manner **PRIOR TO** the date listed below:

OBTAIN A PERMITS FOR WORK DONE AND PASS ALL INSPECTIONS.

In the event that the said violation is not corrected or abated as indicated above **PRIOR TO MARCH 25, 2016**, a fine of **\$250.00 per day** shall be imposed against Respondent, beginning on that date and continuing for each day that the aforesaid violation continues to exist.

When the violation has been abated, Respondent **MUST CALL CODE ENFORCEMENT AT 239-765-0202 AND REQUEST A RE-INSPECTION.**

2. Reimburse the Petitioner for costs set out in Paragraph A(5) above.

In the event the costs awarded herein are not paid prior to MARCH 25, 2016, these costs may become a lien against the Respondent, upon being recorded in the Public Records of Lee County, even if the violation has been abated in accordance with this Order.

Failure to abate this violation as set forth herein could result in the accrual of additional administrative costs and expenses.

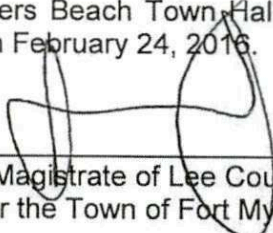
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931.

Please include a case number on the check.

Non-compliance with the terms of this Order will result in the imposition of a lien against all real and personal property of Respondent, and could result in a lien foreclosure action.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida on February 24, 2016.



Special Magistrate of Lee County, Florida
in and for the Town of Fort Myers Beach

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

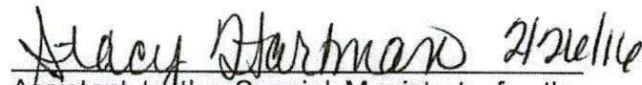
REHEARING: Either the Town or the violator may request a rehearing of the decision of the Special Magistrate. A request for rehearing will be made in writing, and will be filed with the clerk within ten (10) business days of the Special Magistrate's execution of the Order. A request for the rehearing will be based only on the grounds that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law that was fundamental to the decision of the Special Magistrate. The written request for rehearing will specify the precise reasons therefore. The Special Magistrate will make a determination as to whether or not to rehear the matter and his decision will be made at a public hearing. If the Special Magistrate determines that he will grant a rehearing, he may: schedule a hearing where the parties will be given the opportunity to present evidence or argument limited to the specific reasons for which the rehearing was granted; or modify or reverse the prior Order, without receiving further evidence, providing the change is based on a finding that the prior decision of the Special Magistrate resulted from a ruling on a questions of law which the Special Magistrate has been informed was an erroneous ruling.

Until a request for rehearing has been denied or otherwise disposed of, the Order of the Special Magistrate will be stayed and the time for taking an appeal, pursuant to this section, will not commence to run until the date upon which the Special Magistrate has finally disposed of the request for rehearing by denying the same or otherwise.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. mail, interoffice mail or hand delivery to the Town of Fort Myers Beach and Attorney for the Town of Fort Myers Beach and by U.S. mail to:

Absolute Best Rate Rentals LLC
c/o Leo J. Dibiasi, Registered Agent
12071 McGregor Blvd.
Fort Myers, FL 33919


Assistant to the Special Magistrate for the
Town of Fort Myers Beach, Florida



Town of Fort Myers Beach
AFFIDAVIT OF NON-COMPLIANCE
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0591

Exhibit "E"
Page 1 of 1

TOWN OF FORT MYERS BEACH

Case Number: CE15-0167

(Petitioner)

VS.

Absolute Best Rate Rentals LLC
12071 McGregor Ave.
Fort Myers, FL 33919
(Respondent)

STATE OF FLORIDA, COUNTY OF LEE

I, Molly Jacobs, Code Enforcement Officer for the Town of Fort Myers Beach, offer the following:

1. That on 2/24/2016, the Code Enforcement Special Magistrate held a public hearing and issued an Order finding the property listed to be in violation of said code.
2. That, pursuant to said Order, Respondent(s) was to have taken certain corrective action on or before 3/25/2016.
3. That a re-inspection was performed at 80 Ave E (bldg. B) on 3/25/2016
4. That re-inspection revealed the property to still be in violation of said code.
5. The corrective action ordered by the Code Enforcement Special Magistrate has not been taken by the property owner.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25th day of March 2016, by Molly Jacobs, Code Enforcement Officer for the Town of Fort Myers Beach, who is personally known to me or _____ who has/have produced _____ as identification.



NOTARY PUBLIC

Print Name: Patricia E Prevost

Commission No: FF 205718

Commission Exp: 3-3-2019

Molly Jacobs
Molly Jacobs
Code Enforcement Officer
Town of Fort Myers Beach

INSTR # 2016000076124, Doc Type LI, Pages 2, Recorded 04/12/2016 at 12:25 PM,
Linda Doggett, Lee County Clerk of Circuit Court, Rec. Fee \$18.50 Deputy
Clerk ALUCKEY

PARCEL #: 19-46-24-W4-0070A.0020

THIS SPACE FOR RECORDING

BEFORE THE SPECIAL MAGISTRATE OF
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA :

Petitioner,

CASE NO.: CE15-0167

vs.

ABSOLUTE BEST RATE RENTALS, LLC
Respondent.

CODE ENFORCEMENT ORDER TO IMPOSE LIEN

THIS CASE was first heard by the undersigned Lee County Hearing Examiner at a public hearing on February 24, 2016, after which an Order was entered which found that a violation existed on the subject property and required the Respondent, ABSOLUTE BEST RATE RENTALS, LLC, as the responsible person or entity to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine. The subject property is more particularly described as follows:

CRESCENT BEAACH
BLK: A PB: 4 PG: 45 LOT 2

Said legal description is obtained from the Trustee's Deed recorded at Official Record Book Instrument Number 2015000260051, in the Public Records of Lee County, Florida.

On March 28, 2016, written competent and convincing evidence was provided that the violation had not been abated in accord with the above Order, and the Special Magistrate therefore finds and decides:

1. That the above-noted Order has not been complied with; and
2. That the violation of the Town of Fort Myers Beach Land Development Code (LDC) Section 6-111 still exists on the subject property; and
3. That the Respondent has not paid the prosecution costs in the amount of \$150.00 which are now due and owing to the Petitioner per Chapter 162, Florida Statutes.

IT IS ORDERED that Respondent pay to the Town of Fort Myers Beach a fine of \$250.00 per day, beginning on March 25, 2016, and continuing for each and every day that the aforesaid violation exists and continues on the property locate, as reported by the Petitioner at 80 Avenue E (Bldg. B), Fort Myers Beach, FL 33931.

Upon recording in the Public Records, this Order shall constitute a lien for the fine amount against all real and personal property of Respondent, including, but not limited to, the above-referenced property and subsequent foreclosure of such lien may result in the loss of such property. The prosecution costs awarded herein may also become a lien against Respondent, upon recording, pursuant to Chapter 162, Florida Statutes.

RESPONDENT MUST CONTACT TOWN OF Fort Myers BEACH CODE ENFORCEMENT AT 239-765-0202 TO REQUEST A REINSPECTION FOR DETERMINATION

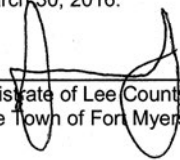
OF COMPLIANCE. RESPONDENT IS ADVISED THAT NUMEROUS PHONE CALLS MAY BE NECESSARY TO ENSURE CONTACT WITH THE CODE ENFORCEMENT OFFICER.

Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Please include a case number on the check.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida on March 30, 2016.



Special Magistrate of Lee County, Florida
in and for the Town of Fort Myers Beach

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by interoffice mail or hand delivery to the Town of Fort Myers Beach and Attorney for the Town of Fort Myers Beach; and by U.S. mail to:

Absolute Best Rate Rentals LLC
c/o Leo J. Dibiasi, Registered Agent
12071 McGregor Blvd.
Fort Myers, FL 33919



Assistant to the Special Magistrate for the Town of
Fort Myers Beach, Florida



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

Instrument Prepared by and Return to:

Town of Fort Myers Beach Code Enforcement

2731 Oak Street

Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Code Enforcement Manager for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 24th day of February, 2016, ABSOLUTE BEST RATE RENTALS, LLC. (property owners) were found in violation of the Town of Fort Myers Beach Ordinance No. 103.5, (For maintaining of unsafe buildings, structures and/or service systems) at the property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE15-0167, which was adjudicated on the 28th day of March, 2016.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

2. The Order was recorded as Instrument No. 2016000076124 on the 12th day of April, 2016 in the public records of Lee County, Florida.
3. ABSOLUTE BEST RATE RENTALS, LLC. was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 25th day of March, 2016.
4. According to available records in possession of the Town of Fort Myers Beach, a desk inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024 and the Subject Property was found in compliance on the 28th day of September, 2022 due to hurricane Ian and the property being demoed.
5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.
6. Code Enforcement Case No. CE15-0167 will be closed upon payment of \$594,650.00 lien in full.
7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

FURTHER AFFIANT SAYETH NOT.

Signed on this 16 day of April, 2024.

Yozzo, Thomas W

Print Name

[Signature]

Signature

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16th day of April, 2024 by Thomas Yozzo, as _____, who is personally known to me or has produced _____ as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

[Signature]

Signature of Notary

Ashley Shepard

(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FMBgov.com

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Any and all communications may be subject to public disclosure.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931

BEFORE THE SPECIAL MAGISTRATE
TOWN OF FT. MYERS BEACH, FLORIDA

TOWN OF FT. MYERS BEACH,

Petitioner,

Case Nos. CE15-0167, CE14-0394,
CE17-0065

v.

Property Address: 80 Ave E

WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC,

Respondent.

_____ /

AFFIDAVIT OF MAILING AND POSTING OF NOTICE OF HEARING
(FORECLOSURE AUTHORIZATION)

STATE OF FLOIRDA
COUNTY OF LEE

Before me, the undersigned authority, personally appeared Bill Stout, a Code Enforcement Officer for the Town of Ft. Myers Beach, who after being duly sworn, deposes and says:

1. That I am a resident of Lee County, Florida, and over the age of 21.
2. That on the 30th day of January, 2024, I mailed a copy of a Notice of Hearing to Authorize Foreclosure of a Code Enforcement Lien ("Notice"), to be held before the Special Magistrate on the 12th day of February, 2024, by first class certified United States mail, return receipt requested and Priority Mail Express to White Sand Properties of Fort Myers Beach, LLC at 415 Palermo Cir., Fort Myers Beach, FL 33931 and to Steven A Ramunni, the registered agent listed with the Florida Division of Corporations, at 110 N Main Street, Labelle, FL 33935. Copies of the Notices are attached as Exhibit AA.
3. That as of the date of this Affidavit, the certified mail and priority mail express sent to the property owner has either been refused or delivery could not be completed.

That as of the date of this Affidavit, a return receipt of the certified mailing and receipt of the priority mail express has been received by the registered agent, a copy of which is attached as Exhibit BB.

4. That I posted a copy of the Notice on the property at 80 Avenue E, Fort Myers Beach, FL 33931 on the 30th day of January, 2024. A copy of a photograph of the posting taken by me is attached as Exhibit CC to this Affidavit.
5. That I posted a copy of the Notice at Town Hall at 2545 Estero Blvd., Fort Myers Beach, FL 33931 on the 30th day of January, 2024. A copy of a photograph of the posting taken by me is attached as Exhibit DD to this Affidavit.

FURTHER AFFIANT SAYETH NOT.

Bill Stout

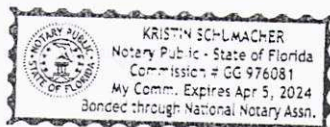
Printed Name: Bill Stout

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 1st day of February, 2024, by Bill Stout, ☒ who is personally known to me OR ☐ who has produced _____ as identification.

Kristin Schumacher
Notary Public Signature

My Commission Expires: April 5, 2024
(SEAL)





Town of Fort Myers Beach

NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

1/29/2024

Case Number:	CE15-0167, CE14-0394, CE17-0065
Priority Mail:	EI 602 240 950 US
Regular Mail:	1/30/2024

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

STEVEN A RAMUNNI- REG. AGENT FOR:
WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC
110 N MAIN STREET
LABELLE, FL 33935,

Respondent.

Site Address: 80 AVENUE E
Parcel Strap No.: 19-46-24-W4-0070A.0020

**AMENDED AND CORRECTED NOTICE OF CODE ENFORCEMENT HEARING TO AUTHORIZE
FORCLOSURE**

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that three (3) or more months have passed since the recording of three (3) liens on the above-described property as Official Records Instrument Numbers 2013000076145, 2016000076146, and 2019000160404 in the Lee County Public Records. A Hearing before the Town's Code Enforcement Special Magistrate seeking authorization to foreclose the liens has been scheduled for:

February 12, 2024, at 1:00 P.M. at Bay Oaks Recreational Campus, located at 2731 Oak St., Fort Myers Beach, Florida.

A copy of the referenced liens is attached hereto and incorporated herein by reference.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the request, even though you are not present, and may take other action that will affect your rights.

Bill Stout

Code Enforcement Officer
Town of Fort Myers Beach



Town of Fort Myers Beach

NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

9589 0710 5270 0183 6372 36

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Labelle, FL 33935

Certified Mail Fee

\$4.40

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | | |
|--|----|--------|
| ☐ Return Receipt (hardcopy) | \$ | \$0.00 |
| ☐ Return Receipt (electronic) | \$ | \$0.00 |
| ☐ Certified Mail Restricted Delivery | \$ | \$0.00 |
| ☐ Adult Signature Required | \$ | \$0.00 |
| ☐ Adult Signature Restricted Delivery | \$ | \$0.00 |

Postage

\$0.92

\$

Total Postage and Fees

\$8.97

\$

Sent To

Steven Ramunni

80 Ave E

Street and Apt. No., or PO Box No.

110 N Main St

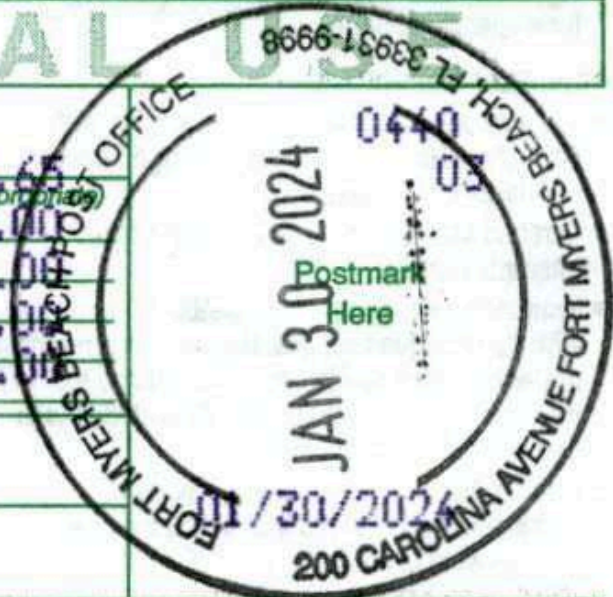
NOHFA

City, State, ZIP+4®

Labelle, FL 33935

PS Form 3800, January 2023 PSN 7530-02-000-9047

See Reverse for Instructions



Tracking Number:

Remove X

9589071052700183637236

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Feedback

Latest Update

Your item was delivered to an individual at the address at 10:26 am on January 31, 2024 in LABELLE, FL 33935.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

LABELLE, FL 33935
January 31, 2024, 10:26 am

USPS in possession of item

FORT MYERS BEACH, FL 33931
January 30, 2024, 10:44 am

Hide Tracking History

[What Do USPS Tracking Statuses Mean?](https://faq.usps.com/s/article/Where-is-my-package) (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



USPS Tracking Plus®



Product Information



PARCEL #: 19-46-24-W4-0070A.0020
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

**CASE NOS. CE14-0394,
CE15-0167, CE17-0065**

WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC,

Respondent.

**FORECLOSURE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

THIS CAUSE came on for public hearing on February 12, 2024, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, White Sand Properties of Fort Myers Beach, LLC, by and through its designated representative, Steven A. Ramunni, P.A., for the purpose of adjudication of the Town's Request for Authorization to Foreclose, the liens recorded in the Official Records Book as Instrument Numbers 2016000076124, 2016000076125, and 2019000160404. Having considered the sworn testimony, evidence, and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, White Sand Properties of Fort Myers Beach, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 80 Avenue E, Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 2, Block A, Crescent Beach Subdivision, according to the map or plat thereof recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida.

2. The property was previously found in violation of the Town of Fort Myers Beach Code and Respondent's predecessor was ordered to bring the property into compliance within a specific amount of time given for compliance. The property was not brought into compliance during said time.
3. Due to the finding of a failure to comply, fines accrued and liens were filed for the fines against the property in violation and against all other property owned by Respondent's predecessor, both real and personal.
4. Subsequently, Respondent acquired the property at issue, subject to the liens.
5. Respondent did not present sufficient evidence that the liens were ever paid, satisfied, or otherwise released.
6. More than three months have passed since the lien was recorded on 4/12/2016 in the Official Records Book as Instrument Number 2016000076124.

More than three months have passed since the lien was recorded on 4/12/2016 in the Official Records Book as Instrument Number 2016000076125.

More than three months have passed since the lien was recorded on 7/9/2019 in the Official Records Book as Instrument Number 2019000160404.
7. Service is not at issue. Respondent was present at the hearing, having received notice of the hearing along with copies of the orders/liens on which foreclosure was requested, and did not have any objections related to service or notice. This case is therefore properly before the Special Magistrate.

B. CONCLUSION OF LAW:

1. The legal prerequisites for requesting authorization to foreclose the liens have been met.
2. Respondent has shown insufficient evidence to support any legal reason to prevent foreclosure or other action to collect the fines.

C. ORDER:

1. Based upon the forgoing Findings of Fact and Conclusions of Law, it is hereby ordered that the Special Magistrate authorizes the Town to foreclose the liens against White Sand Properties of Fort Myers Beach, LLC due to the unpaid liens filed more than three months ago on April 12, 2016, and July 9, 2019.

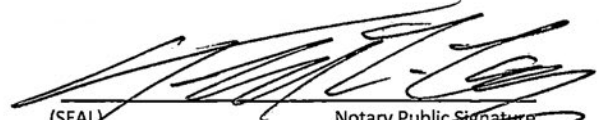
ORDERED this 12th day of February 2024, and executed this 22 day of February 2024.


Special Magistrate

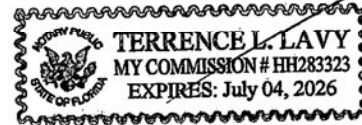
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence OR online notarization, this 22nd day of February, 2024, by Monica Schaeckel X who is personally known to me OR who has produced as identification.


(SEAL) Notary Public Signature

My Commission Expires:



CERTIFICATE OF SERVICE

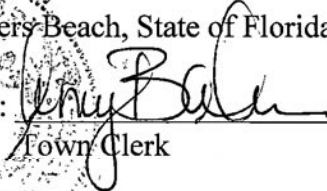
I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 23 day of February, 2024 to:

White Sand Properties of Fort Myers Beach, LLC
415 Palermo Cir.
Fort Myers Beach, FL 33931

Steven A. Ramunni- Reg. Agent for:
White Sand Properties of Fort Myers
Beach, LLC
110 N. Main St.
Labelle, FL 33935


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort
Myers Beach, State of Florida, County of Lee.

BY: 

Town Clerk

Dated

February 23, 2024



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

Exhibit "J"
Page 1 of 2

2/9/2017

ORLANDINI JOSEPH B
281 PALERMO CIR
FORT MYERS BEACH, FL 33931

CASE NUMBER:	CE17-0065
CERTIFIED MAIL:	7016 2140 0000 1484 1959

SITE ADDRESS: **80 AVENUE E**
PARCEL STRAP NO: **194624W40070A0020**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **2/3/2017** by Town of Fort Myers Beach Code Enforcement Officer **JOE KONTOMANOLIS** indicates that the following items are a violation:

Work w/ out permit-building C

These items are a violation of the following Town Codes:

LDC Sec 6-111 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

You are hereby directed to abate or remedy these violations within 14 days of receipt of this notice.

***The violation(s) can be abated or corrected by taking the following actions:
Secure required permit and associated inspections.***

Florida Statute 162.06: Enforcement procedure- If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation.



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0909

Exhibit "J"
Page 2 of 2

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 476-2467 if you have any questions concerning this Notice of Violation.

Respectfully,

JOE KONTOMANOLIS

Code Enforcement Officer

Town of Fort Myers Beach

Received By: _____ Date: _____



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

June 16, 2017

TOWN OF FORT MYERS BEACH
Petitioner

Case Number:	CE17-0065
Certified Mail:	7017 0660 0000 3686 1649
Regular Mail:	6/16/2017

vs.

ORLANDINI JOSEPH B
281 PALERMO CIR
FORT MYERS BEACH, FL 33931

Site Address: **80 AVENUE E**
Parcel Strap No.: **194624W40070A0020**

NOTICE OF CODE ENFORCMENT HEARING- AMENDED

YOU ARE HEREBY NOTIFIED that, on, *REPEAT - Work w/ out permit - Pavers* was identified as a violation of the Town's Codes. . A Hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for:

7/26/2017 at 9:00 A.M. in the Council Chambers at Town Hall, locate at 2525 Estero Boulevard, Fort Myers Beach, Florida.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. This is the only Notice of this hearing that you will receive. Please govern yourself accordingly.

Please be aware that under Florida Statutes chapter 162 and Town of Fort Myers beach Land Development Code Section 2-427(b) a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues or is repeated. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation(s) has been corrected or abated prior to the hearing.



Town of Fort Myers Beach

NOTICE OF VIOLATION AND NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

MOLLY JACOBS
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

INSTR # 2018000049665, Doc Type LI, Pages 3, Recorded 03/01/2018 at 02:08 PM, Page 1 of 3
Linda Doggett, Lee County Clerk of Circuit Court, Rec. Fee \$27.00 Deputy
Clerk ERECORD

PARCEL #: 19-46-24-W4-0070A.0020

SPACE ABOVE RESERVED FOR RECORDING

BEFORE THE SPECIAL MAGISTRATE FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH, FLORIDA,

CASE NO. CE17-0065

Petitioner,

v.

JOSEPH ORLANDINI,

Respondent(s)

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on July 26, 2017 before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, JOSEPH ORLANDINI, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and decides as follows:

A. FINDINGS OF FACT

1. The Respondent is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property.
2. The Respondent received notice of the alleged existence of a certain condition on the property described herein, and that such condition constituted a violation of a Town of Fort Myers Beach Ordinance.
3. The notice given to the Respondent specified that certain actions to abate the alleged violation were to be taken by a time certain, but Respondent failed to complete such actions timely.
4. The following condition exists on the subject property, as reported by Petitioner, at 80 Avenue E, Fort Myers Beach, FL 33931:

WORK WITHOUT A PERMIT-Pavers IN VIOLATION OF TOWN OF
FORT MYERS BEACH LDC 10-101 (a).

5. Petitioner has incurred administrative costs and expenses in the amount of \$175.00 in the prosecution of this case.

B. CONCLUSION OF LAW

1. Respondent, by reason of the foregoing, is in repeat violation of Town of Fort Myers Beach LDC 10-101 (a).
2. The costs incurred herein shall constitute a legal debt against the Respondent, pursuant to Section 162.09, Florida Statutes, which is due and owing to the Petitioner as of the date of this Order.

C. ORDER

WHEREFORE IT IS ORDERED that Respondent shall:

1. Correct or abate the aforesaid violation in the following manner **PRIOR TO** the date listed below:

**SECURE REQUIRED PERMITS AND PASS REQUIRED INSPECTIONS
(LIMITED DEVELOPMENT REVIEW ORDER "LDO")**

The said violation was not corrected or abated as indicated above **PRIOR TO AUGUST 30, 2017** a fine of **\$150.00 per day** shall be imposed against Respondent, beginning on that date and continuing for each day that the aforesaid violation continues to exist.

When the violation has been abated, Respondent **MUST CALL CODE ENFORCEMENT AT 239-765-0202 AND REQUEST A RE-INSPECTION.**

2. Reimburse the Petitioner for costs set out in Paragraph A(5) above.

In the event the costs awarded herein are not paid prior to **AUGUST 30, 2017** these costs may become a lien against the Respondent, upon being recorded in the Public Records of Lee County, even if the violation has been abated in accordance with this Order.

Failure to abate this violation as set forth herein could result in the accrual of additional administrative costs and expenses.

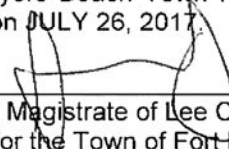
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931.

Please include a case number on the check.

Non-compliance with the terms of this Order will result in the imposition of a lien against all real and personal property of Respondent, and could result in a lien foreclosure action.

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida on JULY 26, 2017.



Special Magistrate of Lee County, Florida
in and for the Town of Fort Myers Beach

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

REHEARING: Either the Town or the violator may request a rehearing of the decision of the Special Magistrate. A request for rehearing will be made in writing, and will be filed with the clerk within ten (10) business days of the Special Magistrate's execution of the Order. A request for the rehearing will be based only on the grounds that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law that was fundamental to the decision of the Special Magistrate. The written request for rehearing will specify the precise reasons therefore. The Special Magistrate will make a determination as to whether or not to rehear the matter and his decision will be made at a public hearing. If the Special Magistrate determines that he will grant a rehearing, he may: schedule a hearing where the parties will be given the opportunity to present evidence or argument limited to the specific reasons for which the rehearing was granted; or modify or reverse the prior Order, without receiving further evidence, providing the change is based on a finding that the prior decision of the Special Magistrate resulted from a ruling on a questions of law which the Special Magistrate has been informed was an erroneous ruling.

Until a request for rehearing has been denied or otherwise disposed of, the Order of the Special Magistrate will be stayed and the time for taking an appeal, pursuant to this section, will not commence to run until the date upon which the Special Magistrate has finally disposed of the request for rehearing by denying the same or otherwise.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by interoffice mail or hand delivery to the Town of Fort Myers Beach and Attorney for the Town of Fort Myers Beach and by U.S. mail to:

JOSEPH ORLANDINI
281 PALERMO CIR
FORT MYERS BEACH, FL 33931



Assistant to the Special Magistrate for the
Town of Fort Myers Beach, Florida



Town of Fort Myers Beach

NOTICE OF CODE ENFORCEMENT HEARING

2525 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0909

5/30/2019

TOWN OF FORT MYERS BEACH
Petitioner

Case Number:	CE17-0065
Certified Mail:	7019 0160 0000 9737 8462
Regular Mail:	5/30/2019

vs.

ORLANDINI JOSEPH B
281 PALERMO CIR
FORT MYERS BEACH, FL 33931

Site Address: **80 AVENUE E**
Parcel Strap No.: **194624W40070A0020**

NOTICE OF CODE ENFORCEMENT HEARING-AMENDED IMPOSITION OF FINES/LIENS

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you, exists on the above-described property. A Hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for:

6/20/2019 at 10:30 A.M. in the Council Chambers at Town Hall, locate at 2525 Estero Boulevard, Fort Myers Beach, Florida.

A copy of the previously issued **NOTICE OF VIOLATION** is attached hereto and incorporated herein by reference.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. If you believe you have come into compliance, it is **your** responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.



Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0909

Carl Bengé
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

7019 0160 0000 9737 8462

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	

Postmark
5/30/19
NoH Amend
80 Ave E
CE 17-0005

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**Track Another Package +****Tracking Number:** 70190160000097378462

Remove X

Your item was delivered to an individual at the address at 9:24 am on May 31, 2019 in FORT MYERS BEACH, FL 33931.

 Delivered

May 31, 2019 at 9:24 am
Delivered, Left with Individual
FORT MYERS BEACH, FL 33931

Feedback

Tracking History**May 31, 2019, 9:24 am**

Delivered, Left with Individual
FORT MYERS BEACH, FL 33931

Your item was delivered to an individual at the address at 9:24 am on May 31, 2019 in FORT MYERS BEACH, FL 33931.

May 31, 2019, 6:22 am

Departed USPS Regional Facility
FORT MEYERS FL DISTRIBUTION CENTER

May 30, 2019, 8:57 pm

Arrived at USPS Regional Facility
FORT MEYERS FL DISTRIBUTION CENTER

Product Information

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Feedback

The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

Town of Fort Myers Beach
NOTICE OF CODE ENFORCEMENT HEARING
 2525 Estero Blvd Fort Myers Beach, Florida 33931
 Phone: 239-939-6282 Fax: 239-765-0305

5/30/2019

TOWN OF FORT MYERS BEACH
 Petitioner

VS.

ORLANDINI JOSEPH B
 281 PALERMO CIR
 FORT MYERS BEACH, FL 33931

Site Address: 80 AVENUE E
 Parcel Strap No.: 194624W40070A0020

Case Number:	CE17-0065
Certified Mail:	7319 0160 0000 9737 8462
Regular Mail:	5/30/2019

**NOTICE OF CODE ENFORCEMENT HEARING-AMENDED IMPOSITION OF
FINES/LIENS**

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you, exists on the above-described property. A Hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has, therefore, been scheduled for:

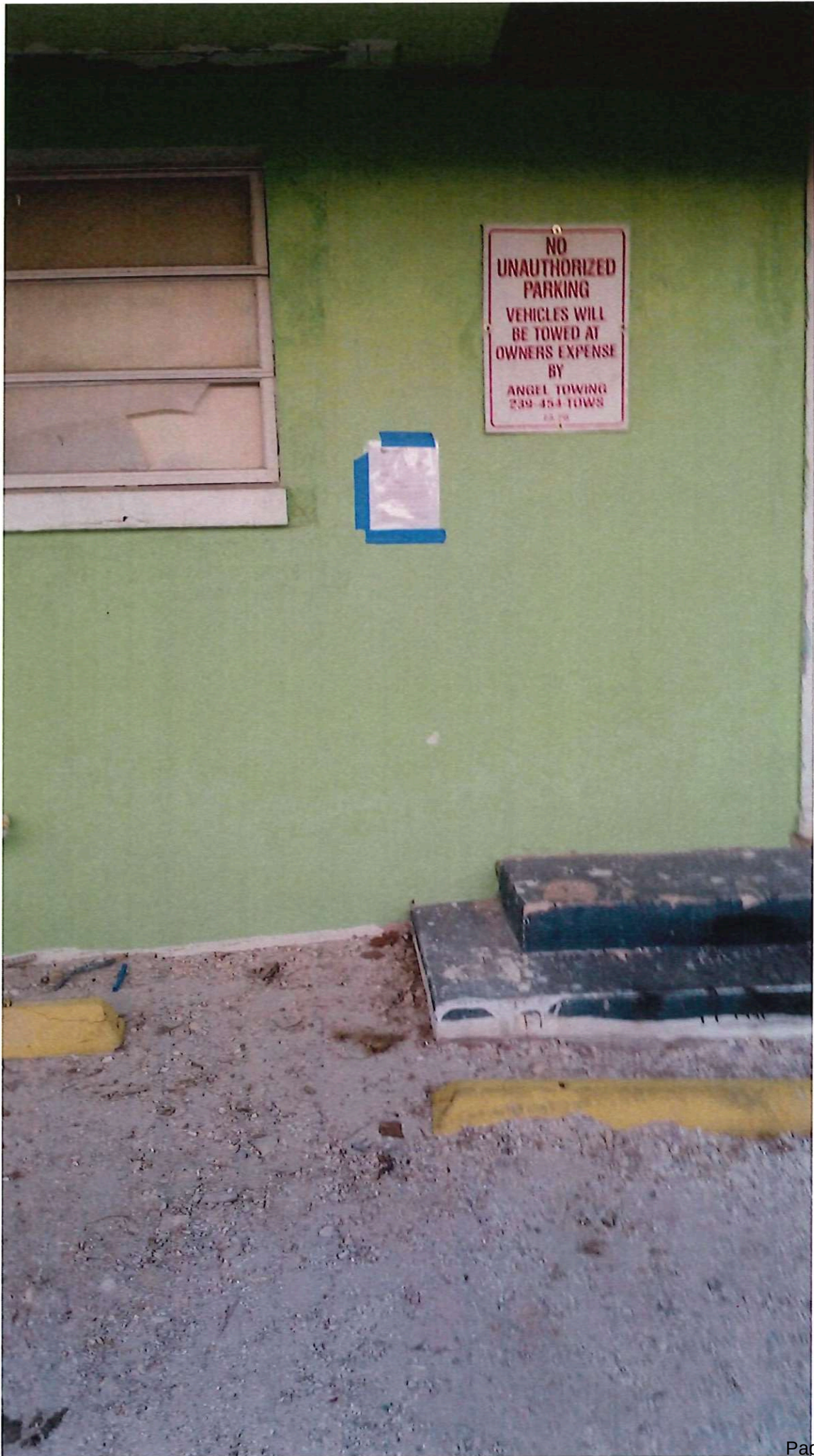
6/20/2019 at 10:30 A.M. in the Council Chambers at Town Hall, locate at 2525 Estero Boulevard, Fort Myers Beach, Florida.

A copy of the previously issued **NOTICE OF VIOLATION** is attached hereto and incorporated herein by reference.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

Page 1 of 2

F:\Documents\VIOLATIONS\UNINSPECTIONS\Notice of Hearing.doc



Danielle Batt

From: Bill Stout
Sent: Thursday, May 30, 2019 8:16 PM
To: Kristin Schumacher; Daphnie Bercher
Subject: 80 Avenue E NOH CE17-0065 post pictures
Attachments: 20190530_200600_resized.jpg; 20190530_200550_resized.jpg

Hi,

I, Bill Stout, took these pictures at 80 Avenue E on May 30th at 20:05.

Bill Stout

Sent from my Verizon 4G LTE smartphone

Linda Doggett, Lee County Clerk of Circuit Court

INSTR. # 2019000160404, Doc Type LI, Pages 3, Recorded 7/9/2019 at 11:14 AM, Deputy Clerk CDOUGLAS ERECORD

Rec Fees: \$27.00

PARCEL #: 19-46-24-W4-0070A.0020

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE17-0065

ORLANDINI, JOSEPH,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on June 20, 2019, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Joe Orlandini, present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Joe Orlandini ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Property"), legally described as:

Lot 2, Block A, CRESCENT BEACH SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 4, Page 45, Public Records of Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a time certain, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and on July 26, 2017, a hearing took place at which competent substantial evidence was entered into the record that the Property/Respondent were in violation of Town Code. Accordingly, the Town of Fort Myers Special Magistrate ("Special Magistrate") entered an Order of Enforcement finding the Property/Respondent in violation of Section 6-111, Adopting FBC 105.1 of the Town Code.
5. Subsequent thereto, an Affidavit of Non-Compliance was prepared by Petitioner stating that Respondent had not complied with the Order of Enforcement, and a Notice of Hearing was served on the Respondent stating that a lien certification public hearing would take place on June 20, 2019. The Notice of Hearing further stated that at said hearing the Special Magistrate would receive evidence, hear testimony, and determine whether or not the Respondent was in compliance with the Order of Enforcement.
6. The Respondent has complied with the Order of Enforcement after 310 days of non-compliance, not paid the accrued fine in the amount of \$46,500.00, nor paid the administrative fee/cost of prosecution in the amount of \$175.00.

B. CONCLUSION OF LAW:

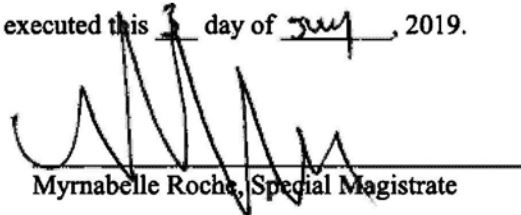
1. Respondent, by reason of the foregoing facts, was in violation of Town Code and took 310 days to comply with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate certifies that a fine in the amount of \$46,675.00, has accrued every day that Respondent was in non-compliance with the Order of Enforcement previously entered in this case.
2. The Special Magistrate believes property owner has come forth and presented sufficient evidence of mitigating circumstances therein and reduced the lien being imposed to the amount of \$500.00.
3. This Order may be recorded in the public records of Lee County, Florida or in any other county in the State of Florida where Respondent owns property and if so recorded shall constitute a lien against the Property and any other real or personal property that Respondent owns in Lee County or other county in the State of Florida.

4. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 20 day of June, 2019 and executed this 3 day of July, 2019.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

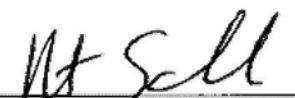
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

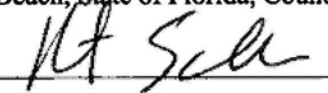
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Order was sent by U.S. Mail on the 9 day of July, 2019 to:

Joseph Orlandini
281 Palermo Cir.
Fort Myers Beach, FL 33931


Code Compliance Coordinator

I certify this document to be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY:  7/9/19
Dated



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

Instrument Prepared by and Return to:

Fort Myers Beach Code Enforcement

2731 Oak Street

Fort Myers Beach, Florida 33931

TOWN OF FORT MYERS BEACH, FLORIDA

CODE ENFORCEMENT

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Code Enforcement Manager for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 3rd day of February, 2017, Orlandini, Joseph B (property owner) was found in violation of the Town of Fort Myers Beach Ordinance No. 105.1, (work without a permit) at the property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE17-0065, which was adjudicated on the 20th day of June, 2019.
2. The Order was recorded as Instrument No. 2019000160404 on the 9th day of July, 2019 in the public records of Lee County, Florida.

FORT MYERS BEACH ESTERO ISLAND

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3. Orlandini, Joseph B was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 26th day of July, 2017.

4. According to available records in possession of the Town of Fort Myers Beach, an inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024, and the Subject Property was found in compliance on the 28th day of September, 2022 due to Hurricane Ian and the property being Demoed.

5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.

6. Code Enforcement Case No. CE17-0065 will be closed upon payment of \$650.00 lien in full.

7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

FURTHER AFFIANT SAYETH NOT.

Signed on this 16 day of April, 2024.

Yozzo, Thomas W
Print Name

[Signature]
Code Enforcement Officer

FORT MYERS BEACH ESTERO ISLAND

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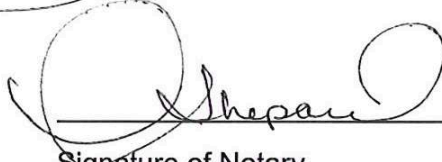
Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16th day of April, 2024 by Thomas Vozzo, as _____, who is personally known to me or has produced _____ as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026



Signature of Notary

Ashley Shepard

(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FORT MYERS BEACH ESTERO ISLAND

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