



Fort Myers Beach Town Council

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

AMENDED Agenda

Monday, October 6, 2025

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Local Planning Agency (LPA)
Appointment of Members to the FY26 Local Planning Agency
 - B. Anchorage Advisory Committee (AAC)
Appointment of Members to the FY26 Anchorage Advisory Committee
 - C. Audit Committee
Appointment of Members to the FY26 Audit Committee
 - D. Bay Oaks Recreational Campus Advisory Board (BORCAB)
Appointment of Members to the FY26 Bay Oaks Recreational Campus Advisory Board
 - E. Cultural and Environmental Learning Center Advisory Board (CELCAB)
Appointment of Members to the FY26 Cultural and Environmental Learning Center Advisory Board
 - F. Marine and Environmental Resources Task Force (MERTF)
Appointment of Members to the FY26 Marine and Environmental Resources Task Force
 - G. Public Safety Committee (PSC)
Appointment of members to the FY26 Public Safety Committee
- VIII. APPROVAL OF MINUTES**

NEW A. Town Council - September 24, 2025

NEW B. Town Council Budget Hearings — September 24, 2025

IX. CONSENT AGENDA

- A. Resolutions 25-281 through 25-284; 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 25-285 through 25-288; Extension of Local Emergency - Tropical Storm 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 25-289 through 25-292; Extension of Local Emergency - Tropical Storm Milton

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

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Resolution 25-276; SEZ20250208 Fishing Pier at County ROW at Old San Carlos (Lee County Pier)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250208 TO ALLOW RECONSTRUCTION OF THE PIER WITH ELEVATED WALKWAYS, LIGHTING IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR

THE PROPERTY LOCATED AT COUNTY R/W AS LEGALLY RECORDED IN PLAT BOOK 9, PAGE 9, EXTENSION OF OLD SAN CARLOS BLVD. IN PUBLIC RECORD OF LEE COUNTY, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

- B. Resolution 25-277; SEZ20250217 50/58 Estero Boulevard (Bowditch Park)
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250217 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF BOARDWALKS, PAVER DECK, SIDEWALK, DECKING AND BENCHES IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 50/58 ESTERO BOULEVARD COMMONLY REFERED TO AS STRAP NUMBER 24-46-23-w1-0080d.0400; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- C. Resolution 25-278; SEZ20250116, 6612 Estero Boulevard (Island Winds Condo Assoc.)
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250116 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF A TIKI HUT IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 6612 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- D. Ordinance 25-15; RPD20250181 -138/140 Delmar Ave
This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-15.

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.

- E. Ordinance 25-17; Development Agreement; 110-130 and 134/138 Connecticut Street (First Baptist Church of Fort Myers)

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-17. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 3, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 110-130 CONNECTICUT STREET (PARCEL 1) AND 134/138 CONNECTICUT STREET (PARCEL 2) FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00151.0010 AND 29-46-24-W1-00151.001A AND OWNED BY FIRST BAPTIST CHURCH OF FORT MYERS, INC., AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 AND AMENDED BY RESOLUTION 24-247 FOR THE PURPOSE OF REDEVELOPMENT OF THE PARCELS 1 AND 2 TO ALLOW REBUILDING A CHURCH FACILITY AND 12 SINGLE-FAMILY HOMES; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Ordinance 25-19; Expedited Special Exceptions

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 25-19. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 3, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR SPECIAL EXCEPTIONS THAT ONLY REPLACE "LIKE FOR LIKE" STRUCTURES THAT WERE EXISTING PRIOR TO A NATURAL DISASTER EVENT, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10

DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

A. Resolution 25-277; Ongoing Miscellaneous Professional Services, RFQ-25-06-AD

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING 16 INDIVIDUAL PROFESSIONAL SERVICE AGREEMENT WITH THE FOLLOWING FIRMS, WHICH WERE NEGOTIATED BY TOWN STAFF AS DIRECTED BY THE TOWN COUNCIL ON AUGUST 18, 2025 IN RESPONSE TO RFQ-24-06-AD ENTITLED "ONGOING MISCELLANEOUS PROFESSIONAL SERVICES": 1) AIM ENGINEERING & SURVEYING, 2) AXIS INFRASTRUCTURE LLC, 3) BURT HILL-POLLOCK KRIEG, 4) CAP GOVERNMENT, 5) COASTAL ENGINEERING, 6) EMSITE INC., 7) GMA ARCHITECTS AND PLANNERS, 8) GRAEF USA, 9) HALEY WARD, 10) HANS WILSON, 11) HYATT SURVEY SERVICES, 12) JEZERINAC GROUP, 13) JOHNSON ENGINEERING, 14) JR EVANS ENGINEERING, 15) K2M DESIGN, AND 16) RADISE INTERNATIONAL; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH EACH OF THE TOP RANKED FIRMS FOR EACH CATEGORY OF WORK WITHIN THE REQUEST FOR QUALIFICATIONS AND WHICH WERE SUCCESSFULLY NEGOTIATED; AND PROVIDING FOR AN EFFECTIVE DATE.

NEW B. Resolution 25-297; FDEP LGFR Resolution

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AUTHORIZING AND DIRECTING TOWN STAFF TO SUBMIT A FUNDING REQUEST TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ESTERO ISLAND SHORE PROTECTION PROJECT, INCLUSIVE OF BEACH MAINTENANCE, PHYSICAL MONITORING AND BIOLOGICAL MONITORING; AUTHORIZING THE USE OF TOWN FUNDS AT A LATER DATE TO MATCH FUNDING TO BE RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

NEW C. Special Event: Spacarelli Post-Wedding Beach Party

Request to hold a special event with alcohol on Sunday, October 19, 2025 on the beach adjacent to Crescent Beach Park

NEW D. RFQ-25-10-AD Rejection and Cancelation

Reject and cancel the RFQ-25-10-AD qualification proposal for the Fort Myers Beach Engineering & Architectural Services Bay Oaks Community Pool Rehabilitation Project with cause, due to lack of adequate competition as provided in the Request for Qualifications and Sections 2-480(i)(12) and 2-480(h)(5)(e) of the Town Code, and provide

direction to staff to re-bid the project.

E. Request for Reconsideration - SEZ20250149

A request to for reconsideration of a required condition in Resolution 25-294, associated with SEZ20250149 for the property located at 4750 Estero Boulevard, was timely submitted to the Town on September 24, 2025, by Brian Campbell on behalf of The Shores of Fort Myers Beach Condominium Association, Inc.

The applicant is requesting that Town Council revise the sea turtle protection condition to allow for pier construction during sea turtle nesting season, subject to specific environmental safeguards. The proposed revision would require the applicant to obtain a permit from the Florida Fish and Wildlife Conservation Commission (FWC) authorizing a Marine Turtle Permit Holder to relocate nests within a designated construction corridor necessary for the project. The corridor would be limited to the minimum width required for equipment and material transport. Construction activities would be restricted to daylight hours, with daily monitoring of nesting activity by the FWC Marine Turtle Permit Holder before work begins each day. No exterior nighttime lighting would be permitted. If nighttime work is needed, the applicant would be required to obtain additional authorization and comply with any further conditions. This request seeks to balance environmental protection with the practical needs of the construction timeline. The applicant did not attend the hearing when the special exception was approved or would have made the request at that time.

If the Town Council would like to reconsider the matter, a motion should be made to schedule the rehearing regarding the condition at issue.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

A. Settlement Agreement

Approval of a Settlement Agreement in the case styled Pareshkumar (Paresh) Patel v. Town of Fort Myers Beach, Case No. 2:24-CV-00353-SPM filed in the U.S. District Court, Middle District of Florida, Ft. Myers Division. A copy of the proposed settlement agreement is included in the agenda materials.

B. Executive Session

The Town Attorney is announcing her request for a Litigation Executive Session pursuant to Section 286.011(8), Florida Statutes to discuss settlement negotiations and strategy related to litigation expenditures regarding the case of the Town of Fort Myers Beach, Florida vs. White Sand Properties of Fort Myers Beach, LLC, Case No. 2025-CA-004261,

20th Judicial Circuit, Lee County, Florida. The Executive Session will begin at 3:00 p.m., on October 20, 2025 at Fort Myers Beach Town Hall, 6231 Estero Boulevard, Fort Myers Beach, FL 33931. 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 Esquire Deposition Services to be announced prior to the commencement of the Executive Session. The Executive Session will last approximately 1 hour.

C. Resolution 25-296; Fort Myers Beach Elementary

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, INITIATING THE CONFLICT RESOLUTION PROCEDURES PROVIDED IN CHAPTER 164, FLORIDA STATUTES, WITH THE SCHOOL BOARD OF LEE COUNTY REGARDING A MATERIAL BREACH OF THAT CERTAIN INTERLOCAL AGREEMENT DATED MAY 15, 2023 BETWEEN THE TOWN AND THE SCHOOL BOARD OF LEE COUNTY AS ADOPTED BY THE TOWN IN RESOLUTION 23-45; DIRECTING COMPLIANCE WITH THE GOVERNMENTAL CONFLICT RESOLUTION ACT IN CHAPTER 164, FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO PROVIDE NOTICE TO SCHOOL BOARD OF LEE COUNTY SUPERINTENDENT DENISE M. CARLIN OF THE INITIATION OF THE CONFLICT RESOLUTION PROCESS, INCLUDING THE DATE AND LOCATION FOR THE CONFLICT ASSESSMENT MEETING; AND PROVIDING AN EFFECTIVE DATE.

D. Resolution 25-295; Vose Law Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE AGREEMENT FOR TOWN ATTORNEY SERVICES WITH THE VOSE LAW FIRM AS REQUESTED BY LETTER FROM THE FIRM DATED JULY 8, 2025, TO INCREASE THE MONTHLY FEE FOR LEGAL SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

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

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



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

1. **Request:**

Meeting Date: October 6, 2025

Appointment of Members to the FY26 Local Planning Agency

Why the action is necessary:

Three seats on the Local Planning Agency expired on September 30, 2025, leaving three vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain a quorum and ensure the Local Planning Agency can continue advising Town Council on community planning, land use, and preservation of the island's unique natural characteristics in accordance with the Town Code.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Res. 24-17

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Per Town of Fort Myers Beach Code of Ordinances, [Division 3.—Local Planning Agency \(LPA\)](#)

Sec. 34-112. - Purpose and Scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. - Composition, appointment and compensation of members.

- (a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.
- (b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.
- (c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).
- (d) All appointed members of the local planning agency must file an annual financial

disclosure as required by the Florida Commission on Ethics.

Current Status

There are currently **(3) three vacancies** on the Local Planning Agency. The Town Clerk's Office has received a total of (4) four applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Waiver Needed if Appointed / Re-Appointed:

Anita Cereceda
Edward Schoonover

Charter Review alt
AAC, BORCAB, Charter Review

Attachments:

1. Boan, James
2. Cereceda, Anita * Will need waiver if re-appointed
3. Plummer, Jane
4. Schoonover, Edward *Will need waiver if appointed

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies.

7. Management Recommendations:

8. Recommended Approval:

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

September 9, 2025

Honorable Mayor and Town Council Members:

I have been a member of the Local Planning Agency (LPA) since November of 2022. I believe I have been conscientious in attendance, reviewing applicant and staff materials and have been objective in analyzing the issues and projects submitted for our consideration.

I have enjoyed working with the staff, consultants, applicants, fellow LPA members and Town Council. After the destruction caused by hurricanes Ian, Helene and Milton, I am dedicated to helping rebuild our island.

I think my legal background in zoning, land development and code interpretation has helped me understand the complex issues facing us. I believe my career experiences and the variety of projects I have been involved with over the last 40+ years brings a unique perspective to the LPA.

I respectfully request that you consider my application for reappointment to the Local Planning Agency. If any of you have any questions about my application, I can be reached by phone or email (jbam3@comcast.net).

Sincerely



James Boan

21067 Saint Peters Dr.

Town of Fort Myers Beach

SEP 09 2025

Received by: _____



SEP 09 2025

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08.18.25

Name: BOAN JAMES S
Last First Middle initial

Telephone Number: 630.284.0022

Email Address: JBAM3@COMCAST.NET

Home Address: 21067 SAINT PETERS DR FMB FL 33931

Mailing Address _____

(if different from home address):

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

If yes, which committee(s)? L.P.A.

If yes, when is your term expiration? 10 2025

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☒ No ☐

If yes, what board, etc., and since when?

LPA

11/22

Why are you seeking appointment to this board or committee?

SEE COVER LETTER

Community Involvement:

SEE ATTACHED

Interests / Activities:

SEE ATTACHED

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

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

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

Signed

James Boan

Date

10/9/25

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

RESUME OF JAMES S. BOAN

JAMES S. BOAN (OF COUNSEL)

James Boan brings nearly 45 years of public service to the Odelson & Sterk, Ltd. team. He earned his undergraduate degree from the University of Illinois at Urbana-Champaign in 1973, his Master's Degree from George William College in 1978, and his Juris Doctorate from Northern Illinois University College of Law in 1983. He is admitted to practice in the U.S. District Court for the Northern District of Illinois.

Early in his career, Jim held Superintendent and Director positions with the Bolingbrook Park District. He served as Village Administrator and then Chief of Staff in Bolingbrook from 1997 until 2001 when he became Village Attorney, a position he has held for nearly 20 years. As Village Attorney, his practice focuses on local governmental matters, real estate, finance and taxation, and planning, zoning, annexation and land use.

Jim is active in the Will County Governmental League and the Illinois Municipal League Home Rule Attorneys Committee. He is a member of the Illinois State Bar Association and was the former Chairman of the Kendall County Board. In April 2011, the Bolingbrook Park District formally dedicated 27 acres of open woodlands as the James S. Boan Woods at the Hidden Oak Conservation Area in Bolingbrook in recognition of his many years of public service. Recently, Jim was awarded the Bolingbrook Chamber of Commerce Lifetime Achievement Award.

He joins the firm as Of Counsel where he will provide consultation on local government, finance, land use, zoning, and economic development matters.

RETIRED FROM LAW PRACTICE IN 2020

Additional involvement since Retirement

1. Mentoring young attorneys at my prior firm on zoning, land use and Local Government issues.
2. Member of "Let's Go FMB" -Pier Committee
3. Mantazas Pointe Homeowners Association-Vice President (2 Years)
4. Member Fort Myers Beach Local Planning Agency

Interests and activities

Biking, Pickleball, Live Music, Gardening



RECEIVED

By Amy Baker at 9:45 am, Aug 19, 2025

Town of Fort Myers Beach **Advisory Boards and Committees Application**

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I'm seeking reappointment to the local planning agency. Because I believe I offer a unique perspective that can be helpful to the town during this very important time of rebuilding our community.

Community Involvement:

Member of the fort myers beach women's club, the fort myers beach community foundation
Former mayor and council member for the town of fort myers beach
Founding member of we are fmb

Interests / Activities:

Travel
Entertaining
Beach
Theater
Music

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

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

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

Signed



Date

08/14/25

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

Anita Cereceda

Ft. Myers Beach, FL | 239-218-1450 |
fmbanita22@gmail.com |

Business owner, active community service member, consultant.

Experience

December
1985- current

The Pier Peddler, Local Color FMB Inc, The Islander Gift Gallery and Boutique

I have owned and operated 3 successful small businesses on Ft. Myers Beach for over 30 years. My expertise is in procurement, management, and design. *** note: Hurricane Ian destroyed both the Pier Peddler and Local Color. Currently there are no plans to rebuild. The Islander reopened in October of 2024 and is thriving.

November
2022-current

Consultant

Working with 2 different agencies, I have consulted on restaurant design, retail space and business management.

Skills:

Proficient in POS systems, QuickBooks, B2B platforms
Extensive knowledge of the Ft. Myers Beach Comprehensive plan and Land Development Code
Effective team building and collaboration in community service and business
Excellent communication skills, both verbal and written
Fluent in Spanish

Activities:

Member, Ft. Myers Beach Community Foundation
Member, The Ft. Myers Beach Women's Club



RECEIVED

By Amy Baker at 8:55 am, Aug 29, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08/28/25

Name: Plummer Jane B
Last First Middle initial

Telephone Number: (239) 851-9565

Email Address: jbprealtor@aol.com

Home Address: 340 Fairweather Ln Ft Myers Beach, FL 33931

Mailing Address same

(if different from home address):

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

If yes, which committee(s)? LPA

If yes, when is your term expiration? October 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I believe I am the longest serving member of the LPA. I have a lot of history and institutional knowledge of what has happened since we became a Town in 1995. I hope that my knowledge and perspective would be a big benefit serving on the LPA.

Community Involvement:

I have served on the Historical Preservation Board, Bay Oaks Advisory and the Little League. I have held the Vice Chair and Chair positions on all of these boards over the years. I am currently Vice Chair on the LPA.

Interests / Activities:

My children and grandchildren, boating, reading and traveling are my biggest joys.

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed

Jane B. Plummer

Date

08/28/20

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

Jane B. Plummer

340 Fairweather Lane

Ft. Myers Beach, Fl | 239-218-1450 |
jbprealtor@aol.com |

Realtor

Experience

1989-2008

Owner, The Anchor Inn Cottages

I owned and operated these cottages on Virginia Avenue for 6 years. Bookkeeping, advertising, maintenance and reservations were all handled in house. I also lived on the property.

Owner, Curves

This trendy fitness business was located in Key Estero Shops and saw great success. We had both local and off island clients. I operated this location with the help of my daughters. Book keeping, and general business accounting was all handled in house.

1990-present

Realtor

Working for multiple on-island real estate offices has give me a broad view not only of the island itself, but the residents and visitors that come each year. Many of my friends were once a client looking to buy a piece of paradise!

Currently working with Jesse Titus at FMB Realty

Skills:

Excellent people skills! Communication, follow-up and constant contact are essential to my business.

Property management skills associated with rental units I own.

Active member of the FMB Local Planning Agency and in depth knowledge of the Ft. Myers Beach Comprehensive plan and Land Development Code

Chair person of the Bay Oaks Rec Committee

Mother of 2 successful daughters that were raised on this island attending the Beach School .

Activities:

Travel, Boating, Reading, Maintaining long distance friendships!

**RECEIVED**

By Amy Baker at 10:06 am, Sep 12, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 09/11/25

Name: Schoonover Edward J
Last First Middle initial

Telephone Number: (218) 820-3389

Email Address: ed.schoonover@jandjholmes.com

Home Address: 8180 Lagoon Rd

Mailing Address

(if different from home address):

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

If yes, which committee(s)? AAC, BORCAB, Charter Commission

If yes, when is your term expiration? 2026

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to assist the town in the process of changing and easing codes and regulations in order to assist residents and commercial business in their efforts to get shovels in the ground and rebuild.

Community Involvement:

Laguna Shores HOA (former), Anchorage Committee (current) BORCAB (current)
Charter Commission (current)

Interests / Activities:

Outreach Africa advisor (non profit)

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

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

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

09/11/25

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

ED SCHOONOVER

LPA CANDIDATE

CONTACT

218.820.3389
ed.schoonover@jandjholmes.com
8180 Lagoon Rd
Fort Myers Beach, FL
33931

PROFILE

I have nearly 25 years of experience working in a municipal government. I spent most of my time working in the Parks and Recreation Department but have spent time in various other departments including: Planning, Engineering, Surveying and Public Works. I then spent time managing and assisting operations for a large family YMCA. My latest chapter has been in property management as our companies own and operate 29 properties in both the residential and commercial realms. We are proud of our laundromat and services chain of stores that covers the North Central Minnesota Area. We have been full time residents of Fort Myers Beach since 2018.

EXPERIENCE

Owner/Property Manager and Development Coordinator

2013 – Present JMKS, J2, Chip, JMK and Sons Properties

Our companies own and operate a variety of properties. We have had HUD/HAP properties that required us to have extensive knowledge in Section 8 and affordable housing plans. Also included in our property profile are several group homes serving developmentally disabled adults and children. Our commercial side includes office buildings and a chain of service-related storage units and wash facilities.

Maintenance and Operations Director

2010 – 2013 Brainerd (MN) Family YMCA

I managed and oversaw all aspects of building operations. Some aspects of management included: Manage staff, coordinate barrier removal for ADA compliance, seek and award bids for projects with various contractors, I participated in the complete remodel of a Gymnasium floor and the reconstruction and remodeling of two pools.

Operations Specialist

1982 – 2008 Brainerd Area Civic Center

Assisted in management and operations under the auspices of both nonprofit and municipal management. Major focuses were: superior customer service, maintaining playing surfaces and facilities to an NHL type standard, implementing utility saving projects reducing water and electricity expenses.

Ed Schoonover

LPA Candidate

8180 Lagoon Rd
Fort Myers Beach, FL 33931
218.820.3389
ed.schoonover@jandjholmes.com

REFERENCES

Chuck "Gringo" Grillo

Retired NHL teams front office

218.821.8400

Mr. Grillo is the former vice president and director of player personnel for the San Jose Sharks (NHL). Mr. Grillo was the Head Scout for the Pittsburgh Penguins (NHL) and has won a Stanley Cup in that role. Mr. Grillo was one of our major tenants at Brainerd Area Civic Center and can testify to my work ethic and attention to detail

Bob Motzko

Head Coach Minnesota Golden Gophers Men's Hockey (NCAA)

320.291.6431

Mr. Motzko serves as head coach of the perennial top ten in the nation Gopher men's hockey teams. Mr. Motzko has won an International Gold Medal leading the men's junior hockey team. Mr. Motzko served on the LSVB board with me and can testify to my leadership and ability to get things done.

Randy Klinger

Special Education Teacher, Sarasota, FL

218.839.0990

Mr. Klinger was the Executive Director of the Brainerd Family YMCA and worked closely with me on various major projects. Mr. Klinger is currently a special ed teacher with life experience of helping others succeed. Mr. Klinger can testify to my management abilities and experience securing quality contractors to complete major projects under cost and on time.

1. **Request:**

Meeting Date: October 6, 2025

Appointment of Members to the FY26 Anchorage Advisory Committee

Why the action is necessary:

Three seats on the Advisory Committee expired September 30, 2025, leaving three vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain quorum and ensure AAC can continue advising Town Council on the management and use of Town waters, the Harbor Management Plan, and related assignments from Council.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to appointment.

Committee Purpose

The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

Current Status

There are currently **(3) three vacancies** on the Anchorage Advisory Committee. The Town Clerk's Office has received a total of (2) two applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, and subsequently on the Town's website and through social media posts, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Waiver Needed if Appointed / Re-Appointed:

Edward Schoonover

AAC, BORCAB, Charter Review, possibly LPA

Attachments:

1. Riedel King, Chris REDACTED
2. Schoonover, Ed

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies.

7. Management Recommendations:

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 - 9/19/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025



RECEIVED

By Amy Baker at 4:41 pm, Aug 11, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

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

Yes ☒ No ☐

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

Yes ☒ No ☐

If yes, what board, etc., and since when? Fort Myers Beach Library District - July 2025

Why are you seeking appointment to this board or committee?

As a member of this committee for the past two years, and chair the past year, I believe I've been able to provide greater organization and focus for our efforts, leaning into the vast experience, expertise and knowledge of our members for the benefit of the town. Successful operation of the Mooring Field and the town's other Marine Operations duties are vitally important to FMB, and I want to continue to support & emphasize that.

Community Involvement:

Anchorage Advisory Committee Chair
Fort Myers Beach Library District Board Member
Woman's Club Member
Chamber of Commerce Member
I clean up a 1.5 mile stretch of the beach daily

Interests / Activities:

Reading
Eating out -- supporting local restaurants
Fitness -- walking, working out
Environmental health of FMB
Island's End condo activities

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

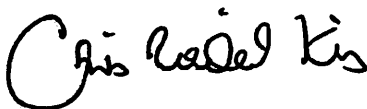
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

08/10/25

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 3:05 pm, Aug 21, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have 30 years of experience working and sports and recreational facilities in both the private and public sector. I believe this experience in facility management will be of assistance to the committee and the council.

Community Involvement:

Laguna Shores HOA, Outreach Africa Advisory Board, Past President Lakeshore Village (MN), Vice President JMKS Properties

Interests / Activities:

Past Director Brainerd (MN) Brainerd Braves Amateur Baseball, Organizer Community Activities, Property Manager, Mission Work, Travel

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

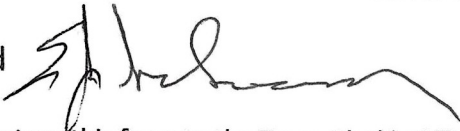
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

08/19/25

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: October 6, 2025

Appointment of Members to the FY26 Audit Committee

Why the action is necessary:

Three seats on the Audit Committee expired on September 30, 2025, leaving three vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain a quorum and ensure the Audit Committee can continue advising Town Council on financial reporting, auditing practices, and fiscal oversight.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Res. 24-17

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to appointment.

(2) *Audit committee.* All members of the audit committee shall be registered voters within the territorial boundaries of the Town of Fort Myers Beach who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

Committee Purpose

The Audit Committee shall advise the Town Council on matters related to governmental financial reporting and auditing, pursuant to 218.39 F.S., or any other topic(s) as assigned by the Town Council. The Committee helps ensure fiscal accountability and transparency by providing informed recommendations on auditing practices and financial management.

Current Status

There are currently **(3) three vacancies** on the Audit Committee. The Town Clerk's Office has received a total of (2) two applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, and subsequently on the Town's website and through social media posts, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Attachments:

1. Puffer, Barbara
2. Sheely, Marianne

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies

7. Management Recommendations:

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 - 9/19/2025
Approved - 9/23/2025
Approved - 9/23/2025
Approved - 9/24/2025
Final Approval - 9/29/2025



RECEIVED

By Amy Baker at 1:02 pm, Aug 12, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08/12/25

Name: Puffer Barbara W
Last First Middle initial

Telephone Number: (203) 494-2765

Email Address: pufferpro@snet.net

Home Address: 6895 Estero Blvd., #566

Mailing Address

(if different from home address):

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

If yes, which committee(s)? Audit

If yes, when is your term expiration? 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have enjoyed my 4 years thus far and am willing to continue;

Community Involvement:

Contained in Resume Addendum

Interests / Activities:

Contained in Resume Addendum

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

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

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

08/12/25

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

NARRATIVE ADDENDUM

HIGHLIGHTS TO BARBARA W. PUFFER'S RESUME

Revised 8/11/25

I think I would be a helpful addition to the volunteer team.

I had a 50-year corporate, consulting and college professor career in communications, marketing, advertising, non-profit fund development and public affairs at high levels. I am one of fewer than 100 Fellows in my profession around the world. In tandem, I had lots of financial experience, beginning with my presidency/chairmanship of some large non-profit organization Boards to my elective financial positions. I retired partially in 2023 and fully in 2025.

- I have served on the Fort Myers Beach Audit Committee since 2022.
- My husband Tom and I have owned a condo at Estero Cove on Fort Myers Beach since 1991 and I became a resident in 2009. I was the Hurricane Charley president for Estero Cove, in 2004, where we had about \$4 million in association and owner damage – cleared in 9 months. Fast forward to Hurricane Ian in 2022, and Tom and I served on a small owner/officer recovery team through 2023.
- Prior to Charley, I was EC's treasurer and then chair of the finance committee for more than a decade. Up to the point of Hurricane Ian, we had amassed about \$1.2 million in Reserves. On the death of our treasurer in the fall of 2022, I was appointed to reassume the treasurer/Board role through 2023. Today, I again serve on my Association's finance committee and spearhead insurance, Reserves and Documents efforts.
- I was an elected member of the Guilford CT Board of Finance from 1991-1995 and then moved up to be one of three elected Selectmen (like a town Board or Council) 1996-1998.
- I was treasurer for the 160+-year-old Guilford Agricultural Society/Guilford Fair, leading them out of a financial hole around 1992 and spearheading a \$50K operating fund fundraising campaign during the COVID shutdown.
- I was executive VP of the Board of American School for the Deaf in CT, overseeing finance, grounds and human resources committees before rising to become the first woman president of the Board in the 1990s.
- In my profession, I have received more than 100 awards for my work, have served in every position from chapter president to the international board and recently authored a chapter on business communications ethics published in a global primer on business communications.

Community Involvement:

- I am a two-time breast cancer survivor – the first in 1987. Since then, I have been a fervent fundraiser for Susan G. Komen Breast Cancer Foundation Races and Pink Walks in both CT (where I was on the founding committee) and SWFL. I have been the honored survivor in both locations and have stood up teams (Puffer's Pals) in CT, SWFL, D.C., Dallas, and NYC.
- I worked as a volunteer receptionist for the Poor Clare nuns at their monastery on Fort Myers Beach for several years.
- I have been involved from volunteer, to Board, to speech coach to running the media center for a Special Olympics International Winter Games, and serving on a Board for a Special Olympics International Summer Games. This work has spanned more than 40 years and I am proud to be the first volunteer named to the Connecticut Special Olympics Hall of Fame.
- I founded and ran a Very Special Arts Festival in CT for 7 years in the '90s and received a Kennedy Foundation award for my efforts.
- I was the youngest Distinguished Alum ever (1987) at my undergrad alma mater, University of Bridgeport, in Connecticut.
- I earned my masters degree from Fairfield University in CT, where I later served for four years on the College of Arts and Sciences Advisory Board and assisted in launching a new major of study.

Other Interests and Activities:

- My husband and I still maintain an old family property in Guilford, CT, as our vacation home. There, we live in an active lake neighborhood and keep a boat on Long Island Sound. We have no children and an airport 15 miles from us runs frequent flights to RSW.
- We were very active in the Ascension Women's Club and Knights of Columbus. In 2022, I wrote a 40-page history of the Club and parish on FMB and it is now in the Beach Library and Historic Society. The book includes a 4-page ending supplement about the Hurricane Ian damage – penned as the original manuscript was headed to press.

I can provide references on request.

Barbara Puffer

Barbara Puffer, MA, Accredited Business Communicator*

Puffer Public Relations Strategies – A Virtual Agency

www.pufferpr.com, barbara@pufferpr.com

203-494-2765 (cell) 203-457-0231 (CT) 239-463-4543 (FL)

6895 Estero Blvd., #566, Ft. Myers Beach, FL 33931

35 Shore Drive, Guilford, CT 06437

PROFESSIONAL:

- *President, Puffer Public Relations Strategies, Promotions & Publishing* (1998 to present) Senior consulting and new business development role. Broad range of public relations, development, and marketing, as well as board training and facilitation for profit and non-profit organizations. One-on-one and team approaches.
Revised 2022/2025
- *Associate Professor, University of Maryland University College* ²⁰⁰²⁻²⁰¹⁵ ~~(2002 to present)~~ Associate Adjunct Professor, teaching online in the undergraduate Communications Studies & Professional Writing program and for the Graduate School of Management and Technology. Undergraduate Communications Course Chair and numerous contracted assignments beyond instruction. 2011 Teaching Recognition Award.
- *Connecticut Health Investigative News* ²⁰¹²⁻²⁰²² ~~(2012 to present)~~ Contributing writer.
- *Corporate Manager Communications, Barnes Group Inc.* 123 Main Street, Bristol, CT 06010 (1985-1998). Reported at various times to: Chairman of the Board; Senior Vice President, Human Resources; Vice President, General Counsel & Corporate Secretary; Vice President of Human Resources; and directors of public affairs, employee relations/organization development, and compensation/benefits. Barnes Group is a 150+-year-old, sometimes Fortune 500, international distributor of parts and supplies for the maintenance and repair market, and a manufacturer of springs and precision components for aerospace, automotive and other durable goods markets. **Job scope included:** Full responsibility for planning and implementation of internal communications programs and publications for as many as 4,000 employees in 7 countries, on 4 continents – involving surveys, ethics, employee benefits, training, curriculum development, strategic operating projects, factory closings, publications, a web site, and more traditional employee information and education programs. Additional media and community relations responsibilities. Also, simultaneously served as facilities manager, Barnes Group World Headquarters, 6/96-4/97.
- *Manager Personnel and Corporate Relations Department, Southern New England Telephone* 227 Church St., New Haven, CT (1977-1985). Full range of internal and external communications and editorial responsibilities. (Included a nine-month assignment as Manager, Advertising and Promotions, SONECOR Systems Division).
- *Manager Public Relations Dept., Phoenix* (formerly Phoenix Mutual Life Insurance Company), One American Row, Hartford, CT (1976-1977). Assistant to the Senior Vice President/Public Relations. Full range of internal and external communications and editorial responsibilities.

- *Manager, Corporate Planning Dept., Union Trust Co. (Now part of Wells Fargo system), Corner Church and Elm Sts. New Haven, CT 06504 (1973-1976). Assistant to the Vice President-Advertising. Full range of internal communications and editorial responsibilities.*
- *Suburban Reporter/Photographer, New Haven Register, Sargent Drive, New Haven, CT 06511 (1973). Daily and Sunday. Circulation approximately 140,000.*
- *Other part-time: University of Bridgeport (CT), Teaching Assistant. (1973) Journalism workshop Teaching Assistant; associate producer - CBS Network Television Sports (1975); writer - M/X Development Corporation (1979-1984); speech writer and publicity coordinator- CT and National High School Athletic Coaches Association (1977-1984) and various marketing for Connecticut non-profit organizations.*

EDUCATION:

- **MA-Corporate and Political Communications** , Fairfield University, Fairfield., CT - 1976.
- **BA-Journalism-Broadcasting** , Dow Jones and Faculty "Outstanding Graduate" Award, accelerated study, Sigma Delta Chi New England news writing award, University of Bridgeport, Bridgeport, CT - 1972.
- **Advanced & Basic Faculty Development Training Certificates** – Univ. of Maryland University College.
- **Certified** - Online Teaching with WebTycho Training, Univ. of Maryland, Univ. College (Current)
- **Certified** - Development Dimensions International, Interaction Management Trainer. (1980s)
- **Certified** - Behavioral Technologies, Inc., Behavioral Interviewing Trainer. (1980s)
- **Continuing Education** - Boston University, American Management Association, American Institute of Banking, Wilson Learning Corporation, Productivity Inc., Bell System Training School (Illinois), Council of Communication Management, and International Association of Business Communicators.

* Accredited, 1979, International Association of Business Communicators

HONORS:

- 2013 -- The University of Maryland University College, two certificates of recognition: Notable Scholarly Activity in the Area of Professional Publications for being named a Fellow of IABC in 2012.
- 2012 -- International Association of Business Communicators Fellow distinction.
- 2011 -- Teaching Recognition Award. University of Maryland University College.
- 2010 -- U.S. Library of Congress Local Legacy *Guilford Agricultural Society Fair Since 1859*, Dedication
- 2009 -- International Association of Business Communicators, International Region Leader of the Year.
- 2007 - American School for the Deaf, Board of Directors Award of Merit, "for distinguished service since 1986."
- More than 100 awards of Excellence and Merit for multi-media communications programs, exhibits, sound, one-person efforts, community relations programs, employee publications, newspaper design, recruiting materials, and newspaper & special publications, International Association of Business Communicators (1979-2012)
- 2007 -- Susan G. Komen for the Cure Ultimate Drive BMW Survivor Hero Award for volunteerism for breast cancer.
- 2007 -- Inducted , Shriver Society, honoring long service volunteers in Special Olympics.
- 2000 -- International Association of Business Communicators Research Foundation Lifetime Foundation Friend Award, International Conference, Vancouver, B.C.
- 1999 -- St. Vincent's Foundation "Stamp Out Breast Cancer" Volunteer Award.

- 1999 -- Susan G. Komen Breast Cancer Foundation Race for the Cure and 10th Anniversary "Celebration of Life", Connecticut breast cancer survivor representative at the National Race and home of Honorary Race Chairmen, Vice President & Mrs. Gore.
- 1999 -- Extraordinary Women of CT Award, by Clear Channel Radio & Bob Thomas Ford.
- 1999 -- Positive Leadership Unselfish Service (PLUS) Award, from The Family Center, Inc., Bristol, CT. 39-town social service agency. Keynote address.
- 1998 -- Special Olympics Hall of Fame, inaugural class, Sheila Schmidt Award for Volunteerism. 10/98
- Chairman's Award, International Association of Business Communicators (IABC), Annual International Meeting in New Orleans.
- 1997 -- Jean Kennedy Smith Founders Award, Very Special Arts Connecticut.
- 1991 -- Lou Bachman Memorial Award as Outstanding United Way Volunteer (Bristol, Plymouth, Burlington, CT).
- 1987 -- Distinguished Alumni Award, University of Bridgeport.
- 1983 -- Communicator of the Year, Connecticut-IABC.
- 1983 & '81 -- Distinguished Service Award, Connecticut Special Olympics. Nominee 1993.
- 1979 -- Internationally certified event director, clinician & coach, International Special Olympics.
- 1979 -- SNET Women in Leadership Award nominee, New Haven, Connecticut, YMCA.
- 1975 -- Distinguished Service Award, Connecticut/IABC.
- Who's Who in Outstanding Young Women of America, as well as Who's Who Outstanding Women of the World, of America, In the East, Emerging Leaders in America, Advertising, Public Relations, International Women, and Two Thousand Notable Women.

SPEAKING & PUBLISHING:

- 2015 -- Speaker - Circle of Fellows, FIR Podcast Network, "The rising (or falling) value of organizational communicators."
- 2012 -- Speaker, IABC Heritage Region Conference & Student Conference, Pittsburgh.
- 2010 -- Speaker, University of New Haven Communications Studies program.
- 2009 -- Panelist, IABC Heritage Region Conference, Cleveland, Ohio.
- 2008 -- Speaker, CT IABC.
- 2006 -- Speaker, student workshop, Heritage Region IABC Conference, Washington D.C.
- 2006 -- Speaker, "Writing it Right for the Media," IABC Writing Conference, Chicago.
- 2005 -- Contributor -- LaBossiere, C., *The Successful Communication Consultant*, International Association of Business Communicators, San Francisco.
- Public Relations community expert on the communications portal www.communiteelligence.com
- 2000 -- Speaker and published on "Marketing Your Mission" at the International Fundraising Conference sponsored by Blackbaud, in South Carolina.
- 2003/2000/1999 -- A speaker on "Marketing Your Mission" at Yale's Women's Campaign School workshop on lobbying and action for non-profits in 1999 and 2000. Also, panelist, 2003 on the politics of women running for office.
- 2001 -- Published on planning fundraising events in *Fund Raising Management* magazine.
- Published on planning fundraising events and communication planning in *Comment* newsletter for non-profit organizations.

2021 - Author of *Business Communications Ethics in the IABC Guide for Practical Business Communications: A Global Standard Primer*

VOLUNTEERISM/PROFESSIONAL AND CIVIC:

- **International Association of Business Communicators (IABC)**, Member (1974-present); *Ethics Committee*, Chairman, (2014-present); *Executive Director Search Committee*, Chairman (2013-2014); *Research Foundation Board* (1995 -1997), Chairman, 1997, Trustee (1995-1996), RFQ Committee, (2000-2005); *International Executive Board*, Director of IABC U.S. District 1, (1985-1987), Director-Professionalism, (1987-1988); Director-Educational Relations, (1988-1989); *Heritage Region Executive Committee & Board (2006-2009)*, Region Director (2009), Region Leader of the Year (2009) Region Conference Co-chair (2008); Region Conference Sponsorship Chairman (2012, 2013); *Connecticut/IABC*, two-term president, (1979 and 1980); *IABC U.S. District 1 Executive Board*, (1985-1990); *Accreditation Board* and examiner for IABC, (1984-1995), exam proctor (1997); Blue Ribbon Panel judge, division judge, and division coordinator for IABC's prestigious international *Gold Quill* competition, (1979, 1980, 1983, 2000); Chair, District 1 IABC conferences, (1979 and 1986) Chairman, *EXCEL Award*, 1992.
- **Fairfield University**, 2011 to 2015. Advisory Board of the College of Arts and Sciences.
- **11th Annual Komen CT Race for the Cure**. Vice-Chair, Public Affairs, 2004.
- **Board of Selectmen, (1 of 3) Town of Guilford, CT**. Elected 1995-1997. \$46 mil. budget.
- **Board of Finance, Guilford, CT**. Elected 1991-1995. Vice Chair., 1993 to 1995. \$40+ million budget.
- **American School for the Deaf**, West Hartford, CT. President 1996-1999 (First woman to hold position in the 180-year history of the school) \$12 million budget, 200+ students; Board of Directors (1991-present); first vice president of the Board and chairman- Executive Committee (1994-1996); past development chairman; Board of Corporators (1986-1991), and 175th Anniversary/Communications 2000 capital campaign steering committee (special gifts). Co-chair, executive director search committee, 2006
- **MILE (Micro Investment Lending Enterprise)** member of the Board of Directors of national board formed by Subway founder Fred DeLuca.(2000-2003.)
- **Mercy High School**, principal's development committee. Middletown, CT. (2002 to 2003)
- **Bristol Hospital**, Corporator (1996 to 2002). Development Foundation Board Member (1994 to 1998); Capital Campaign Cabinet (1994 -1996).
- **Special Olympics, CT**, Honorary Advisory Board (1997-2002); Executive Committee, vice chairman of the Board (1989-1996); Public Ed. Chair (1979-1981, and 1988-1996); State Wheelchair Events Co-Director, (1978-1989); creator and volunteer director of public relations/advertising program for Conn. Special Olympics. Raised more than \$400K in services over 1979 and 1980, for 2 years of prize-winning communications programs on state & regional level. Honorary lifetime trustee for Greater Hartford .
- **Special Olympics, International**, 1995 World Games Board of Directors, CT, (1993- 1995); Public Speaking Trainer for adults with mental retardation in a program called Global Messengers, formerly Athletes for Outreach (1989-1997); Director/Media Center, International Winter Games, VT (1981); and liaison and coordinator between the international office and the National High School Athletic Coaches Association(1980-1985).
- **Bristol, Plymouth, Burlington (CT) United Way**, Executive Board (1986-1989), Public Relations and Marketing committees, vice chairman Allocations Committee; Chairman and Founder of New Cambridge Society Leadership Giving Club (1990-1993); United Way Emergency Campaign Chair, (1992).
- **Guilford Agricultural Society Board of Directors** (1993 to 2005), Public Relations and Advertising Director (1996 to 2008); Treasurer (1998 - 2000.)
- **Tunxis Community College Foundation** Director (1989-1992 and 1994-1997); Economic Conference Chairman (1990), Conference and Scholarship Committees (1990-1992). Economic Conference, Membership and Capitol Campaign Committees (1994-1997).
- **"Big Sister"**, (1993-1994) and School Business Partnership mentor (1989 to 1995).
- **Bristol (CT) School/Business Partnership**. Barnes Group liaison (1989 to 1996)

- **"What About Women" Volunteer Television Production Board, WVIT-TV-30**, Connecticut's NBC Station (1993-1995).
- **Bristol (CT) Girls Club Family Center**, Executive Board, (1987-1989); Lifetime Trustee, 1990. Founder, chairperson, and Steering Committee of Bristol PLUS "Women in Leadership" Awards (1990-1999).
- **Susan G. Komen Breast Cancer Foundation Connecticut Race For the Cure**, Startup steering committee, survivor coordinator, long-range planning chair, funds distribution. (1993 to 2000).
- **Very Special Arts Connecticut**. Founder, chair and steering committee for the Shoreline Festival for physically and mentally challenged artists and performers (1992 to 1997).
- **"SARAH 40"** vice chair Celebration Cabinet in charge of public education and events (1997). (Formerly Shoreline Association for Retarded and Handicapped).

OTHER:

- **University of Bridgeport**, Alumni Board of Directors, Vice President-Alumni Affairs (1985-1989), Presidential Search Committee (1986 and 1987); Alumni House Chairman (1989-1991).
- **Exceptional Cancer Patients**, Executive Board (1988).
- **New England Association for Business, Industry, & Rehabilitation, Public Relations**, (1980). Greater New Haven, Connecticut
- **Private Industry Council**, Startup member, and Marketing Committee (1980).
- **Estero Cove Condominium Association** (FT. Myers Beach, FL,) President, Secretary, and Treasurer (2002 to 2006). As president, led a \$4 million recovery in 2004 after the devastation of Hurricane Charley. Finance committee, 2006 - present)
- **National Panel of Consumer Arbitrators and the New Haven Better Business Bureau**, Member and arbitrator (1984- 1985).

Updated Aug., 2015

handwritten
notations 9/23

**RECEIVED**

By Amy Baker at 12:52 pm, Aug 14, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 8/13/25

Name: Sheely Marianne M
Last First Middle initial

Telephone Number: 3127189958

Email Address: Mariannesheely@gmail.com

Home Address: 22628 Island Pines Way #203 FMB

Mailing Address

(if different from home address):

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

If yes, which committee(s)? Audit

If yes, when is your term expiration? Sept 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Current Audit Committee member, would like to continue serving the community.

Community Involvement:

FMB Chamber of Commerce
Estero Bayside Cndb Assoc. board member
FMB Women's Club member

Interests / Activities:

boating
yoga

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

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

Yes ☐ No ☒

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

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

Signed



Date

8/13/25

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

MARIANNE M. SHEELY, CPA
312-718-9958
mariannesheely@gmail.com

PROFESSIONAL EXPERIENCE:

MPS TAX AND ACCOUNTING SERVICES LLC

October 2024-Present

Owner

- Tax planning, prepare and file individual and trust income tax returns
- Prepare estate tax and gift tax returns
- Trust accountings for fiduciaries
- Notary

CONGAREE RIVER, LLC

Feb. 2009 - Present

Controller

- Tax planning and compliance for multi-generation family office with interests in timber, real estate, outside partnership investments and securities
- Supervise and train 3 bookkeepers in all aspects of tax return preparation and compliance
- Preparation of federal and multi state partnership, foundation, trust and individual income tax returns
- Estate planning, investment analysis and oversee general ledger operations for over 150 entities
- Communicate with attorneys, accountants, investment advisors, property managers, foresters and government agencies
- Handle all estimated and extended tax payments and any federal or state taxing agency correspondence
- Prepare work-papers to outside accountants as needed
- Full responsibility for closing of all ledgers and provide assistance to staff for journal entries
- Work closely with foresters for timber inventory and sales
- Work with property managers for rental properties and operations of business parks
- Communicate with outside investments and all family members regarding their income and gift tax returns and various tax issues

OSTROW REISIN BERK & ABRAMS, LTD

(February-April) 2012-2023

Seasonal Tax Preparer

- Prepare and review individual and trust income tax returns

MAYER BROWN LLP

Oct. 2002 – Feb. 2009

Wealth Management Tax Administrator

- Prepared estate tax and gift tax returns
- Prepared federal and state, individual, trust, partnership, estate, and private foundation income tax returns

RSM US LLP

1995-1997 & 1998-2002 (Formerly known as:

Altschuler, Melvoin, & Glasser, LLP; American Express Tax & Business Services; McGladrey & Pullen, LLP)

Tax Accountant / Senior Tax Accountant

- Responsibilities included tax compliance and planning for real estate professional individuals, trusts and corporations
- Prepared and reviewed individual, trust, gift, corporate, and partnership tax returns
- Reviewed multiple states non-resident individual tax returns

EDUCATION:

Northern Illinois University – DeKalb, IL - Bachelor of Science, Accountancy – December 1992

DePaul University – Chicago, IL – Masters in Science of Taxation- 10 classes completed (1999-2011)

Certified Public Accountant – Licensed in Illinois and Florida– August 1994

SOFTWARE: CCH Prosystem Fx Tax, CCH Axxess Tax, GoSystem Tax, CCH Document, Thomson Reuters Accounting CS

VOLUNTEER: current-Town of Ft Myers Beach Audit Committee, Estero Bayside Condo Board Member

ORGANIZATIONS: current- Ft Myers Beach Chamber of Commerce, Ft Myers Beach Womens Club

1. **Request:**

Meeting Date: October 6, 2025

Appointment of Members to the FY26 Bay Oaks Recreational Campus Advisory Board

Why the action is necessary:

Four seats on the Bay Oaks Recreational Campus Advisory Board expired on September 30, 2025, and one member has passed away, leaving five vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain a quorum and ensure the Bay Oaks Recreational Campus Advisory Board can continue advising Town Council on matters related to Bay Oaks, the community pool and recreational programming.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to appointment.

Committee Purpose

The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

Current Status

There are currently **(5) five vacancies** on the Bay Oaks Recreational Campus Advisory Board. The Town Clerk's Office has received a total of (5) five applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, and subsequently on the Town's website and through social media posts, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Waiver Needed if Appointed / Re-Appointed:

Michele Cherney	Charter Review
Barbara Hill	CELCAB

Attachments:

1. Cherney, Michele
2. Hill, Barbara
3. Loughrey, Rick
4. Neaf, Anne
5. Sullivan, Joy

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies.

7. Management Recommendations:

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 - 9/19/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

RECEIVED

By Amy Baker at 11:45 am, Sep 16, 2025



Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 09/10/24

Name: Cherney Michele M
Last First Middle initial

Telephone Number: (920) 621-5033

Email Address: mcherney20@outlook.com

Home Address: 21 Fairview Blvd, Fort Myers Beach, FL 33931

Mailing Address: Same - Full time resident

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

21 Fairview Blvd
Fort Myers Beach, FL 33931

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

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

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

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

Community Involvement:

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

Interests / Activities:

Pickleball
Golf
Gym
Fishing/Boating
Swimming/beach
Biking

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

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

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

Signed 

Date

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Fort Myers Beach, FL 33931

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



SEP 10 2025

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 09/08/25

Name: Hill Barbara A
Last First Middle initial

Telephone Number: (239) 293-3603

Email Address: barbarahill@comcast.net

Home Address: 340 Madison Ct, Ft Myers Beach, FL 33931

Mailing Address

(if different from home address):

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

If yes, which committee(s)? BORCAB

If yes, when is your term expiration? 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I wish to continue to serve my community as a member of BORCAB. I currently serve as Vice President. I believe it is important, especially now since the recent passing of our long term BORCAB President, to continue with current leadership until this advisory board elects a new president.

Community Involvement:

President, CELCAB
Member, Friends of Mound House
Member, Friends of Bay Oaks

Interests / Activities:

As a long-time resident and property owner of Fort Myers Beach, it is a privilege to serve my community in building and sustaining programs of excellence for the Town's cultural and recreational amenities and believe my professional experience is of benefit to the town's success as we rebuild for the future.

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

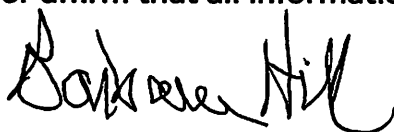
Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

09/08/25

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

RECEIVED

By Amy Baker at 3:08 pm, Sep 09, 2025



Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

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

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to get back involved on this committee. I served on it a number of years ago, but due to my growing business at the time, I had to step away when my term expired. Now that I am retired I would like to get involved again.

Community Involvement:

I served for approx 5 years on the Bay Oaks committee previously and was Vice Chair for part of that time. I was past President of the FMB Little League and Soccer Clubs, as well as a coach for many years for flag football, baseball and soccer. I also was a volunteer for the after school program and was on the committee for the transition from the County to the Town for Bay Oaks.

Interests / Activities:

Running, biking, triathlons, softball, volunteering, lacrosse, rock climbing.

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

Do you qualify for Special Exemptions per § 119.071, F.S. Yes ☐ No ☒

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

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

Signed



Date

09/08/25

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



RECEIVED

By Amy Baker at 1:03 pm, Sep 10, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

N/A

Why are you seeking appointment to this board or committee?

Bay Oaks is one of the nicest municipal recreational facilities I've seen and it's been an honor to lead yoga classes there over the years whether on the lawn during Covid, in the gym, in the Community Room or on the Fitness Court after Milton and Helene. I've been informally involved in the Fort Myers Beach community over the years and want to contribute to the Town in an organized, structured, actionable fashion.

Community Involvement:

In Fort Myers Beach- beach litter pick-ups, Trunk-or-Treats, leading donation-based yoga classes for the Beach Kids and at Lover's Key. In Western NY this summer I was part of a medical benefit that raised \$8,000 in two weeks, volunteered as photographer & basket raffle sales for the Sunset Bay 5K raising funds for the volunteer Fire Department as well as spending Tuesday evenings selling basket raffle & 50/50 tickets for the Silver Creek.

Interests / Activities:

Running, yoga, fitness, reading both fiction and non-fiction, knitting, sewing and cheering for the Buffalo Bills. I'm currently in my 500-hour Yoga Teacher Training & plan to have this additional certification by November 2025.

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed

Anne M. Neaf

Date

09/10/2025

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

Anne M. Neaf

E-RYT-200

anneneaf@gmail.com

716-907-0219

annieneaf.com

Profile

Experienced local yoga instructor currently in 500-hour teacher training. Experienced Registered Yoga Teacher - 200 hour training level/1000 hours teaching (E-RYT 200) designation with Yoga Alliance May 2025. Aqua Yoga certification June 2025. Certified Waterfront Lifeguard with American Red Cross. RYT-500 pending November 2025.

Experience

Yoga Instructor - E-RYT-200

Yoga With Annie, 2016-Present

Online, in-person group and private sessions using props and breathing techniques. Current locations in Florida include Fort Myers Beach, Bay Oaks Recreation Center and the Mound House. The goal is to help students learn something about themselves they didn't know when they began their session.

Yoga Instructor

Fiddlesticks Country Club, 2024-Present

Instruct and adjust students according to their personal goals and intentions for the session using props, poses and breath work in a private studio setting.

Yoga Instructor

Fort Myers Beach Yoga Project-Saba Movement Center, 2019-2022

Instructed students on Fort Myers Beach, the Woman's Club, the Library, Lover's Key State Park & the Saba Movement Center in Fort Myers.

Education

RYT-200
Ruby and Pearls Yoga
Studio
Fort Myers, FL
2016

Bachelor of Arts
Sociology and
Womens' Studies
University at Buffalo
1998-2002



RECEIVED

By Amy Baker at 8:53 am, Aug 22, 2025

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date:

Name:

Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

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

Are you an owner of real property within the Town's jurisdiction? Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency? Yes ☒ No ☐

If yes, what board, etc., and since when? BORCAB

Why are you seeking appointment to this board or committee?

Bay Oaks is critical to our community and is (to some extent) a blank canvas. I am passionate about making Bay Oaks a show case development.

Community Involvement:

On the board of the FMB Community Foundation. Membership VP of the FMB Women's Club. Held the first PB tourney at Bay Oaks and am planning the next. Obtained a grant from the SWF Community Foundation as partial sponsors of the PB tourney 2026.

Interests / Activities:

Pball, and Senior Softball. Beach, Boating, Fun!

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

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

Signed Joy Sullivan

Date 08/14/25

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

Office Use:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: **October 6, 2025**

Appointment of Members to the FY26 Cultural and Environmental Learning Center Advisory Board

Why the action is necessary:

Three seats on the Advisory Committee expired September 30, 2025, and one member has passed away, leaving four vacancies on the committee.

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to appointment.

Committee Purpose

The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirements as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

Current Status

There are currently **(4) four vacancies** on the Bay Oaks Recreational Campus Advisory Board. The Town Clerk's Office has received a total of (5) five applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, and subsequently on the Town's website and through social media posts, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Attachments:

1. Davey, Frances
2. De La Torre Salas, Natalie
3. Vaughan, Ellen
4. Werner, Rebecca
5. Wolf, Lorrie

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies.

7. Management Recommendations:

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 - 9/22/2025
Approved - 9/23/2025
Approved - 9/23/2025
Approved - 9/24/2025
Final Approval - 9/29/2025



RECEIVED

By Amy Baker at 9:08 am, Sep 17, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

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

Yes ☐ No ☒

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I am an American historian with a strong background in public history and material culture studies. If appointed to this board, I would be interested in working toward cultural and environmental preservation. In particular, I am interested in how championing preservation translates into telling the complex stories of indigenous

Community Involvement:

I was a board member for the Bonita Springs Historical Society from 2016-2018. I speak yearly for women's history month for the Naples chapter of the Daughters of the American Revolution. When teaching public history courses, I have connected student interns and Lee and

Interests / Activities:

I have great professional and personal interest in museums and historic sites, and enjoy visiting them both as a historian and a visitor. On a personal level, I enjoy outdoor activities such as running, hiking, and kayaking. Further, I enjoy working with animals.

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

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

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

Signed 

Date

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



RECEIVED

By Amy Baker at 8:47 am, Sep 04, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

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

Are you an owner of real property within the Town's jurisdiction? Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency? Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As a public archaeologist with extensive experience across Southwest Florida—particularly in the Town of Fort Myers Beach—I would be honored to support CELCAB's mission to promote and protect the region's cultural, historical, and environmental resources. With a background that blends archaeology and museum work, I bring a unique combination of expertise and practical skills that I believe would be a valuable +

Community Involvement:

As part of my role with the Florida Public Archaeology Network (FPAN), I am committed to public outreach and education, with a strong focus on supporting our region's diverse communities in connecting with Southwest Florida's rich archaeological, historical, and natural heritage. In this capacity, I've had the pleasure of collaborating with Mound House on more than 15 events. As a valued partner, I look forward to continuing and +

Interests / Activities:

My professional interests center on public outreach, community engagement, and supporting local governments in preserving and promoting cultural heritage. Serving on this Board would align closely with FPAN's broader statewide mission and further our collective impact. I am eager to contribute to discussions on archaeology, exhibition management, grant opportunities, and disaster risk management and reduction as they relate to cultural heritage. +

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

Do you qualify for Special Exemptions per § 119.071, F.S. Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed *Natalie A. De La Torre* *Salas* Digitally signed by Natalie A. De La Torre Salas
Date: 2025.09.03 13:51:29 -04'00' Date

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



Town of Fort Myers Beach

SEP 12 2025

Received by: _____

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08/28/25

Name: Vaughan Ellen P
Last First Middle initial

Telephone Number: (734) 846-6903

Email Address: ellenpvaughan@gmail.com

Home Address: 7500 Estero Blvd #1107, FMB, FL 33931

Mailing Address

(if different from home address):

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

If yes, which committee(s)? CELCAB

If yes, when is your term expiration? October 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☒ No ☐

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I seek re-appointment because I care deeply about our island community and seek to continue to do my utmost to be a good steward of the town's resources which are within the purview of CELCAB

Community Involvement:

I am a member of the Friends of the Mound House, I resigned as president in order to eliminate any conflict with CELCAB appointment. I am a member of the Woman's club and past board member, I am a board member of the Community Foundation. I am a sustaining member of the Art Association (as non artist) I am also a member of the Estero Island Historic Society and the Friends of Estero Bay.

Interests / Activities:

In addition to local civic interests, I spend significant time staying informed about local, state, national, & international events. Daily, I spend hours walking and listening to a variety of podcasts on our beach and neighborhoods. Family, friends, and travel round out my world.

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

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

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

Signed *Ellen R Vaughan*

Date

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



SEP 12 2025

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 09/04/25

Name: Werner Rebecca W
Last First Middle initial

Telephone Number: (239) 898-8311

Email Address: rwnern239@Gmail.com

Home Address: 10890 Crooked River Road # 201, Estero, FL 34135

Mailing Address _____

(if different from home address):

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

If yes, which committee(s)? CELCAB

If yes, when is your term expiration? October 2025

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

This is a critical time for the Mound House and Newton Park in view of the Town's financial deficits. I have a long history with the Mound House and CELCAB's responsibility for Newton Park as well. I can bring good knowledge of the history of both to the committee and would like the opportunity to continue on the committee.

Community Involvement:

Mound House Docent
Creciente condo Board of Directors

Interests / Activities:

History
Reading

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed

Becky W. Werner (Becky)

Date

09/04/25

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



Town of Fort Myers Beach

SEP 12 2025

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 09/08/2025

Name: Wolf LORRIE
Last First Middle initial

Telephone Number: 239-357-7400

Email Address: elleloupp95@gmail.com

Home Address: 21400 Bay Village Dr #107 FMB

Mailing Address SAME
(if different from home address):

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

If yes, which committee(s)? _____

If yes, when is your term expiration? _____

I am applying for appointment to: (Check one)

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

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I am a long time resident of FMB & have served on Celcab and LPA previously. I was off island for 2 years after IAN. I was able to return to my home & would like to serve again on Celcab

Community Involvement:

Current Member of Friends of Library Board
Previous member elected Library Board, Celcab, LPA, FMB Foundation, FMB Chamber of Commerce

Interests / Activities:

I am interested in the continued regrowth of FMB
Personal interests include, Dance, Reading, Shelling & Dining out

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

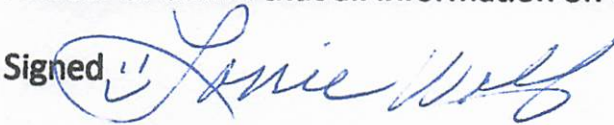
Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☐

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

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

Signed



Date

09/08/2025

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

Lorrie Wolf
21400 Bay Village Dr, Unit 107
Fort Myers Beach, FL 33931-4336
M: (239) 357-7400 | O: 239-498-7311 | E-mail: DH.Wolf@EdwardJones.com

SUMMARY: Highly motivated serial entrepreneur and former business owner; current Client Support Team Member for Level 3 branch transitioning to serving clients directly as a Financial Advisor; studying for SIE and 215 Insurance Exam; FPQP Certified; Notary

EDUCATION

Cabrini University – BS 1977

EXPERIENCE:

Edward Jones – August 2021 to Present

- Financial advisor

Gifts by the Sea – Owner and Founder – Fort Myers Beach, FL – July 2009 – July 2021

- Launched gift shop and post office substation serving the Fort Myers Beach community
- In charge of all purchasing, marketing, advertising, and sales
- Hired and trained a staff of 11 employees

Lorrie Wolf Florist – Owner and Founder – Fort Myers Beach, FL – July 2001 – February 2011

- Owned and operated one of the only dedicated florist shops on Fort Myers Beach
- Negotiated partnerships with 1-800-FLOWERS, Teleflora, and FTD
- Supervised and managed staff of 5 employees
- Obtained Florida State Floral Association Master Designer certification

INTERESTS: Finance and Investing, Philadelphia Eagles, Gardening, Travel

VOLUNTEER EXPERIENCE: Mound House, Fort Myers Beach Library, Estero Island Garden Club, Fort Myers Beach Chamber of Commerce, Fort Myers Beach Civic Association, Director of Fragrance Garden of Lee County

1. **Request:**

Meeting Date: October 6, 2025

Appointment of Members to the FY26 Marine and Environmental Resources Task Force

Why the action is necessary:

Three seats on the Marine and Environmental Resources Advisory Board expired September 30, 2025, leaving 3 vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain quorum and ensure MERTF can continue protecting the Town's marine and environmental resources while carrying out Council directives.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to appointment.

Committee Purpose

The Marine and Environmental Resources Task Force (MERTF) The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

Current Status

There are currently **(3) three vacancies** on the Marine and Environmental Resources Task Force. The Town Clerk's Office has received a total of (2) two applications for appointment to the committee.

Public Notice

The community was initially notified of the vacancies at the Town Council Management and Planning Meeting on August 4, 2025, and subsequently on the Town's website and through social media posts, with applications due to the Town Clerk's Office by the close of business on Friday, September 12, 2025.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Council Consideration

As part of the annual appointment process for advisory committees, it is appropriate for Town Council to review the committee structure and consider opportunities to combine certain committees to increase effectiveness and reduce overlap.

Attachments:

1. Althoff, William
2. Nusbaum, Dave

Financial Impact:

None

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies.

7. Management Recommendations:

8. Recommended Approval:

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025



RECEIVED

By Amy Baker at 3:59 pm, Aug 13, 2025

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08/14/25

Name: althoff william c
Last First Middle initial

Telephone Number: (443) 848-6754

Email Address: walthoff1@verizon.net

Home Address: 17621 hickok belt loop

Mailing Address: bradenton fl 34211

(if different from home address):

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

If yes, which committee(s)? MERTF

If yes, when is your term expiration? 10/2025

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I am an existing and productive member of this committee currently. I have provided my knowledge extend my time on this committee. I enjoy the chance to utilize my college major (Environmental sciences) in real world.

Community Involvement:

condo board president for last 3 years, plus current board memembr for condo association on island

Interests / Activities:

nature photography
environmentalism- always looking for ways for man to exist in nature without causing harm

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

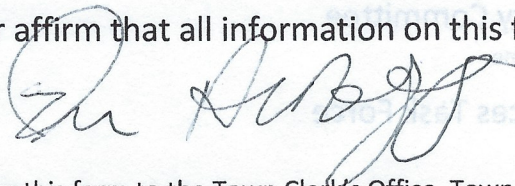
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

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

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

Signed



Date

08/13/25

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

Letter from Dave Nusbaum requesting a second Term on the Marine and Environmental Resource Task Force Advisory Committee.

Dear Mayor, Vice Mayor and Respective Counselors,

I am asking for a second term to serve on the MERTF Advisory Committee. I believe the last two years have seen a directional change to work with the residents, Federal agencies and the Town to promote our stewardship of the island. Rather than taking adversarial positions on topics, we have tried to find the “balance” needed ensure the safeguarding of our environment while keeping the desires of the property owners in mind.

In following this formula, we can better satisfy our purpose, which is to advise the Town Council on environmental matters. We have made great strides and I wish to continue moving our committee in that direction. My experience as a condominium President and rebuilding our complex has been of great assistance. I am asking for another two years.

Respectfully,

Dave Nusbaum



RECEIVED

By Amy Baker at 8:52 am, Aug 20, 2025

Town of Fort Myers Beach
Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: 08/19/2025

Name: NUSBAUM DAVID M
Last First Middle initial

Telephone Number: 262-442-8907

Email Address: Acheesehd@gmail.com

Home Address: 16677 LAKE DRIVE, SHAWANO, WI 54186

Mailing Address 6610 Estero Blvd, Unit 523, Fort Myers Beach, FL 3393
(if different from home address):

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

If yes, which committee(s)? MERTF

If yes, when is your term expiration? 9/30/2025

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I wish to continue to volunteer my efforts to serve on the MERTF for another term.

Community Involvement:

Active Member Condominium Assoc. of FMB
President - Island Winds Condominium Assoc.

Interests / Activities:

Fishing

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

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

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed

David Hobart

Date

8/19/2025

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

1. **Request:**

Meeting Date: October 6, 2025

Appointment of members to the FY26 Public Safety Committee

Why the action is necessary:

Three seats on the Public Safety Committee expired on September 30, 2025, now leaving four vacancies on the committee.

What the action accomplishes:

Fills vacancies to maintain quorum and ensure the Public Safety Committee can continue advising Town Council on significant safety and transportation issues impacting the health, safety, and welfare of the community.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Res. 24-17

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per [Town of Fort Myers Beach Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

Attachments:

1. Benak, Ron

Financial Impact:

None

6. **Alternative Action**

Do not appoint/reappoint members and advertise for the vacancies.

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025



RECEIVED

By Amy Baker at 12:49 pm, Aug 14, 2025

Town of Fort Myers Beach Advisory Boards and Committees Application

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

Please type or print clearly. Do not leave blanks.

Today's Date: AUGUST 13, 2025

Name: BENAK RON
Last First Middle initial

Telephone Number: 402 679 5640

Email Address: RONBENAK@GMAIL.COM

Home Address: 210 STERLING AVE FMYERS BEACH FL 33931

Mailing Address: SAME

(if different from home address):

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

If yes, which committee(s)? PUBLIC SAFETY

If yes, when is your term expiration? OCTOBER 2025

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

My LIFE'S WORK HAS BEEN IN PUBLIC SAFETY. I HAD A 25 YEAR
CAREER AS A PROFESSIONAL FIRE FIGHTER FOR THE CITY OF (MAHI)
MOB. I FEEL I HAVE MUCH TO OFFER THE CITIZENS AND TOWN
OF FT MYERS BEACH.

Community Involvement:

2 YEAR TERM ON FMB PUBLIC SAFETY COMMITTEE,

Interests / Activities:

WATERPROOFING HOMES, GOLF, BOATING, FAMILY

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

Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

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

Signed



Date

13 AUGUST 2025

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



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street

Fort Myers Beach, FL 33931

Minutes

Wednesday, September
24, 2025

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Remove item C under the Administrative Agenda and item B under the Town Attorney's items.

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

The motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford remembered Betty Simpson and sent condolences to her family.

Council Member Woodson noted that the last Jobufest event was last Saturday.

Vice Mayor Atterholt recognized Kim Boxa, who was the principal of the elementary school. She was being transferred to another middle school and will be missed.

Mayor Allers agreed that Betty Simpson would be missed.

No items from Council Member King.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

- A. Town Council - September 11, 2025
Council Member King moved to approve the minutes, seconded by Council Member Woodson.
The motion carried unanimously.
- B. Town Council Budget Hearings - September 11, 2025
Council Member King moved to approve the minutes, seconded by Council Member Woodson.
The motion carried unanimously.

IX. CONSENT AGENDA

No items.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

No items.

XII. ADMINISTRATIVE AGENDA

- A. Proposed 2026 Meeting Schedule
Discuss and approve the monthly schedule for Town Council meetings for calendar year 2026
Town Clerk Baker noted that dates highlighted in yellow on the calendar conflicted with TDC (Tourist Development Council) meetings. Those meetings will be moved to Wednesdays.
Council Member Safford moved to approve the change, seconded by Council Member King.
The motion carried unanimously.
- B. Special Event - Farmers Market at Times Square
Shop Local Productions is requesting to have a Farmer's Market at Times Square from October 2025 through April 2026
Linda Miller from Shop Local Productions described the event, which takes place in three locations.
Council Member King moved to approve the special event, seconded by Mayor Allers.
The motion carried unanimously by roll call vote.
- C. Resolution 25-293; Collection of Non-Ad Valorem Special Assessments **A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ESTABLISHING THE TERMS AND CONDITIONS UNDER WHICH THE LEE COUNTY TAX COLLECTOR SHALL COLLECT AND ENFORCE THE COLLECTION OF THOSE CERTAIN NON-AD VALOREM SPECIAL ASSESSMENTS LEVIED BY THE TOWN OF FORT MYERS BEACH RESULTING IN THE DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL FOR THE FISCAL YEAR**

2026; AND PROVIDING FOR AN EFFECTIVE DATE.

Removed.

D. Resolution 25-275, FY26 Florida State Lobbyist

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO RENEW AND AMEND THE EXISTING AGREEMENT WITH THE TOWN'S FLORIDA STATE LOBBYIST, RONALD L. BOOK, P.A. IN THE AMOUNT OF \$45,000, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager Will McKannay noted that renewing Mr. Book's agreement would be in the best interest of the town.

Mayor Allers moved to approve the resolution, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Tom Houghton, owner of La Ola Surfside Restaurant, explained why the owners were opposed to bringing the Farmer's Market back to Times Square and asked the town council to seek their input before moving forward.

XIV. TOWN MANAGER'S ITEMS

Community Development & Planning Director Frankie Kropacek stated that the locked bollards on Times Square will remain locked. No vehicular traffic is allowed. Town Manager McKannay will set up a meeting between Ms. Miller and the Times Square owners.

Director Kropacek explained the pool situation and asked if the town council would be willing to reduce the advertising time to 15 days to re-advertise the pool project for the CDBGR (Community Development Block Grant Recovery). He added that the information was given to him by the procurement person from Lee County and the CDBGR representative. Town Attorney Stuparich will work with Director Kropacek to see if they can accommodate the request. All council members agreed with the direction.

Town Manager McKannay indicated that yesterday was the last day for temporary placement permits and he received approximately 40 extension applications.

Packets were being reviewed and one was approved. Notices of violation will be issued to those who failed to submit emergency temporary placement permits by the deadline. Town Attorney Stuparich noted that a flowchart and forms were developed for people who did not have an extension approved. She added that there was a compliance period for those who received notices of violation.

Town Manager McKannay announced that the Lee County Sheriff's Department recovered the town's stolen boat. The town is working with the insurance company since they have already received a payout for the boat. The condition of the boat is still under review.

Deputy Town Manager Traci Kohler indicated that weekly meetings were being held to review non-compliant properties, per FEMA. Approximately ten more properties have come into compliance. She noted there were probably 70 non-compliant properties left and they were working with the property owners.

Town Manager McKannay commented that he met with Dave Harner from Lee County regarding the wave mitigation wall and he was very receptive. Mr. Harner agreed to work with the town moving forward.

Town Manager McKannay announced that the Church of the Ascension submitted plans to rebuild. A public information meeting will be held at 2:00 p.m. on October 10, 2025, at St. Leo the Great in Bonita Springs.

Town Manager McKannay stated that he and Deputy Town Manager Kohler continue to meet with the school district staff to work through the requirements of the interlocal agreement. He received a response from the school district to his public records request that did not address his question regarding the reallocation of funds with FEMA's permission. He noted that it may be time to contact FEMA for clarity on the issue. Mayor Allers stated that he had received a response from FEMA regarding the reallocation of funds. He read the response into the record and asked staff to work with Town Attorney Stuparich regarding the town's next steps.

All town council members agreed to proceed with the direction. Town Attorney Stuparich will bring back options for their consideration.

XV. TOWN ATTORNEY'S ITEMS

- A. Executive Session Announcement for October 20, 2025
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 October 20, 2025 at 3:00 PM, or shortly thereafter, at 6231 Estero Blvd., Fort Myers Beach, Florida 33931.

Town Attorney Stuparich announced the new scheduled date and time. All council members agreed to schedule the session for 3:00 p.m. on October 20, 2025.

- B. Settlement Agreement
Approval of a Settlement Agreement in the case styled Pareshkumar (Paresh) Patel v. Town of Fort Myers Beach, Case No. 2:24-cv-00353-SPM filed in the U.S. District Court, Middle District of Florida, Ft. Myers Division. A copy of the proposed settlement agreement will be provided at the public meeting.

Removed.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King mentioned unleashed dogs running on the beach. MERTF (Marine & Environmental Resources Task Force) requested additional signs at the beach access points. MERTF members also suggested adding language regarding dogs on leashes to short-term rental contracts. They asked about enforcement. Emergency Services & Compliance Director Thomas Yozzo

described how a situation was handled yesterday and noted that the Sheriff's Deputies had responded to 14 documented complaints. No citations were issued. He added that the town will respond to complaints and notify the Sheriff's Department. Mayor Allers supported a discussion regarding allowing the rangers to carry pepper spray. Town Manager McKannay indicated that the signs will be replaced. Council Member King learned a lot at the Florida League of Cities Board of Directors' meeting. He will meet with the town manager regarding what they can offer the town.

Vice Mayor Atterholt asked Environmental Projects Manager Chadd Chustz for an update on the vegetation planting. Manager Chustz described the plantings and noted that they were going very quickly. The project is expected to be completed by the end of October.

Council Member Woodson asked when the county would work on the light at Old San Carlos and Estero Blvd. Director Kropacek explained that the light had to be elevated and he thought the project had gone out to bid.

Council Member Safford requested an update on the lighting situation downtown. Director Kropacek replied that it would happen quickly after it got bid. He noted that he met weekly with Chris Powell from Aspire and completion was expected in November.

Mayor Allers asked when the Mobi-mats would be on the beach. Community Services Director Jeff Hauge replied that they were putting them out now. The pickleball courts were almost ready to open and the rest of the park was coming along. He stated that five memorial benches had been ordered, and people could contact him to request a bench.

XVII. ADJOURNMENT

Council Member King moved to adjourn. No second. Mayor Allers adjourned the meeting at 10:13 a.m.



Fort Myers Beach Town Council

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

Minutes

Wednesday, September
24, 2025

5:01 PM

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. PUBLIC COMMENT

Ellen Vaughan, resident, encouraged the council to increase the millage rate because the town needed services.

Tom Torgerson, resident, advocated for a millage rate increase. It was not the time to cut services and he did not think it was in the best interest of the town. He supported reinvesting and recovery of the island.

III. PUBLIC HEARINGS

A. Resolution 25-278; Final FY26 Ad Valorem Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL AD VALOREM MILLAGE RATE FOR THE TOWN OF FORT MYERS BEACH, FLORIDA AT __, WHICH IS __ FOR EACH \$1,000 OF ASSESSED VALUATION AND IS __% GREATER THAN THE ROLLED-BACK RATE OF .8954 MILLS FOR FISCAL YEAR 2026, COMMENCING OCTOBER 1, 2025 AND ENDING SEPTEMBER 30, 2026, FOR THE PURPOSE OF PROVIDING SUFFICIENT FUNDS FOR THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick utilized PowerPoint for his presentation. Slides included the Millage Rate Required Announcement, Overview, Changes as Result of 1st Budget Hearing, Additional Changes Since 1st Budget Hearing, State Appropriations, Bridge Loan Status, FY25-FY26 Position Change Comparison, General Fund Revenue by Source as Percent of Whole, General Fund Expense by Category as Percent of Whole, General Fund Expense Categories by Year, General Fund Expenses by Department, All Funds Revenue by Source as

Percent of Whole, Use of Reserves, Grant Revenue, Transfers, All Funds Expense by Category as Percent of Whole, All Funds Expense Categories by Year, All Funds Expense Budgets by Fund, Capital Budget Items, FDEM FEMA Project Loan, Fund Balance Projection by Fund, Debt Service, FDEM FEMA Project Loan, \$10 Million Capital Improvement Revenue Note, DEO Bridge Loan, Florida State Revolving Fund, Millage Rate, Millage Rates & Required Votes, Staff Recommendations, Emergency Fund Status, Recommendation and Recommended Amendments.

Vice Mayor Atterholt summarized the presentation.

Town Manager Will McKannay noted that adding revenue to the emergency fund should be a priority. Mayor Allers agreed and added that it would be reckless not to continue to save for the future.

Public comment:

Ellen Vaughan, resident, encouraged all to approve the vote.

Tom Torgerson, resident, agreed.

Public comment closed.

Mayor Allers moved to approve the staff recommendation to set the fiscal year 2026 millage rate at 1.150, which is a 28.43% increase over the rolled-back rate from the previous fiscal year, seconded by Council Member Safford.

Vice Mayor Atterholt confirmed that the \$1.2 million worth of cuts were reflected in the budget, and the increase would be used to either support the emergency fund and/or potential matching grants.

Budget Manager Kassandra Penner read the title of the resolution, which included the millage and the percentage rate.

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

A discussion was held regarding the emergency fund.

Vice Mayor Atterholt moved to approve the resolution with the millage rate set at 1.0294 mills, which is 14.96% greater than the rolled-back rate from the previous fiscal year, seconded by Council Member Safford.

The motion carried, 4-1, with Council Member King dissenting.

B. Resolution 25-279; Final FY26 Budget

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2026 COMMENCING OCTOBER 1, 2025, AND ENDING ON SEPTEMBER 30, 2026; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Director Onzick stated the additional revenue would be \$177,149, with \$88,574 transferred to the emergency fund and \$88,575 transferred to grant matching. He recommended that the town council approve the amendment changes on slides 34 and 35 to reflect the lower millage rate.

Mayor Allers moved to approve the resolution for the final fiscal year 26

budget, based on the change of \$88,574 to transfer to the general fund and \$88,574 added to the emergency fund reserve, based on Director Onzick's comments, seconded by Council Member Safford.

No public comment.

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

C. Resolution 25-280; Final FY26 Fee Schedule

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL FEE SCHEDULE FOR FISCAL YEAR 2026 COMMENCING OCTOBER 1, 2025 AND ENDING ON SEPTEMBER 30, 2026; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Director Onzick's presentation included the FY26 Final Fee Schedule Changes and Additional Final Fee Schedule Changes Not Previously Included.

Emergency Services Director Thomas Yozzo confirmed that residents would be permitted to park anywhere, as long as it was legal, with the increase in parking permits.

No public comment.

Council Member Safford moved to approve the resolution based on the amendments with the building fees, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

IV. FINAL PUBLIC COMMENT

No public comment.

V. ADJOURNMENT

Council Member King moved to adjourn, seconded by Mayor Allers.

The motion carried unanimously.

The meeting was adjourned at 6:42 p.m.

1. **Request:**

Meeting Date: October 6, 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. 25-281, Extension of Local Emergency - Debby 10.07.25 - 10.13.25
2. 25-282, Extension of Local Emergency - Debby 10.14.25 - 10.20.25
3. 25-283, Extension of Local Emergency - Debby 10.21.25 - 10.27.25
4. 25-284, Extension of Local Emergency - Debby 10.28.25 - 11.03.25

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 - 9/19/2025
Approved - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-281

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 October 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 25-282

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 October 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 25-283

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 October 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 25-284

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 October 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: October 6, 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. 25-285, Extension of Local Emergency - Helene 10.07.25 - 10.13.25
2. 25-286, Extension of Local Emergency - Helene 10.14.25 - 10.20.25
3. 25-287, Extension of Local Emergency - Helene 10.21.25 - 10.27.25
4. 25-288, Extension of Local Emergency - Helene 10.28.25 - 11.03.25

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 - 9/19/2025
Approved - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-285

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 October 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 25-286

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.
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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 October 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 25-287

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.**

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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.
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:
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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.
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.
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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.
 - (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.
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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 October 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 25-288

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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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 October 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: October 6, 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. 25-289, Extension of Local Emergency - Milton 10.07.25 - 10.13.25
2. 25-290, Extension of Local Emergency - Milton 10.14.25 - 10.20.25
3. 25-291, Extension of Local Emergency - Milton 10.21.25 - 10.27.25
4. 25-292, Extension of Local Emergency - Milton 10.28.25 - 11.03.25

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 - 9/19/2025
Approved - 9/22/2025
Approved - 9/23/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-289

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:

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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 October 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 25-290

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;
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 - 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:
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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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(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.

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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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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 October 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 25-291

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

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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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 - 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 October 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 25-292

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 October 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: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250208 TO ALLOW RECONSTRUCTION OF THE PIER WITH ELEVATED WALKWAYS, LIGHTING IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT COUNTY R/W AS LEGALLY RECORDED IN PLAT BOOK 9, PAGE 9, EXTENSION OF OLD SAN CARLOS BLVD. IN PUBLIC RECORD OF LEE COUNTY, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Town Council will take into account the recommendations made by LPA.

What the action accomplishes:

Approval of this request will allow the applicant to reconstruct the pier with elevated walkways and lighting in the EC zoning district seaward of 1978 CCCL.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant, Ehab B. Guirguis, PE, CPM, on behalf of the owner Lee County, is requesting a special exception for the reconstruction of the destroyed pier located at 10 Old San Carlos with elevated walkways with lighting in the Environmentally Critical zoning district seaward of the 1978 Coastal Construction Control Line (CCCL). The new pier will be wider than the original pier, measuring 12 feet in width. The application is part of a complete project that will involve the reconstruction and restoration of the existing pier in the same location; elevated walkways, three shade structures, lighting and fish cleaning stations to allow public access to the pier for fishing and recreation.

Section 34-652(e)(4) of the Town's LDC allows minor structures, like piers, to be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system, only by special exception. Therefore, the applicant is requesting a special exception to allow the reconstruction of the destroyed pier, adding public access to the deck and lighting as a part of the complete pier reconstruction project.

On 9th September 2025, LPA unanimously voted to recommend approval with conditions for the special exception request (SEZ20250208) to allow the reconstruction of the destroyed pier located at 10 Old San Carlos with elevated walkways with lighting in the Environmentally Critical zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Attachments:

1. NS TC Resolution 25-276- Fishing_Pier
2. TC Staff Report 20250208-Pier
3. Exhibit A: Site Plan -Pier
4. Exhibit B: Application packet - Pier

Financial Impact:

Unknown

6. **Alternative Action**

Approvals/ Denial of SEZ20250208; Special Exception to allow the reconstruction of the pier with elevated walkways, and lighting in the EC zoning district seaward of 1978 CCCL.

7. **Management Recommendations:**

Staff recommends approval with conditions of SEZ 20250208, to reconstruct the pier with elevated walkways, with lighting in the EC zoning district.

8. **Recommended Approval:**

Jason Smalley, Senior Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-276

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250208 TO ALLOW RECONSTRUCTION OF THE PIER WITH ELEVATED WALKWAYS, LIGHTING IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT COUNTY R/W AS LEGALLY RECORDED IN PLAT BOOK 9, PAGE 9, EXTENSION OF OLD SAN CARLOS BLVD. IN PUBLIC RECORD OF LEE COUNTY, 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 Ehab B. Guirguis on behalf of owner Lee County, is requesting a special exception to allow reconstruction of the pier with elevated walkways and lighting in the Environmentally Critical zoning district (seaward of 1978 CCCL), as part of a complete pier reconstruction project including shade structures and fish cleaning station; and

WHEREAS, the Property is located in the “Recreational” and “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the “Community Facilities (CF) 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 September 9, 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/ approval with conditions/ denial of the special exception request; and

WHEREAS, on October 06, 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 reconstruction of the pier with elevated walkways and, lighting in Environmentally Critical zoning district seaward of 1978 , as part of a complete pier reconstruction project including three shade structures and fish cleaning station as provided in the Site Plan attached as Exhibit A and described in the Special Exception Application in Exhibit B.

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 which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of October, 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 October, 2025.

EXHIBITS

A – Site Plan

B- SEZ Application Packet



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250208

CASE NAME: Special Exception to allow the reconstruction of the pier with elevated walkways and lighting in the EC zoning district seaward of 1978 CCCL.

LPA

HEARING DATE: September 9, 2025

STAFF

RECOMMENDATION: Approval with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Ehab B. Guirguis, PE, CPM / Lee County

Request: To reconstruct the pier with elevated walkways and lighting in the Environmentally Critical zoning district as part of the complete pier reconstruction. The proposed a complete reconstruction will include shade structures and fish cleaning station.

Subject property: Extension of Old San Carlos Blvd.

Physical Address: "ROW TIMESSQUARE PIER"

STRAP #: County Row as stated in the Plat Recorded in P.B.9, P.G.9

FLU: Recreation / Pedestrian Commercial

Zoning: Environmentally Critical (EC) /Community Facilities (CF)

Adjacent zoning and land uses:

North: Downtown
Pedestrian Commercial

South: Gulf of Mexico

East: CF, EC, Gulf of Mexico
Pedestrian Commercial and Recreational

West: Downtown, EC, Gulf of Mexico
Pedestrian Commercial and Recreational

II. BACKGROUND AND ANALYSIS

Background:

The applicant, Ehab B. Guirguis, PE, CPM, on behalf of the owner, Lee County, is requesting a special exception for the reconstruction of the destroyed pier located at 10 Old San Carlos with elevated walkways with lighting in the Environmentally Critical zoning district seaward of the 1978 Coastal Construction Control Line (CCCL). The new pier will be wider than the original pier measuring 12 feet in width. The application is part of a complete project that will involve the reconstruction and restoration of the existing pier in the same location; elevated walkways, three shade structures, lighting and fish cleaning stations to allow public access to the pier for fishing and recreation.

Section 34-652(e)(4) of the Town's LDC allows minor structures, like piers, to be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system, only by special exception. Therefore, the applicant is requesting a special exception to allow the reconstruction of the destroyed pier, adding public access to the deck and lighting as a part of the complete pier reconstruction project.

On 9th September 2025, LPA unanimously voted to recommend approval with conditions for the special exception request (SEZ20250208) to allow the reconstruction of the destroyed pier located at 10 Old San Carlos with elevated walkways with lighting in the Environmentally Critical zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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 was historically used as a recreational space with piers added in 1991 and beach access available since 1974. The pier was destroyed during Hurricane Ian in 2022. The Applicant is now proposing a new pier which will start from the same location and will have same orientation however it will be slightly wider. The new

proposed pier will be 12 feet wide that will allow public access for fishing and recreation in the EC district.

The proposed pier total plan area 16,078 ft. -. The project will include three shade structures with shade structure A elevated to 33 ft; shade structure B elevated to 27.5 ft and shade structure C elevated to 35.146ft. While the shade structures and fish cleaning stations are in gulf and will not be a part of this special exception the complete project is to rebuild the Pier with more amenities for citizens.

Therefore, the Applicant is applying for a Special Exception to allow the reconstruction of the destroyed pier with elevated walkways and lighting and in the EC zoning district seaward of 1978 CCCL, as a part of a complete pier rebuilt project.

Neighborhood Impact:

The site has traditionally served as a valuable area for recreational activities and beach access since 1974. In 1991, a community pier was built to enhance these activities, but unfortunately, it was lost during Hurricane Ian. The proposed special exception request is to rebuild the pier including shade structure, lighting, and fish cleaning stations, ensuring that the pier will better serve the community's needs while enhancing the overall recreational experience.

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 pier was destroyed 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.

This proposed a complete pier redevelopment project consists of reconstruction of the destroyed pier, lighting, 3 shade structures, and fish cleaning stations, none of which fall under the category of development as defined in the Town's LDC:

- *Development:* (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- *Improvement to land:* 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. The proposed repairs/ reconstruction will allow the pier to open and create more recreational space for the residents of Fort Myers Beach. The addition of shade structures, fish cleaning station and lighting will generate additional pedestrian traffic to the pier facility.

- 4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed project is to rebuilt of the historic pier. All development will be completed outside of sea turtle nesting season and will be compliant with FDEP requirements. No additional negative impact is anticipated.

- 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.*

The pier was added in 1991, and beach access has existed on this site since 1974. The request is for replacement of the existing pier compatible with the existing use and will not cause damage, hazard, nuisance, or other detriment to persons or property.

- 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 request is for restoration of the destroyed pier with elevated walkways, and lighting in the Environmentally Critical zoning district. The project will all be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

Staff find that the special exception to allow *reconstruction of the pier with elevated walkways with lighting in the Environmentally Critical zoning district*, is in compliance with LDC Sec. 34-88(b). Therefore, staff recommends **approval with conditions of 20250208**, to reconstruction the pier with elevated walkways, and lighting as a part of a complete pier rebuilt project that includes three shade structures, and fish cleaning stations.

On 9th September 2025, LPA unanimously voted to recommend approval with conditions for the special exception request (SEZ20250208) to allow the reconstruction of the destroyed pier located at 10 Old San Carlos with elevated walkways with lighting in the Environmentally Critical zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

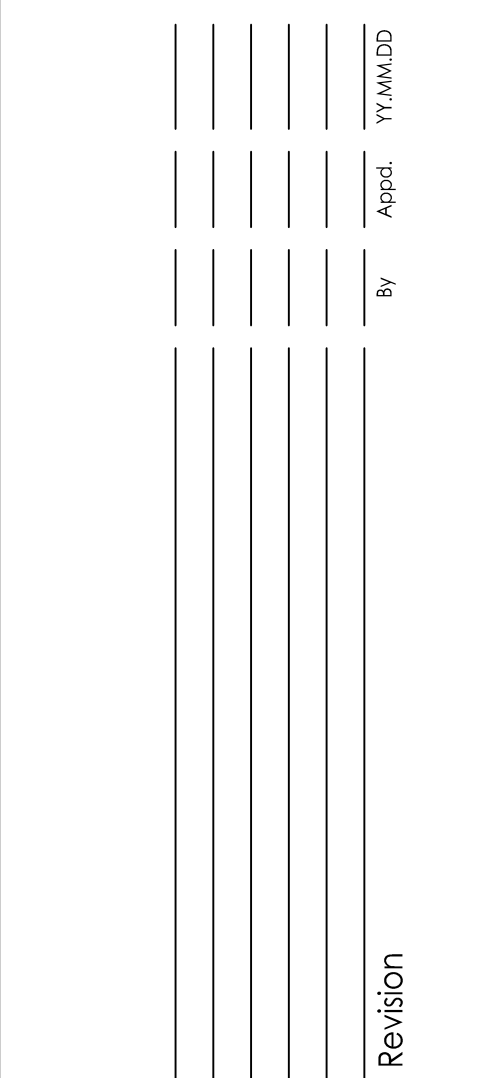
III. CONDITIONS OF APPROVAL

- 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 may not occur during sea turtle nesting 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.

Exhibits:

A – Site Plan

B– SEZ Application Packet



Client/Project LEE COUNTY, FLORIDA	
Permit-Seal	
FT. MYERS BEACH FISHING PIER REPLACEMENT	
Title PLAN AND ELEVATION (1 OF 2)	

Christopher P. Gamache, PE
Lic. No.: 82122

THE OFFICIAL RECORD OF THIS SHEET IS THE
ELECTRONIC FILE DIGITALLY SIGNED AND SEALED
UNDER RULE 61G15-23.004, F.A.C.

Project Number: 238201943

SCALE: AS SHOWN

AAM	MIA	CPG	25.07.15
Dwn.	Dsgn.	Chkd.	YY.MM.DD

Drawing No. C3.01

Revision Sheet



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: 10 Old San Carlos Blvd., Fort Myers Beach, FL.

STRAP Number: N/A - County Right-of-Way, City Parcel ID "ROW TIMESSQUARE PIER"

Applicant: Ehab B. Guirguis, PE, CPM Phone: 239-533-8838

Contact Name: Ehab B. Guirguis, PE, CPM Phone: 239-533-8838

Email: eguirguis@leegov.com Fax: _____

Current Zoning District: EC / CF

Future Land Use Map (FLUM) Category: Recreation / Pedestrian Commercial

FLUM Density Range: 1 unit per 20 acres 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*: Ehab B. Guirguis, PE, CPM Phone: 239-533-8838

**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: 1500 Monroe St., 4th Floor Fort Myers, FL 33901

Email: eguirguis@leegov.com Fax: _____

Contact Name: Ehab B. Guirguis, PE, CPM Phone: 239-533-8838



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: Christopher Gamache, PE Phone: 727-742-6168
Address: 380 Park Place Boulevard, Suite 300, Clearwater FL 33759-4928
Email: christopher.gamache@stantec.com Fax: _____

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

Name: Carey Jenkins Phone: 239-533-8375
Address: 1500 Monroe St., 4th Floor Fort Myers, FL 33901
Email: cjenkins@leegov.com 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: Part VI. B - Boundary Survey Description: A waiver request has been submitted for the boundary survey requirement within this application

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.

Signature

Printed Name

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 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

Lee County, 2120 Main St, Fort Myers, FL 33901

100%



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, Ehab B. Guirguis (name), as Director (title)
of Lee County Facilities & Construction Management (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

Lee County

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

Ehab Gurguis
Signature

Ehab Gurguis
Typed or Printed Name

Director
Title

7/11/2025
Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 11 day of July, 2025, by

Ehab Gurguis ☒ who is personally known to me OR ☐ who has produced



Lydia Montgomery
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: N/A - County Right-of-Way, City Parcel ID "ROW TIMESQUARE PIER"

Property Address: 10 Old San Carlos Blvd., Fort Myers Beach, FL.

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: Business Center

Book: 9 Page: 9 Unit: n/a Block: n/a Lot(s): n/a

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) 80 feet
Depth (please provide an average width if irregular in shape) 193 feet
Frontage on street: 80 feet. Frontage on waterbody: 80 feet
Total land area: 15,440 ☐ acres ☒ square feet

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

The Fort Myers Beach pier is located at 10 Old San Carlos Blvd., Fort Myers Beach,
FL near Lynn Hall Memorial Park, adjacent to Times Square on Estero Island.

☒ 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 |

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250217 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF BOARDWALKS, PAVER DECK, SIDEWALK, DECKING AND BENCHES IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 50/58 ESTERO BOULEVARD COMMONLY REFERED TO AS STRAP NUMBER 24-46-23-w1-0080d.0400; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Town Council will take into account the recommendations made by LPA.

What the action accomplishes:

If the requested Special Exception is granted by the Town Council, it will allow the applicant like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs for Bowditch Park in the Environmentally Critical (EC) zoning district.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is requesting a special exception to allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs.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 walkways and benches into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of a these public amenities in the EC zoning district.

On 9th September 2025, LPA unanimously voted to recommend approval, with conditions special exception (SEZ20250217), to allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs.in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Attachments:

1. Exhibit A to Resolution - Site Plan
2. TC Staff Report SEZ20250217
3. Application
4. Structural plans
5. Complete Property Boundary Survey
6. NS TC Resolution 25-277 , SEZ20250217

Financial Impact:

Unknown

6. **Alternative Action**

Approve with Conditions

7. **Management Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Jason Smalley, Senior Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

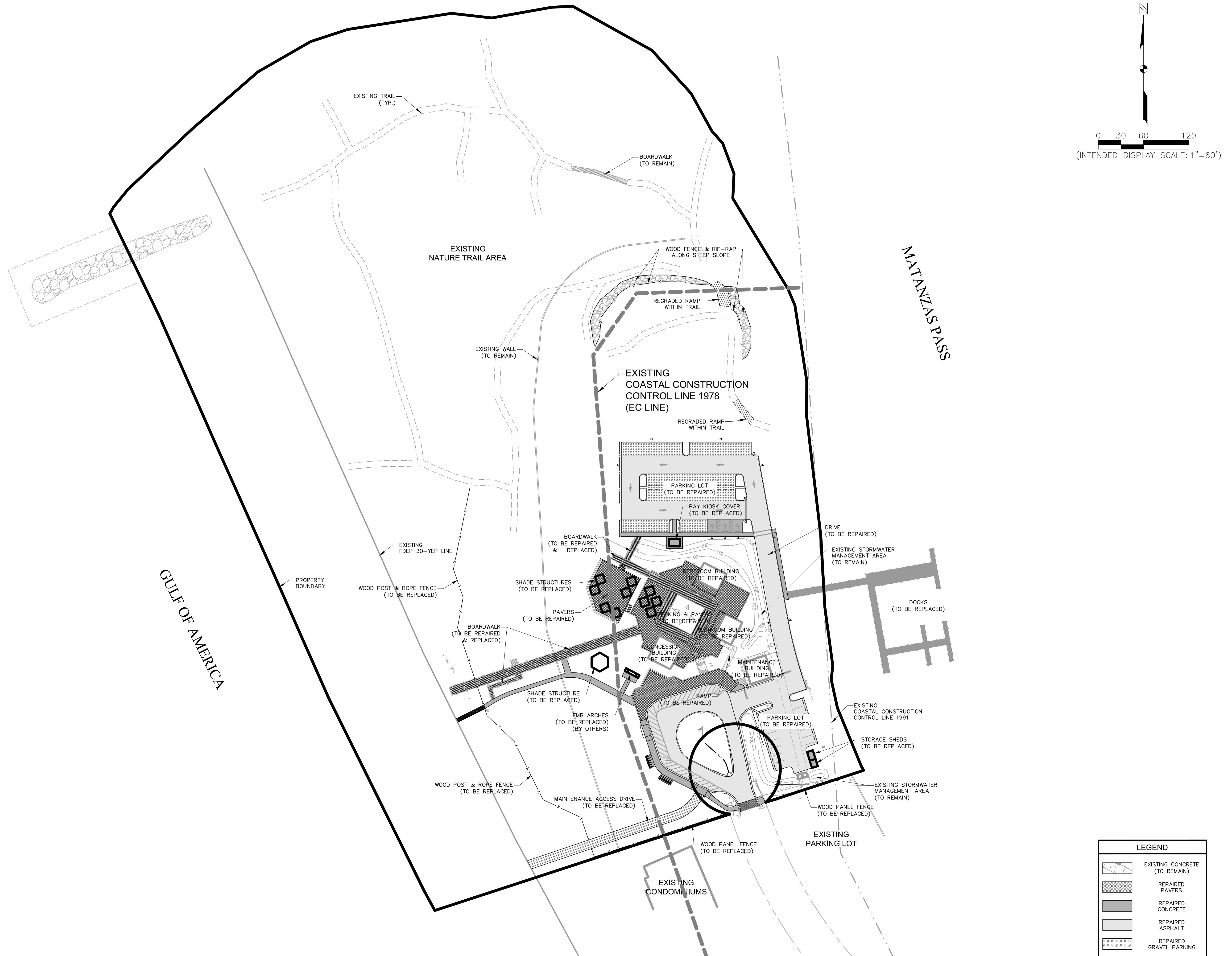
BOWDITCH POINT PARK
TOWN OF FORT MYERS BEACH, FLORIDA

[illegible]

DATE:	JULY 2025
PROJECT NO.	20247020-000
FILE NO.	24-46-23
SCALE:	As Shown

SPECIAL
EXCEPTION
SITE PLAN
EXHIBIT

SHEET NUMBER





Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250217

CASE NAME: Special Exception for like-to-like replacement and restoration of Bowditch Point Park structures in the EC zone due to Hurricane Ian Damage

LPA

HEARING DATE: September 09, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Agent -Johnson Engineering, LLC (Debi Pendlebury) on behalf of Lee County

Request: To allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs.

Subject property: See attached site plan

Physical Address: 50/58 Estero Boulevard

STRAP #: 24-46-23-W1-0080D.0400

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North: Tidal Waters

South: Residential Multi-family (RM)
East: Community Facility (CF) and Estero Bay
West: Gulf Waters

II. BACKGROUND AND ANALYSIS

Background:

The applicant is requesting a special exception to allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs 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 walkways and benches into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like-for-like replacement of these public amenities in the EC zoning district.

On 9th September 2025, LPA unanimously voted to recommend approval, with conditions special exception (SEZ20250217), to allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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. Bowditch Point Park is located at the northern tip of Estero Island consisting of approximately 17'+/- acres, 7'+/- acres are developed as a park for passive recreational use and the remaining 10'+/- acres are restoration/preserve area. The use of the subject property is not changing and remains consistent with LDC Section 34-88. Due to the damage caused by Hurricane Ian on September 28, 2022 a Special Exception is required in conjunction nature of the proposed reconstruction and repairs to restore the park to a full access facility with increased public safety including improved beach access.

Neighborhood Compatibility:

Granting the Special Exception will not adversely impact surrounding properties, as the existing beach park has been in continuous operation for over 30 years and is uniquely positioned between the beach, preserve areas, back bay, and the Gulf of Mexico. Of the 17'+/- acre site, approximately seven acres have been developed as a public beach park designed and the Gulf of Mexico. Of the 17'+/- acre site,

approximately seven acres have been developed as a public beach park designed for passive recreational activities, while the remaining ten acres are maintained as a restoration/preservation area.

The approval of this request will not result in any negative impacts to the public's health, safety, comfort, convenience, or general welfare. Furthermore, the proposed Special Exception is consistent with the intent and provisions of the Land Development Code and remains in compliance with all applicable regulations of the Comprehensive Plan.

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 pathways, decks, pavers and benches 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 the landscaping elements does not create any new development or change the location from what previously existed on the site. Therefore, staff find 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 hut will all be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

Staff finds that the special exception to replace boardwalks, sidewalks, decking, pavers and benches in EC zoning district is in compliance with LDC Sec. 34-88(b). Therefore, staff recommends approval with conditions of SEZ20250217 for like-for-like reconstruction.

On 9th September 2025, LPA unanimously voted to recommend approval, with conditions special exception (SEZ20250217), to allow like-for-like replacement of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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) Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- 3) Construction shall not occur during sea turtle season.
- 4) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.



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: Bowditch Point Park
Authorized Applicant: Lee County (Facilities Construction & Management)
LEIPA STRAP Number(s): 24-46-23-W1-0080D.0400

Current Property Status: Existing Beach Park
Current Zoning: EC and CF
Future Land Use Map (FLUM) Category: Recreation
Platted Overlay? ☐ yes ☒ no FLUM Density Range: 1/20 acres

Requested Action:

☒ Use of premises in the EC (Environmentally Critical) zoning district for:
Bowditch Point Park is located at the northern tip of Estero Island consisting of approximately 17+/- acres, 7+/- acres are developed as a park for passive recreational use and the remaining
10+/- acres are restoration/preserve area. The use of the subject property is not changing and remains consistent with LDC Section 34-88. Due to the damage caused by Hurricane Ian on September 28, 2022
a Special Exception is required in conjunction nature of the proposed reconstruction and repairs to restore the park to a full access facility with increased public safety including improved beach access.
☐ Use of premises in the _____ zoning district for:

PART I Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Request for the restoration and repair of Bowditch Point Park due to the significant
damage caused by Hurricane Ian on September 28, 2022. The proposed use of
the subject property is not changing and remains consistent with LDC 34-88.
The proposed improvements include replacing: 179'+/- boardwalk, 1,600'+/- of
paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and bench repairs.
This is an existing public facility that was reopened with limited access to the
damage caused by Hurricane Ian. The proposed facility site repairs will increase
the public safety and provide improved beach access.

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:
1. Whether there exist changed or changing conditions which make approval of the request appropriate. The approval of this request is both necessary and appropriate to facilitate the restoration and repair of the site and its facilities
following the extensive damage sustained during Hurricane Ian in September 2022. Ensuring the safety and welfare of the general public remains a primary consideration in moving this project forward. Given that the
property is zoned EC (Environmentally Critical), the proposed improvements cannot proceed without the granting of a Special Exception, making this approval an essential step toward recovery and the continued safe use of the site.
2. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comp Plan. The property is designated "Recreation" on the Future Land Use map. Parks and beach access points are permitted uses.
3. The request meets or exceeds all performance and locational standards for the proposed use. Bowditch Point Park is located at the northern tip of the island ensuring the proper beach park is accessible, well-planned to
meet the needs of the community. The appropriate level of service (LOS), open space and preservation will be accommodated in the restoration of the facility to meet the highest of standards for the community.
4. The request will protect, conserve, or preserve environmentally critical areas and natural resources. The restoration will incorporate environmentally sensitive design measures to safeguard native habitats, ensure long-term preservation of beach, pr
5. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. The site has long operated as a passive recreational beach park,
harmoniously coexisting with the surrounding natural preserve, beach and water. The planned restoration will maintain this established character, ensuring the use remains consistent with the environmental sensitivity.
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 LDC. The existing and proposed use of the property fully complies with the applicable
zoning provisions and regulations outlined in Chapter 34 of the LDC. The site is designated EC, a zoning classification that expressly permits passive recreational activities, outdoor educational opportunities, beach access,
scenic viewing areas, boardwalks, benches, and other related amenities. The proposed improvements are consistent with these permitted uses and maintain the intended character and purpose of the EC zoning district.

Granting the requested Special Exception could impact surrounding properties as follows:
Granting the Special Exception will not adversely impact surrounding properties, as the existing beach park
has been in continuous operation for over 30 years and is uniquely positioned between the beach, preserve areas, back bay,
and the Gulf of Mexico. Of the 17+/- acre site, approximately seven acres have been developed as a public beach park designed
for passive recreational activities, while the remaining ten acres are maintained as a restoration/preservation area. This tranquil setting,
located at the end of the island, offers a serene environment that enhances, rather than disrupting the surrounding character of the area.
The approval of this request will not result in any negative impacts to the public's health, safety, comfort, convenience, or general welfare. Furthermore, the proposed Special Exception
is consistent with the intent and provisions of the Land Development Code and remains in compliance with all applicable regulations of the Comprehensive Plan.

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.

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.

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.



50 ESTERO BLVD. FORT MYERS BEACH, FL 33931

Applicant Lee County	PA ID # 071-99071-00	Applicant Representative Ashley Koza	Applicant Representative Title Lee County Engineer
Site Inspection Date May 10, 2023		Site Inspector Name Brian Mallory	
Work Order # 86658		Damage # 1291064	
Facility: ☒ Building ☐ Vehicles ☐ Equipment		Bowditch Point Beach Park- Restrooms	
GPS Latitude 26.46325		GPS Longitude -81.96621	
Physical Location (Address of Damage Site) 50 Estero Blvd. Fort Myers, FL 33931	Date Damaged September 28, 2022	Age of Facility ☒ Exact ☐ Approximate Year Built: 1994	Legal Responsibility ☒ Yes ☐ No
Number of Stories 1	Roof Type ☐ Flat ☒ Gable ☐ Shed ☐ HIP ☐ Mansard	Roof Pitch ☐ 1/12 ☐ 7/12 ☐ 2/12 ☐ 8/12 ☐ 3/12 ☐ 9/12 ☐ 4/12 ☐ 10/12 ☒ 5/12 ☐ 11/12 ☐ 6/12 ☐ 12/12	
Basement ☐ Yes ☒ No			
Facility Description: (Pre-disaster design, function, capacity, dimensions, and footprint) Facility Description Only Buildings: Roof Type/Material/Pitch/Exterior Siding, etc Vehicles /Equipment: Year/Make/Model			
The facilities are Lee County owned Womens and Mens Restrooms in nearly identical separate structures, each with steel sheeted 5/12 pitch roofs and stucco exterior finish cmu block walls located at the Bowditch Point Beach Park used by the general public for recreational beach activities.			

Page 1 of 16

201 WEST MARION AVENUE
SUITE 1306
PUNTA GORDA, FLORIDA 33950
EB # 6656
PHONE - 941-505-1700
FAX - 941-505-1702



FEMA DI #4677	
1291062	- PIER AND BOARDWALK
1291063	- GROUNDS
1291064	- RESTROOMS
1303770	- MAINTENANCE BUILDING
1303771	- MINOR STRUCTURES
1303838	- OFFICE

BOWDITCH POINT PARK
RESTORATION FOR
LEE COUNTY, FLORIDA

G100

WIND PARAMETERS
Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate $V_{ult}=159$ MPH / Nominal $V_{nom}=123$ MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: +0.00 (Open)
Component & Cladding Wind Pressure: per Calcs

FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)

GEOTECHNICAL PARAMETERS
Data Source: *TIERRA PROJECT NO. 6511-23-232*
Vertical Bearing Capacity: 8"PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE

GENERAL REQUIREMENTS

- CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND DETAILS AND SHALL NOTIFY ENGINEER IMMEDIATELY OF ANY ERRORS, OMISSIONS OR DISCREPANCIES PRIOR TO COMMENCEMENT OF WORK.
- ALL MATERIALS, EQUIPMENT, CONNECTORS, AND WORK SHALL MEET OR EXCEED THE DESIGN DATA AND COMPLIANCE CODE CITED.
- ENGINEER IS NOT RESPONSIBLE FOR ANY SUPERVISION DURING CONSTRUCTION.
- CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS PRIOR TO COMMENCING WORK AND DETERMINE THE LOCATION OF ALL ADJACENT UNDERGROUND UTILITIES PRIOR TO COMMENCING EXCAVATION AND NOTIFY ENGINEER OF ANY DISCREPANCIES PRIOR TO CONSTRUCTION.
- THE CONTRACTOR MAINTAINS THE RESPONSIBILITY FOR ALL CONSTRUCTION MEANS, METHODS AND TECHNIQUES REQUIRED FOR THE CONNECTIONS OF ALL PILING, DECK SYSTEMS AND STRUCTURES. ALL WORK SHALL BE PERFORMED IN A WORKMANLIKE MANNER.
- THE STRUCTURAL INTEGRITY OF THE STRUCTURES SHOWN ON THESE PLANS IS DEPENDENT UPON COMPLETION ACCORDING TO PLANS AND SPECIFICATIONS. STRUCTURAL MEMBERS ARE NOT SELF SUPPORTING DURING CONSTRUCTION AND REQUIRE TEMPORARY BRACING UNTIL PERMANENTLY APPLIED TO STRUCTURE AS DIRECTED. THE STRUCTURAL ENGINEER ASSUMES NO LIABILITY FOR THE STRUCTURE DURING CONSTRUCTION UNLESS THE CONSTRUCTION METHOD AND BRACING ARE INCLUDED IN THE PLANS AND SPECIFICATIONS, OR ARE SUPERVISED BY THE STRUCTURAL ENGINEER DURING CONSTRUCTION.
- CONTRACTOR SHALL BE RESPONSIBLE FOR ALL SAFETY PRECAUTIONS AND THE METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES REQUIRED TO PERFORM THE WORK. THE STRUCTURAL ENGINEER HAS NO OVERSIGHT AUTHORITY OR ACTUAL AND/OR DIRECT RESPONSIBILITY FOR THE SPECIFIC WORKING CONDITIONS AT THE SITE AND/OR FOR ANY HAZARDS RESULTING FROM THE ACTIONS OF ANY TRADE CONTRACTOR. THE STRUCTURAL ENGINEER HAS NO DUTY TO INSPECT, SUPERVISE, NOTE, CORRECT, OR REPORT ANY HEALTH OR SAFETY DEFICIENCIES OF THE OWNER, CONTRACTORS, OR OTHER ENTITIES OR PERSONS AT THE PROJECT SITE.
- IN ADDITION TO THE DEMOLITION WORK INDICATED ON THE DRAWINGS, MINOR LOCAL DEMOLITION OF EXISTING ELEMENTS MAY BE REQUIRED TO PERFORM THE STRUCTURAL WORK AS INDICATED ON THE PLANS, SECTIONS, AND DETAILS.
- CONTRACTOR SHALL REMOVE AND REPLACE ALL HURRICANE-DAMAGED OR DETERIORATED MATERIALS TO MATCH EXISTING CONSTRUCTION. NOTIFY ENGINEER IF SITE CONDITIONS DIFFER FROM PLANS.
- ANY CHANGES OR SUBSTITUTIONS SHALL BE APPROVED BY THE ENGINEER.
- BOARDWALK AND PLATFORM STRUCTURES SHALL BE DESIGNED FOR A MINIMUM UNIFORM LIVE LOAD OF 40 PSF. HANDRAILS AND GUARDS SHALL BE DESIGNED TO RESIST A PLF LINE LOAD AND A 200 LB POINT LOAD PER FBC TABLE 1607.1.
- THE ENTIRE SCOPE OF WORK SHALL MEET THE 75 FOOT RULE AND SQUARE FOOTAGE REQUIREMENTS OF NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) 10 FOR NUMBER, TYPE AND PLACEMENT OF EXTINGUISHERS.
- FIELD VERIFY ALL EXISTING ABOVE AND BELOW GROUND CONDITIONS PRIOR TO FABRICATION AND CONSTRUCTION.
- THE STRUCTURAL DESIGN OF BOARDWALKS AND PLATFORM STRUCTURES IS BASED ON THE FULL INTERACTION OF ALL ITS COMPONENT PARTS, WITH NO PROVISION FOR CONDITION OCCURRING DURING CONSTRUCTION. THEREFORE, CONTRACTOR SHALL PROVIDE ADEQUATE BRACING DURING CONSTRUCTION.
- STRUCTURAL DRAWINGS INDICATE TYPICAL AND CERTAIN SPECIFIC CONDITIONS ONLY. SHOP DRAWINGS SHALL DETAIL ALL CONDITIONS IN ACCORDANCE WITH SPECIFIED STANDARDS AND SPECIFIC REQUIREMENTS OF THIS PROJECT AS INDICATED ON THE DRAWINGS.
- CONTRACTOR SHALL APPLY FOR AND OBTAIN ALL NECESSARY PERMITS FROM ALL GOVERNING JURISDICTIONS INCLUDING CHARLOTTE COUNTY, FLORIDA, FOR STRUCTURAL, ELECTRICAL, PLUMBING, AND ALL OTHERS REQUIRED TO COMPLETE THE JOB.

GENERAL STRUCTURAL SPECIFICATIONS

- ALL WORK SHALL CONFORM TO THE FLORIDA BUILDING CODE, 8TH EDITION (2023), INCLUDING FBC - EXISTING BUILDING AND ALL REFERENCED STANDARDS.
- DESIGN LOADS:
STRUCTURAL LOADS (LOADS PER FBC TABLE 1607.1)
LIVE LOAD 100 PSF
DEAD LOAD 20 PSF
STAIR DESIGN LOADS
LIVE LOAD 60 PSF
CONCENTRATED LIVE LOAD 300 LB
HANDRAIL AND GUARDRAIL DESIGN LOADS
CONCENTRATED LOAD 200 LB
UNIFORM LINEAR LOAD 50 PLF
GRAB BARS DESIGN LOADS (FBC, SECTION 1607.7)
SINGLE CONCENTRATED LOAD AT ANY POINT AND IN ANY DIRECTION APPLIED AT TOP OF GUARDRAIL 250 LB
WIND LOADS (PER ASCE 7-22)
BUILDING RISK CATEGORY (TABLE 1.5-1) II
BASIC WIND SPEED (FIG. 26.5-1)
Ultimate (V_u) (THREE SECOND GUST) 159 MPH
Nominal (V_w) 123 MPH
IMPORTANCE FACTOR (TABLE 1.5-2) 1.00
EXPOSURE CATEGORY (26.7.3) EXPOSURE D
INTERNAL PRESSURE COEFFICIENT (TABLE 26.13-1) ±0.00 (OPEN)
COMPONENTS & CLADDING WIND PRESSURES PER PLAN
GEOTECHNICAL DESIGN DATA (PER FBC 1806)
Data Source:
Vertical Bearing Capacity:
Lateral Bearing Pressure:
RAIN DESIGN DATA (PER FBC 1611)
DESIGN RAIN EVENT 100-YEAR, 1-HR
DESIGN RAINFALL (FIG. 1611.1) 4.5-IN
FLOOD DESIGN DATA (PER FBC 1612)
FEMA FIRM MAP 12071C0554G
FEMA FIRM MAP PANEL PANEL 554I685
BASE FLOOD ELEVATION VE-13 COASTAL
3. MATERIALS
CONCRETE (NORMAL WEIGHT - 28 DAY COMPRESSIVE STRENGTH):
SLAB ON GRADE AND FOOTINGS 5,000 PSI
COLUMNS 5,000 PSI
REINFORCING STEEL FOR: CONCRETE MASONRY UNITS (CMU) WALLS, FOOTINGS, BEAMS, ETC ASTM A615, GRADE 60, FY = 60,000 PSI
WELDED WIRE MESH: ASTM A193, GRADE 80M, CLASS-1, TYPE 316 SS
ANCHOR BOLTS ASTM A193, GRADE 80M, CLASS-2, TYPE 316 SS
HIGH STRENGTH BOLTS ASTM A193, GRADE 80M, CLASS-2, TYPE 316 SS
ANCHORS OR POWER ACTUATED FASTENERS: HILTI OR APPROVED EQUAL, TYPE 316 SS
VAPOR BARRIER: 6 MILS POLYETHYLENE
GROUT: 3,000 PSI, NON SHRINK

CONSTRUCTION OBSERVATION

THE STRUCTURAL ENGINEER OF RECORD HAS NOT BEEN RETAINED TO PERFORM CONSTRUCTION OBSERVATION SERVICES FOR THIS PROJECT. THEREFORE, ANY AS-BUILT CONSTRUCTION OR CHANGES MADE TO THE STRUCTURE OR TO THESE PLANS WITHOUT THE ENGINEERS WRITTEN CONSENT SHALL RENDER THE DESIGN AND THE ENGINEERS SEAL ON THESE PLANS NULL AND VOID

EXISTING STRUCTURE

- DRAWINGS FOR THE EXISTING STRUCTURE WERE NOT AVAILABLE. ALL OF THE EXISTING CONDITIONS WERE VERIFIABLE WITHIN THE SCOPE OF ENGINEERING SERVICES. THEREFORE, IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE CONDITIONS RELATING TO THE EXISTING STRUCTURE AND TO NOTIFY THE ENGINEER IMMEDIATELY OF ANY DISCREPANCIES OR CONFLICTS.

WIND BORNE DEBRIS REGION REQUIREMENTS

- DESIGN WIND PRESSURES ARE BASED ON STRUCTURE CLASSIFICATION INDICATED IN GENERAL STRUCTURAL SPECIFICATIONS.
- ALL COMPONENTS AND CLADDING AS REQUIRED SHALL BE DESIGNED BY THE MANUFACTURER IN ACCORDANCE WITH SECTION 1609 OF THE FLORIDA BUILDING CODE FOR DESIGN PRESSURES GENERATED BY AN ULTIMATE DESIGN WIND VELOCITY AS INDICATED IN GENERAL STRUCTURAL SPECIFICATIONS.
- THE ENGINEER OF RECORD DOES NOT CERTIFY THE STRUCTURAL INTEGRITY OF THESE ITEMS.
- THE BUILDER SHALL PROVIDE NECESSARY COPIES OF DETAILS, CERTIFICATIONS, ETC., TO THE BUILDING DEPARTMENT TO SHOW COMPLIANCE WITH THIS PARAGRAPH.

APPLICABLE CODES

FLORIDA BUILDING CODE, BUILDING (FBC-B).....	2023 8 th Edition
FLORIDA BUILDING CODE, FUEL GAS (FBC-FG).....	2023 Edition
FLORIDA BUILDING CODE, MECHANICAL (FBC-M).....	2023 Edition
FLORIDA BUILDING CODE, PLUMBING (FBC-P).....	2023 Edition
FLORIDA BUILDING CODE, EXISTING BUILDING (FBC-EB).....	2023 Edition
FLORIDA BUILDING CODE, RESIDENTIAL (FBC-R).....	2023 Edition
FLORIDA FIRE PREVENTION CODE (FFPC).....	2023 8 th Edition
NATIONAL ELECTRICAL CODE (NEC).....	2020 Edition
FDOT STANDARD SPECIFICATIONS FOR ROAD & BRIDGE CONST.	Latest Edition
FDOT DESIGN STANDARDS.....	Latest Edition
FLORIDA ACCESSIBILITY CODE.....	2023 Edition

SHOP DRAWINGS

- SHOP DRAWINGS AND TEST RESULTS SHALL BE SUBMITTED TO THE ENGINEER OF RECORD FOR REVIEW. NO MODIFICATIONS OR SUBSTITUTION OF DRAWINGS AND SPECIFICATIONS WILL BE ACCEPTED VIA SHOP DRAWINGS REVIEW. ONE COPY OF ALL TEST REPORTS SHALL BE SENT DIRECTLY TO THE ENGINEER OF RECORD, AND ONE COPY TO THE COUNTY. THE FOLLOWING SHOP DRAWINGS AND TEST RESULTS SHALL BE SUBMITTED:
1.1 SUBMIT PROPOSED CONCRETE MIX DESIGN PRIOR TO CONSTRUCTION, INCLUDING BACK UP DATA IN ACCORDANCE WITH 901 CHAPTER 4, SECTION 4.2.3, EXCLUDING SECTION 4.2.3.4.6
1.2 SUBMIT DETAILED SHOP DRAWINGS OF REINFORCING BARS SHOWING NUMBER, SIZES, AND LOCATION, INCLUDE BAR LISTS AND BEND DIAGRAMS.
1.3 SUBMIT TEST RESULTS PERFORMED BY A QUALIFIED TESTING LABORATORY FOR THE FOLLOWING:
CONCRETE TEST ON:
1.3.1 CYLINDER STRENGTH TESTS - ASTM C39/C39M-23.
1.3.2 SLUMP TESTS - ASTM C143/C143M-20.
1.4 SUBMIT SOIL DENSITY TEST
1.4.1 98% COMPACTION SHALL BE ACHIEVED AT ALL LOCATIONS WHERE NEW CONCRETE IS TO BE POURED, INCLUDING ALL SLABS AND FOUNDATIONS. REQUIRE 1 DENSITY TEST PER CONCRETE APPROACH SLAB AND 1 DENSITY TEST FOR KIOSK LOCATIONS
1.4.2 USING MODIFIED PROCTOR (AASHTO T-180)
1.4.3 PROCTOR TEST TO BE SUPPLIED BY CONTRACTOR (NO ADDITIONAL PAYMENT)
1.4.4 CONTRACTOR TO SUPPLY SIGN & SEALED DENSITY TEST REPORT BY FLORIDA REGISTERED PROFESSIONAL ENGINEER.
2. CONTRACTOR SHALL REVIEW AND STAMP SHOP DRAWINGS PRIOR TO SUBMISSION TO THE ENGINEER OF RECORD. CONTRACTOR SHALL REVIEW FOR COMPLETENESS AND COMPLIANCE WITH CONTRACT DOCUMENTS.
3. SUBMIT SHOP DRAWINGS TO THE STRUCTURAL ENGINEER AS INDICATED OR SPECIFIED FOR REVIEW PRIOR TO FABRICATION. REVIEW WILL BE FOR GENERAL CONFORMANCE WITH THE DESIGN INTENT CONVEYED IN CONTRACT DOCUMENTS.
4. WHEN ENGINEER IS REQUIRED TO SIGN AND STAMP SHOP DRAWINGS AND CALCULATIONS, ENSURE SEAL INDICATES ENGINEER AS REGISTERED IN THE STATE WHERE PROJECT SITE OCCURS.
5. SHOP DRAWINGS ARE NOT PART OF CONTRACT DOCUMENTS. THEREFORE, ENGINEERS REVIEW DOES NOT CONSTITUTE AN AUTHORIZATION TO DEVIATE FROM THE TERMS AND CONDITIONS OF THE CONTRACT.
6. SHOP DRAWINGS WILL BE REJECTED FOR INCOMPLETENESS, LACK OF COORDINATION WITH OTHER PORTIONS OF CONTRACT DOCUMENTS, LACK OF CALCULATIONS (IF REQUIRED), OR WHERE MODIFICATIONS OR SUBSTITUTIONS ARE INDICATED WITHOUT PRIOR REVIEW. SUBMIT SHOP DRAWINGS AND CALCULATIONS TO GOVERNING CODE AUTHORITY WHEN SPECIFICALLY INDICATED OR REQUESTED.
7. STRUCTURAL ENGINEER REQUIRES 10 WORKING DAYS AFTER RECEIPT OF SHOP DRAWINGS AND CALCULATIONS FOR PROCESSING.
8. MAINTAIN A COPY OF ALL SHOP DRAWINGS ACCEPTED BY THE STRUCTURAL ENGINEER AT SITE DURING CONSTRUCTION PERIOD.
9. WHEN ENGINEER IS REQUIRED TO SIGN AND STAMP SHOP DRAWINGS AND CALCULATIONS, ENSURE SEAL INDICATES ENGINEER AS REGISTERED IN THE STATE WHERE PROJECT SITE OCCURS.
10. SUBMITTALS SHALL BE SUBMITTED TO ENGINEER OF RECORD FOR ANY PROPOSED ALTERNATIVES TO PRODUCTS SPECIFIED IN PLANS.

ALUMINUM SPECIFICATIONS

- WHERE OTHERWISE NOT SPECIFIED, ALUMINUM HANDRAIL FOR VERTICAL AND HORIZONTAL MEMBERS SHALL BE SEAMLESS, 1-1/2 INCH (IPS), SCHEDULE 40, 6063-T832 OR 6063-T6 ALUMINUM ALLOY PIPE. ALUMINUM FITTINGS SHALL BE OF WROUGHT MATERIAL OF THE SAME COMPOSITION AS RAILS AND POSTS OR CAST ALUMINUM OF ALUMINUM ALLOY NO. 214. ALUMINUM FITTINGS SHALL HAVE A MINIMUM THICKNESS OF 1/4-INCH. ALL SCREWS, CONNECTORS AND BOLTS SHALL BE OF STAINLESS STEEL OR 2024-T4 ALUMINUM ALLOY.
2. ALL OTHER ALUMINUM COMPONENTS SHALL BE AS NOTED.

TEST PILE REQUIRED

- TEST PILES MUST BE COMPLETED WITHIN THE AREA OF THE STRUCTURES FOUNDATION.
- THE TEST PILE MUST MATCH THE INDICATED TYPE AND BE INSTALLED USING SUITABLE METHODS ASSOCIATED WITH THE PILING TYPE.
- TEST PILES MUST INCORPORATE APPROPRIATE MONITORING DEVICES TO MEASURE PARAMETERS SUCH AS LOAD, DISPLACEMENT, AND SOIL PRESSURES DURING PILE DRIVING OR LOADING TESTS.
- LOAD TESTS, INCLUDING STATIC LOAD, DYNAMIC LOAD, AND PILE INTEGRITY TESTS, ARE REQUIRED TO EVALUATE PILE CAPACITY AND PERFORMANCE.
- PREPARE A COMPREHENSIVE REPORT DOCUMENTING TEST PILE INSTALLATION, INSTRUMENTATION SETUP, LOAD TEST PROCEDURES, AND RESULTS. PRESENT FINDINGS TO THE ENGINEER OF RECORD FOR REVIEW AND APPROVAL BEFORE INSTALLING ADDITIONAL PILING.

PILE INSTALLATION

- WHEN PRE-DRILLING PILES, PERMANENT AND TEST PILES MAY BE PREDRILLED UP TO 10 FT OR 20% OF THE EMBEDMENT LENGTH. FOR THE 10" PILES CALLED FOR ON THIS PROJECT, THE PREDRILLED HOLE SHALL NOT EXCEED THE PILE DIAMETER. IF OBSTRUCTIONS OR ROCK IS ENCOUNTERED, THE PREDRILLED HOLE SHALL NOT EXCEED A MAXIMUM OF 12" THROUGH THE OBSTRUCTION. CLEAN SAND SHALL BE BACKFILLED WHERE OBSTRUCTIONS MUST BE DRILLED THROUGH. (FDOT 455-S-1.1)
2. PILES SHALL HAVE EMBEDMENT TO PRACTICAL REFUSAL AS DEFINED AS 10 BLOWS PER INCH OR LESS THAN ONE INCH PENETRATION, WITH THE HAMMER OPERATING AT THE HIGHEST SETTING DETERMINED BY THE ENGINEER AND LESS THAN 1/4 INCHES REBOUND PER BLOW THEN PILE SHALL BE CUT TO REQUIRED HEIGHT.
3. ALL BOLTS, FASTENERS, BRACKETS AND STRAPS SHALL SHALL BE 316 STAINLESS STEEL, UNLESS NOTED OTHERWISE. BOLT END SHALL EXTEND PAST THE STAINLESS STEEL NUT BY A MINIMUM OF THREE (3) THREADS.
4. THE CUTTING OF BOLTS SHALL BE AVOIDED. SHOULD BOLTS REQUIRE CUTTING THE BOLT SHALL BE CUT USING VIRGIN CERAMIC GRINDING DISK AND THE CUT SHALL HAVE TWO COATS APPLIED OF COLD GALVANIZING PAINT.

FOUNDATION SOIL

1) FOUNDATION AND SLAB NOTES: SUB-GRADE PREPARATION INCLUDING DRAINAGE, EXCAVATION, COMPACTION, AND FILLING REQUIREMENTS, SHALL CONFORM STRICTLY WITH RECOMMENDATIONS GIVEN IN THE SOILS REPORT OR AS DIRECTED BY THE PROJECT REPRESENTATIVE.

2) FOOTINGS SHALL BEAR ON SOLID UNDISTURBED EARTH (CONTROLLED, COMPACTED STRUCTURAL FILL OR BOTH) AT LEAST 18" BELOW LOWEST ADJUTANT GRADE. FOOTING DEPTHS/ELEVATIONS SHOWN ON PLANS (OR IN DETAILS) ARE MINIMUM AND FOR GUIDANCE ONLY. THE ACTUAL ELEVATIONS OF FOOTINGS MUST BE ESTABLISHED BY THE CONTRACTOR IN THE FIELD WORKING WITH THE TESTING LAB SOILS ENGINEER. BACKFILL BEHIND ALL RETAINING WALLS WITH FREE DRAINING GRANULAR FILL AND PROVIDE FOR SUBSURFACE DRAINAGE AS NOTED IN THE SOILS REPORT.

3) ALLOWABLE SOIL PRESSURE..... 2,000 PSF
LATERAL EARTH PRESSURE (RESTRAINED/UNRESTRAINED)..... 60 PCF / 35 PCF

4) ALL FILL SHALL BE CLEAN SELECT MATERIAL FREE OF DELETERIOUS MATERIALS SUCH AS WOOD, ROOTS, TRASH, OR OTHER EXTRANEIOUS MATERIALS. PLACE FILL IN 1' LIFTS, MEASURED LOOSE, AND COMPACT EACH LIFT TO 95% MAXIMUM DENSITY AT OPTIMUM MOISTURE CONTENT AS MEASURED BY ASTM D688.

5) FOUNDATION CONCRETE SHALL BE PLACED BEFORE DETERIORATION OF THE SUB-GRADE DUE TO WEATHER, GROUND WATER SEEPAGE, FOOT TRAFFIC, OR CONSTRUCTION OPERATIONS. ANY PORTIONS OF THE SUBGRADE PERMITTED TO DETERIORATE SHALL BE REMOVED AND REPLACED WITH AN APPROVED COMPACTED BACKFILL OR LEAN CONCRETE (FLOWABLE FILL) WITHOUT ADDITIONAL COMPENSATION TO THE CONTRACTOR.

6) PROVIDE BOTH TERMITE PROTECTION & VEGETABLE GROWTH RETARDANT TREATMENT OF THE SOIL. TREATMENT MUST EXTEND 1'-0" OUT FROM BUILDING. A CERTIFICATION OF WORK COMPLETED IS REQUIRED AND MUST BE POSTED. USE SENTRION BAIT TERMITE TREATMENT SYSTEM OR APPROVED EQUAL.

7) COMPACT BACKFILL 5'-0" OUT FROM BUILDING.

8) A PERMANENT SIGN WHICH IDENTIFIES THE TERMITE TREATMENT PROVIDER AND NEED FOR REINSPECTION AND TREATMENT CONTRACT RENEWAL SHALL BE PROVIDED. THE SIGN SHALL BE POSTED NEAR THE WATER HEATER OR ELECTRIC PANEL.

9) CONDENSATE AND ROOF DOWNSPOUTS SHALL DISCHARGE AT LEAST 12" FROM BUILDING AND SIDE WALLS.

10) IRRIGATION / SPRINKLER SYSTEMS INCLUDING ALL RISERS AND SPRAY HEADS SHALL NOT BE INSTALLED WITHIN 1'-0" (12 INCHES) / 12" OF THE BUILDING SIDE WALLS.

11) INITIAL TERMITE TREATMENT SHALL BE DONE AFTER ALL EXCAVATION AND BACKFILL IS COMPLETE.

12) SOIL DISTURBED AFTER INITIAL TREATMENT SHALL BE RETREATED INCLUDING SPACES, BOXED OR FORMED.

13) SOIL TREATMENT MUST BE APPLIED UNDER ALL EXTERIOR CONCRETE OR GRADE WITHIN 12 INCHES (12") OF THE STRUCTURE SIDEWALLS.

14) AN EXTERIOR VERTICAL CHEMICAL BARRIER MUST BE INSTALLED AFTER CONSTRUCTION IS COMPLETE INCLUDING LANDSCAPING AND IRRIGATION. ANY SOIL DISTURBED AFTER VERTICAL BARRIER IS APPLIED SHALL BE RETREATED.

15) ALL BUILDINGS TO HAVE PRE CONSTRUCTION TREATMENT.

16) A CERTIFICATE OF COMPLIANCE MUST BE ISSUED TO THE BUILDING DEPARTMENT BY A LICENSED PEST CONTROL COMPANY BEFORE ANY FINAL INSPECTIONS WILL BE ISSUED THE CERTIFICATE OF COMPLIANCE SHALL STATE: "THE BUILDING HAS RECEIVED A COMPLETE TREATMENT FOR PREVENTION OF SUBTERRANEAN TERMITES. THE TREATMENTS IN ACCORDANCE WITH THE RULES AND LAWS OF THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES."

17) AFTER ALL WORK IS COMPLETED, LOOSE WOOD, AND FILL MUST BE REMOVED FROM BELOW AND WITHIN 12" OF THE BUILDING. THIS INCLUDES ALL GRADE STAKES, TUB TRAP BOXES, FORMS, SHORING OR OTHER CELLULOSE CONTAINING MATERIAL.

18) NO WOOD, VEGETATION, STUMPS, CARDBOARD, TRASH, ETC. SHALL BE BURIED WITHIN 15 FEET OF ANY BUILDING OR PROPOSED BUILDING.

LUMBER

- CODES AND STANDARDS (CURRENT EDITIONS)
1.1. AMERICAN WOOD COUNCIL (AWC)
1.2. AMERICAN WOOD PROTECTION ASSOCIATION (AWPA)
1.3. 2024 NATIONAL DESIGN SPECIFICATION (NDS) FOR WOOD CONSTRUCTION
2. DIMENSIONAL LUMBER SHALL BE SOUTHERN PINE WITH THE MINIMUM NOMINAL DESIGN VALUES PER AWC NDS.
3. WHERE SPECIFIED, ENGINEERED LUMBER PRODUCTS SHALL BE PER MANUFACTURER PROVIDED DESIGN VALUES. CONTRACTOR SHALL PROVIDE SUBMITTAL FOR ALL ENGINEERED LUMBER PRODUCTS.
4. ALL WOOD IN CONTACT WITH CONCRETE, MASONRY, OR SOIL, EXPOSED TO WEATHER, OR AT OTHER LOCATIONS AS SHOWN ON STRUCTURAL DRAWINGS, SHALL BE PROTECTED OR PRESSURE TREATED IN ACCORDANCE WITH AMERICAN WOOD PROTECTION ASSOCIATION (AWPA) REQUIREMENTS. PRESSURE TREATMENT APPROPRIATE FOR LUMBER IN CONTACT WITH SOIL SHALL BE PROVIDED WHERE APPLICABLE.
4.1. ALL NEW WOOD PILES MUST UNDERGO DUAL TREATMENT (UNLESS NOTED OTHERWISE):
4.1.1. FIRST TREATMENT WITH CHROMIUM COPPER ARSENATE (CCA) 1.00, FOLLOWED BY
4.1.2. SECOND TREATMENT WITH CRESOSOTE SOLUTION (CR-S) 20.00.
4.2. ALL NEW BENITS AND STRINGERS MUST ADHERE TO THE AMERICAN WOOD COUNCIL'S USE CATEGORY UC4B AND BE TREATED WITH 0.60 POUNDS PER CUBIC FOOT (PCF) OF CCA (UNLESS NOTED OTHERWISE).
4.3. ANY GUARDS AND DECKING, EXCLUDING HIGH-DENSITY POLYETHYLENE (HDPE) DECKING, MUST BE TREATED WITH 0.60 PCF ALKALINE COPPER QUATERNARY (ACQ), OR 0.31 PCF COPPER AXOLE (CA), OR 0.23 PCF CAC, OR MICRONIZED COPPER AZOLE E (MCA), ANY GUARDS AND DECKING, WHERE DECKING IS NOT HIGH DENSITY POLYETHYLENE (HDPE), SHALL BE TREATED WITH 0.60 PCF ACQ OR 0.31 PCF CA OR 0.23 PCF WOLMAN 6 E (WCA-6) OR MCA.

WOOD PRESERVATION TREATMENT		
APPLICATION	AWPA USE CATEGORY	TREATMENT (LBS/CU FT.)
IN CONTACT WITH METAL ROOFING	UC2	0.018 PCF PTI OR EQUAL + (0.019 PCF EL2, 0.14 PCF UC4C, 0.15 PCF MCA, OR 0.17 PCF SBX)
ABOVE GROUND USE	UC3B	ACQ 0.25
CONCRETE OR GROUND CONTACT, IN-GROUND USE, DECKING, ROOF COMPONENTS	UC4A	0.40 PCF ACQ OR EQUAL + (0.14 PCF UC4-C, 0.15 PCF MCA, OR 0.15 PCF CA)
STRINGERS & BENTS 2X6-2X10, ROOF POSTS 6X6-10X10	UC4B	0.60 PCF ACQ OR 0.31 PCF CA OR 0.23 PCF OF UC4C OR MCA
SPLIT PILE GAP 3X10, STRINGERS & BENTS 2X8-3X10	UC4B	0.60 PCF CCA
UPLAND PILES IN GROUND OR FRESHWATER PILES	UC4C	0.80 PCF CCA OR 0.41 CA
SALTWATER EXPOSURE PILES, CROSS BRACING, AND WALERS	UC5C	DUAL TREATMENT AS PRODUAS OR SPHAEROMA TEREBRANS ARE PRESENT: FIRST CCA 1.00 SECOND, CR OR CR-S 20.00

5. WALL STUDS SHALL BE CAPPED WITH A DOUBLE PLATE, INSTALLED TO PROVIDE OVERLAPPING AT CORNERS AND INTERSECTIONS WITH BEARING PARTITIONS.

6. ENGINEERED WOOD TRUSS SYSTEMS SHALL BE DESIGNED BY SUPPLIER'S DELEGATED ENGINEER TO CONFIGURATION AND LOAD-CARRYING CAPACITY SHOWN ON DRAWINGS AND SPECIFICATIONS. ALTERNATE TRUSS LAYOUTS ARE ACCEPTABLE ONLY AS A CHANGE ORDER WHICH WILL INCLUDE ENGINEERING CHARGES FOR REDESIGN OF THE STRUCTURE BY THE ENGINEER OF RECORD. SUBMIT SHOP DRAWINGS FOR REVIEW PRIOR TO FABRICATION. SHOP DRAWINGS SHALL SHOW AND SPECIFY ALL CONNECTOR TYPES UTILIZED WITHIN TRUSSES, AS WELL AS CONNECTORS UTILIZED IN ALL OTHER CONNECTIONS AND ATTACHMENTS BETWEEN TRUSSES OR COMPONENTS SUPPLIED AS PART OF THE ENGINEERED TRUSS SYSTEM. A PLACING PLAN SHALL BE INCLUDED, IDENTIFYING ALL TRUSS SYSTEM COMPONENTS, AS WELL AS ALL PERMANENT BRACING REQUIRED FOR TRUSS DESIGN.

7. ENGINEERED SHOP DRAWINGS SHALL BEAR THE SIGNATURE AND IMPRESSED SEAL OF A FLORIDA REGISTERED PROFESSIONAL ENGINEER AS THE SPECIALTY ENGINEER. THE FOLLOWING LOAD DURATION FACTORS SHALL BE USED FOR ALLOWABLE STRESS DESIGN (ASD):

7.1. DEAD LOAD	0.90
7.2. DEAD LOAD + FLOOR LIVE LOAD	1.00
7.3. DEAD LOAD + ROOF LIVE LOAD	1.25
7.4. DEAD LOAD + WIND LOAD	1.60

8. WHERE STRENGTH DESIGN (LRFD) IS UTILIZED ON ENGINEERED SHOP DRAWINGS, THE FOLLOWING TIME EFFECT FACTORS SHALL BE USED:

8.1. 1.40	0.60
8.2. 1.20 + 1.6L + 0.5(L _r S, R)	0.70 (L FROM STORAGE)
8.2. 1.20 + 1.6L + 0.5(L _r R)	0.80 (L FROM OCCUPANCY)
8.2. 1.20 + 1.6L + 0.5(L _r S, R)	1.25 (L FROM IMPACT)
8.3. 1.20 + 1.6(L _r S, R) + (L _r 0.5W)	1.00
8.4. 1.20 + 1.0W + 1.4L + 0.5(L _r S, R)	1.00
8.5. 1.20 + 1.0E + 1L + 0.25	1.00
8.6. 0.90 + 1.0W	1.00
8.7. 0.90 + 1.0E	1.00

9. DECK SHEATHING SHALL BE INSTALLED LONG DIMENSION PERPENDICULAR TO FRAMING AND END JOINTS SHALL BE STAGGERED.

10. ROOF AND FLOOR SHEATHING SHALL BE INSTALLED LONG DIMENSION PERPENDICULAR TO FRAMING AND END JOINTS SHALL BE STAGGERED.

11. PLYWOOD FLOOR, WALL, AND ROOF SHEATHING ARE DESIGNED AS DIAPHRAGMS AND SHALL COMPLY WITH APPLICABLE PROVISIONS OF CHAPTER 23 OF THE 2023 FLORIDA BUILDING CODE (FBC-2023). UNLESS SHOWN OTHERWISE SPAN RATED PANELS SHALL BE FASTENED TO NOMINAL 2X4 SOUTHERN PINE FRAMING SPACED UP TO 24" O/C IN ACCORDANCE WITH THE FOLLOWING:

- 11.1. PANELS UP TO 5/8" THICK: 10D NAILS AT 4" O/C ALONG SUPPORTED PANEL EDGE, 6" O/C ELSEWHERE, U.N.O.
- 11.2. PANELS UP TO 3/4" THICK: 12D NAILS AT 4" O/C ALONG SUPPORTED PANEL EDGE, 6" O/C ELSEWHERE, U.N.O.

12. ROOF SHEATHING SHALL BE NAILED WITH RING-SHANK NAILS IN ACCORDANCE WITH THE FLORIDA BUILDING CODE.

13. AT GABLE ENDWALLS, GABLE END TRUSSES, AND ALL COMPONENT AND CLADDING EDGE STRIP 3' LOCATIONS, SPACE NAILS AT 4" O/C AT ALL EDGES AND INTERMEDIATE SUPPORTS.

14. NAILING, JOIST BLOCKING, AND RAFTER BLOCKING SHALL MEET THE MINIMUM REQUIREMENTS OF CHAPTER 23 OF THE FLORIDA BUILDING CODE UNLESS MORE STRINGENT REQUIREMENTS ARE INDICATED ON THE PLANS.

15. ALL CONNECTORS SHALL BE TYPE 316 STAINLESS STEEL (SS). CONNECTOR MODEL NUMBERS SHOWN ARE STRONG-TIE CONNECTORS AS MANUFACTURED BY SIMPSON STRONG-TIE CO. PO BOX 10789, PLEASANTON, CA 94588 OR USP CONNECTORS AS MANUFACTURED BY MITEK, INC. 18023 SWINGWILE RIDGE RD, CHESTERFIELD, MO 63017. SUBSTITUTIONS ARE ACCEPTABLE WITH THE APPROVAL OF THE STRUCTURAL ENGINEER. UNLESS SHOWN OTHERWISE, INSTALL SIZE AND NUMBER OF FASTENERS PER MANUFACTURER INSTALLATION INSTRUCTIONS. ALL CONNECTORS TO PRESSURE TREATED LUMBER SHALL BE TYPE 316 STAINLESS STEEL (SS).

16. ANY NOTE REQUIRING A RING SHANK MAY BE SCREW SHANK FOR AUTOMATIC NAILING

17. ALL STRUCTURAL WOOD SHALL BE PRESSURE TREATED TO AWPA U1, UC4B OR UC4C AS REQUIRED. ALL CONNECTORS AND FASTENERS SHALL BE HOT-DIPPED GALVANIZED PER ASTM A153 OR TYPE 316 STAINLESS STEEL FOR COASTAL EXPOSURE.

WOOD TRUSSES

- ALL WOOD TRUSSES SHALL BE IN ACCORDANCE WITH "NATIONAL DESIGN SPECIFICATION (NDS) FOR WOOD CONSTRUCTION" AND DESIGN SPECIFICATION FOR METAL PLATE CONNECTED WOOD TRUSSES", TRUSS PLATE INSTITUTE (TPI)
- SHOP DRAWINGS, SIGNED AND SEALED BY A PROFESSIONAL ENGINEER REGISTERED IN THE STATE OF THE PROPOSED CONSTRUCTION, SHALL BE SUBMITTED TO THE ENGINEER FOR APPROVAL PRIOR TO FABRICATION. SHOP DRAWINGS SHALL INCLUDE THE FOLLOWING ITEMS:
* DRAFTED PLAN LAYOUTS IDENTIFYING ALL TRUSSES AND MEANS OF SUPPORT (I.E. COLUMNS OR BEAMS BY OTHERS)
* CALCULATIONS FOR LOAD DETERMINATION ON TRUSSES, GIVING UNIFORM LOADS (PARTIAL OR OTHERWISE) AND/OR POINT LOADS
* TRUSS CONFIGURATION DRAWING GIVING STRESSES ON ALL MEMBERS, REACTIONS AT SUPPORTS AND STRESSES ON ALL MEMBERS, INCLUDING PLATES.
- ALL POINT LOADS, PARTIAL UNIFORM LOADS OR COMBINATIONS THEREOF SHALL BE DETERMINED BY THE TRUSS MANUFACTURER AND ACCOUNTED FOR IN THE DESIGN.
- TRUSS MANUFACTURER WILL PROVIDE CALCULATIONS INDICATING ADDITIONAL WIND, WATER AND DEAD LOADS FOR ROOF LOCATIONS WITH GUSSETS AND VALLEY LOCATIONS REQUIRING ADDITIONAL ROOF FRAMING FOR INTERSECTIONS WITH HIGHER OR LOWER ROOFS IN ACCORDANCE WITH ASCE 7-10/2010
- TRUSS MANUFACTURER SHALL SPECIFY ALL PRE-FABRICATED LUMBER HARDWARE.
- CUTTING AND/OR NOTCHING OF PRE-FABRICATED TRUSSES IS NOT PERMITTED. CUTTING AND/OR NOTCHING WILL REQUIRE NEW ENGINEERING AND AN APPROVED "REVISION" WITH THE BUILDING DEPARTMENT PRIOR TO CALLING FOR INSPECTION.
- FLOOR TRUSS ENGINEER SHALL TAKE INTO ACCOUNT UPLIFT LOADS THAT RESULT FROM WIND PRESSURE BELOW THE BUILDING.

LEVEL 2 ALTERATION NOTES:

BASED ON THE CURRENT SCOPE, THIS PROJECT DOES NOT MEET THE CRITERIA FOR A LEVEL 2 ALTERATION UNDER THE FLORIDA BUILDING CODE - EXISTING BUILDING, 8TH EDITION (2023). THE WORK IS LIMITED TO REPAIR AND IN-KIND REPLACEMENT OF COMPONENTS DAMAGED BY HURRICANES IAN AND HELENE. THIS INCLUDES:

- REPLACING WINDOWS AND DOORS WITH NO CHANGES TO OPENINGS OR CONFIGURATIONS
- REPLACING BOARDWALK DECKING AND STRUCTURAL COMPONENTS IN THEIR ORIGINAL ALIGNMENT
- REFINISHING AND MINOR REPAIR OF EXPOSED STRUCTURAL CONCRETE ELEMENTS (E.G., SPALLS AND SURFACE DEGRADATION)
- NO RECONFIGURATION OF SPACE, CHANGES IN OCCUPANCY, OR SYSTEM MODIFICATIONS ARE PROPOSED. AS SUCH, THE PROJECT IS CLASSIFIED AS A LEVEL 1 ALTERATION IN ACCORDANCE WITH FBC-EB 606.1.
- THE FOLLOWING NOTE WILL BE ADDED TO THE COVER SHEET OR CODE COMPLIANCE SHEET FOR CLARITY:
LEVEL 1 ALTERATION COMPLIANCE NOTE:
THIS PROJECT IS CLASSIFIED AS A LEVEL 1 ALTERATION UNDER THE FLORIDA BUILDING CODE - EXISTING BUILDING, 8TH EDITION (2023). THE SCOPE IS LIMITED TO THE REPAIR AND IN-KIND REPLACEMENT OF HURRICANE-DAMAGED COMPONENTS INCLUDING WINDOWS, DOORS, BOARDWALKS, AND STRUCTURAL CONCRETE. NO RECONFIGURATION OF SPACE, EQUIPMENT CHANGES, OR OCCUPANCY MODIFICATIONS ARE PROPOSED.

FLOOD ZONE DETAILS:

- THE SITE IS LOCATED WITHIN FEMA FLOOD ZONE VE (EL 13') PER THE EFFECTIVE FIRM PANEL ON THE ATTACHED FIRMETTE. EXCEPTED FROM THE NATIONAL FLOOD HAZARD LAYER (NHL), EXPORTED ON 30 JANUARY 2025. THE VE DESIGNATION INDICATES A COASTAL HIGH HAZARD AREA SUBJECT TO WAVE ACTION, AS DEFINED BY FEMA.
- WE WILL INCLUDE A NOTE ON THE SITE PLAN AND CODE COMPLIANCE SHEET SIMILAR TO THE FOLLOWING:
FLOODPLAIN NOTE:
THE SUBJECT PROPERTY LIES WITHIN FEMA FLOOD ZONE VE (EL 13') PER THE EFFECTIVE FIRM PANEL REFERENCED IN THE ATTACHED FIRMETTE. ALL IMPROVEMENTS SHALL COMPLY WITH APPLICABLE REQUIREMENTS OF FBC SECTION 1612, ASCE 24, AND LOCAL FLOODPLAIN MANAGEMENT REGULATIONS PERTAINING TO CONSTRUCTION IN COASTAL HIGH HAZARD AREAS.

WOOD NOTES FOR THE BOARDWALKS:

PLEASE REFER TO THE ORIGINAL AS-BUILT PLANS FOR BOARDWALK CONSTRUCTION DETAILING. THE FOLLOWING NOTES AND CALCUTS SHOULD BE INCORPORATED INTO THE DWS CONSTRUCTION TO ENSURE ACCURACY AND PRESERVATION OF MATERIAL INTENT.

BOARDWALK CONSTRUCTION NOTES FROM AS-BUILTS (INCLUDE AS GENERAL NOTES OR WITHIN APPROPRIATE DETAIL SHEETS):

- DECKING:
1.1 2"x6" PRESSURE TREATED SOUTHERN YELLOW PINE (SYP) DECK BOARDS, ORIENTED PERPENDICULAR TO STRINGERS.
1.2 DECK BOARDS TO HAVE A 1/8" TO 1/4" GAP BETWEEN BOARDS FOR DRAINAGE.
1.3 SCREWED WITH STAINLESS STEEL OR CERAMIC-COATED DECKING SCREWS (MINIMUM TWO PER JOIST BEARING).
- FRAMING:
2.1 JOISTS: 2X10' OR 2X12' PT SYP @ 16" O/C (VERIFY PER STRUCTURAL SHEET).
2.2 STRINGERS/BEAMS: DOUBLE 2X12' PT SYP BOLTED TOGETHER AT 24" O/C.
2.3 JOIST HANGERS AND CONNECTORS TO BE HOT-DIPPED GALVANIZED OR STAINLESS STEEL PER COASTAL EXPOSURE.
- POSTS AND PILES:
3.1 MINIMUM 8"Ø (NOMINAL) ROUND TIMBER PILES. PRESSURE TREATED TO AWPA UC4C STANDARDS.
3.2 EMBEDMENT DEPTH PER STRUCTURAL DETAIL OR GEOTECHNICAL RECOMMENDATION (TYPICALLY 10'-12' MIN).
3.3 ALL PILES TO BE CROWNED AND CHAMFERED.
- GUARDRAILS / HANDRAILS:
4.1 TOP AND MIDRAILS: 2X6" PT SYP
4.2 POSTS: 4X4" PT SYP AT 6'-0" OC MAX.
4.3 VERTICAL BALUSTERS: 2X2" PT SYP AT 4" OC MAX SPACING (PER ADA / SAFETY REQUIREMENT)
- FINISHES AND PROTECTION:
5.1 ALL WOOD EXPOSED TO WEATHER SHALL BE PRESSURE TREATED AND RATED FOR GROUND CONTACT OR SEVERE EXPOSURE.
5.2 ALL CUTS SHALL BE FIELD-TREATED WITH APPROVED END-CUT PRESERVATIVE.

STRUCTURAL ABBREVIATIONS		AR	ANCHOR ROD
		ARCH	ARCHITECTURE
		ASD	ALLOWABLE STRESS
			ENGINEERS
#	NUMBER OR POUND	ASSY	ASSEMBLY
Ø	ROUND OR DIAMETER	ASTM	AMERICAN SOCIETY F
□	SQUARE		TESTING AND MATER
△	AND	AWC	AMERICAN WOOD CO
@	AT	AWPA	AMERICAN WOOD
∅	DIAMETER OF REINFORCEMENT BAR		PROTECTION ASSOCI
		AWS	AMERICAN WELDING S
ACI	AMERICAN CONCRETE INSTITUTE	B'	BOTTOM OF
		B/ BETWEEN	BETWEEN
ADA	AMERICANS WITH DISABILITIES ACT	BOT	BOTTOM
		BTM	BOTTOM
AFF	ABOVE FINISH FLOOR	BM	BEAM
AH	AIR HANDLER	BLD	BUILDING
ALUM	ALUMINUM	BPL	BASE PLATE
		BRG	BEARING
ANSI	AMERICAN NATIONAL STANDARDS INSTITUTE	C TO C	CENTER TO CENTER

REVISIONS	DESCRIPTION	DATE	NO.

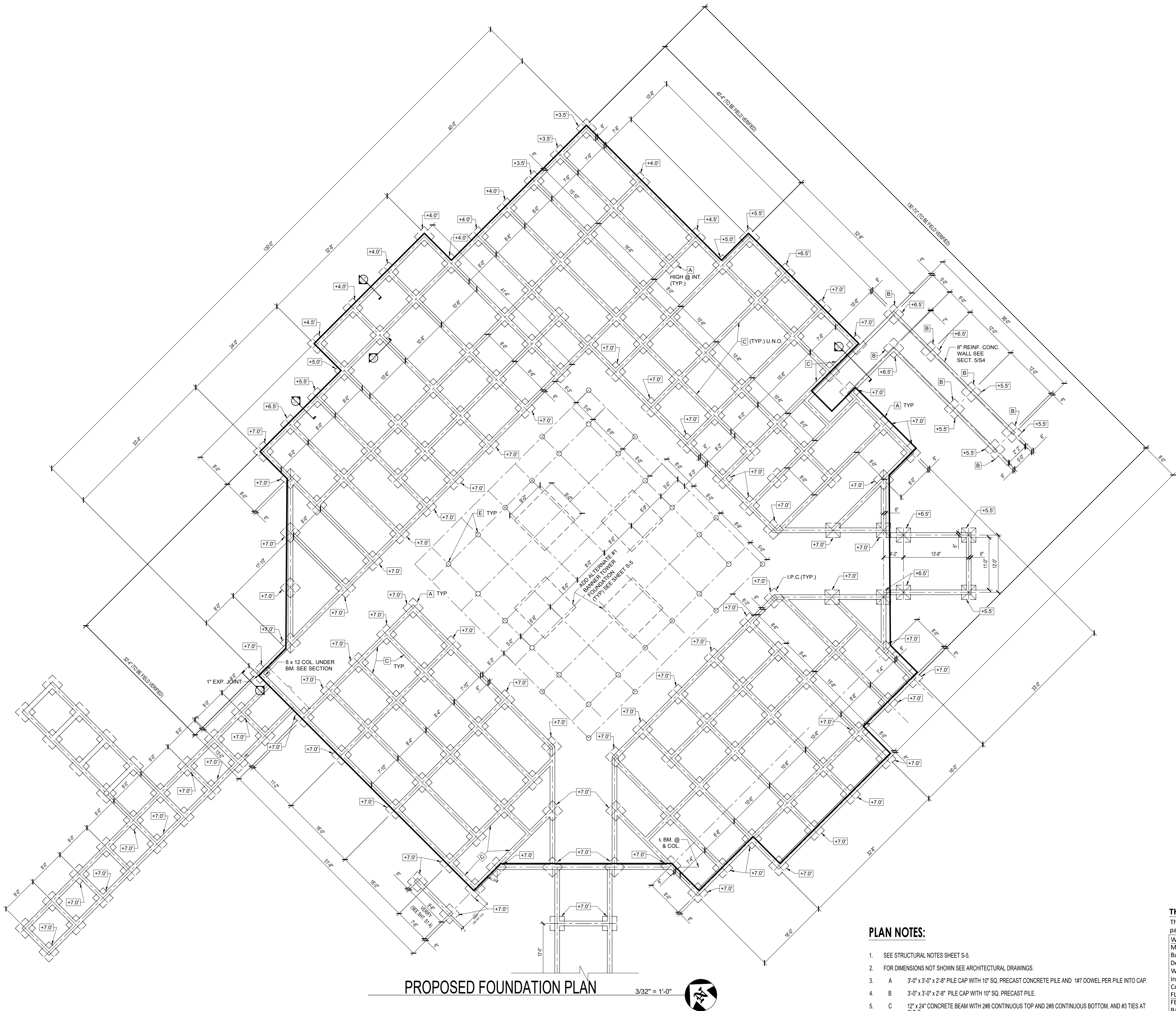
DATE:	07-30-2025
PROJECT NO.	25095.001
FILE NO.	~~~~
SCALE:	N/A

PROPOSED
FOUNDATION PLAN

SHEET NUMBER

S100

PROGRESS PRINT - NOT FOR CONSTRUCTION - DO NOT REPRODUCE



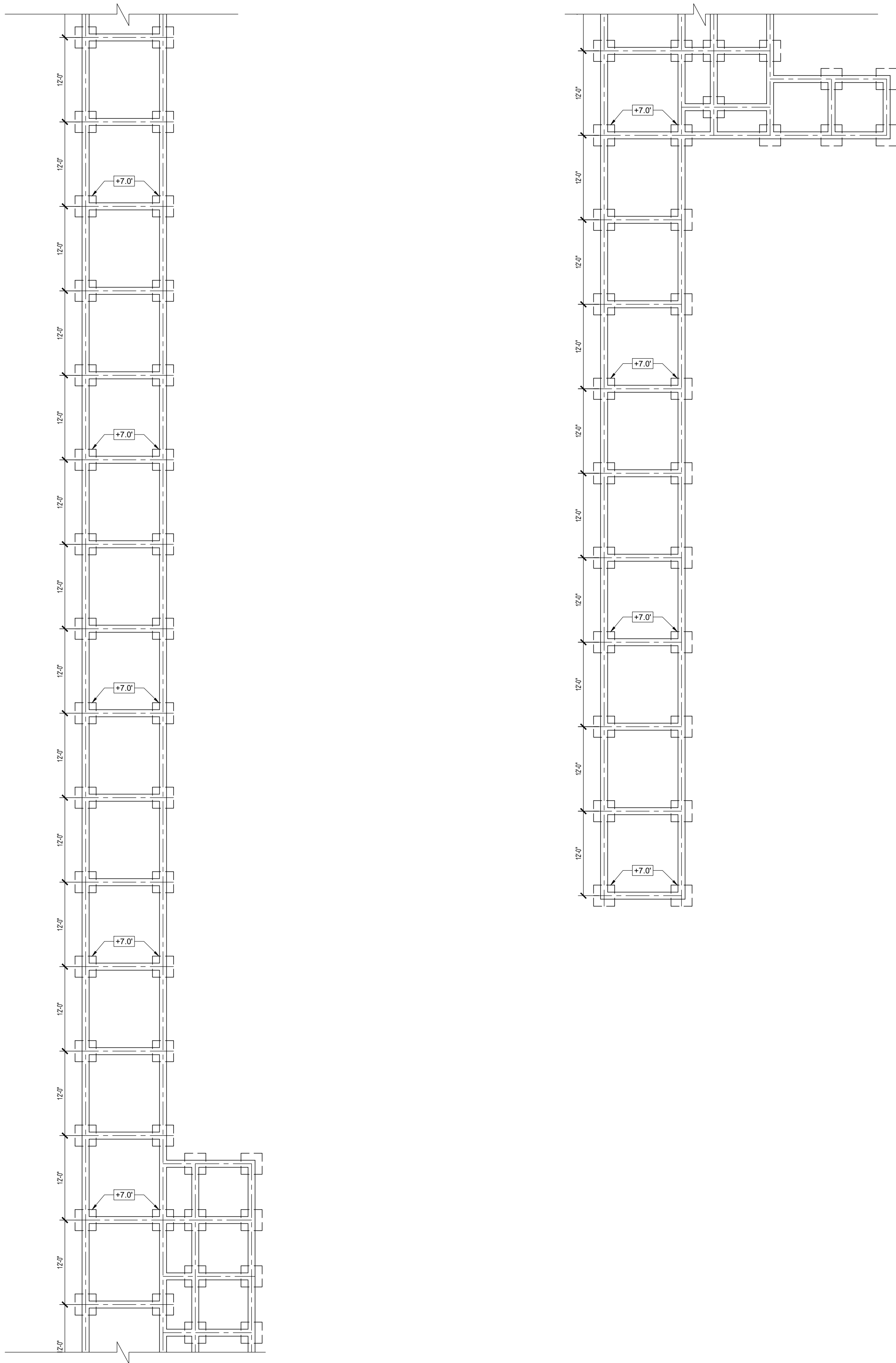
PLAN NOTES:

- SEE STRUCTURAL NOTES SHEET S-5.
- FOR DIMENSIONS NOT SHOWN SEE ARCHITECTURAL DRAWINGS.
- A 3'-0" x 3'-0" x 2'-8" PILE CAP WITH 10" SQ. PRECAST CONCRETE PILE AND 1/8" DOWEL PER PILE INTO CAP.
- B 3'-0" x 3'-0" x 2'-8" PILE CAP WITH 10" SQ. PRECAST PILE.
- C 12" x 24" CONCRETE BEAM WITH 2#8 CONTINUOUS TOP AND 2#8 CONTINUOUS BOTTOM, AND #3 TIES AT 8" O.C.
- E 12" DIAMETER WOOD PILE.
- ELEVATION @ TOP OF HIGH PILE CAPS IS BOTTOM OF SLAB, SLAB SLOPES AND ELEVATION VARIES.

THE WEILER ENGINEERING CORPORATION

These plans are in Compliance with Florida Building Code 2023 for wind parameters indicated.

WIND PARAMETERS
Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate V_{ult} = 159 MPH / Nominal V_{asd} = 123 MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: ±0.00 (Open)
Component & Cladding Wind Pressure: per Calcs
FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)
GEOTECHNICAL PARAMETERS
Data Source: TIERRA PROJECT NO. 6511-23-232
Vertical Bearing Capacity: 8" PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE



PROPOSED FOUNDATION PLAN

3/32" = 1'-0"



PLAN NOTES:

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FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)
GEOTECHNICAL PARAMETERS
Data Source: TIERRA PROJECT NO. 6511-23-232
Vertical Bearing Capacity: 8"PILE:4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE

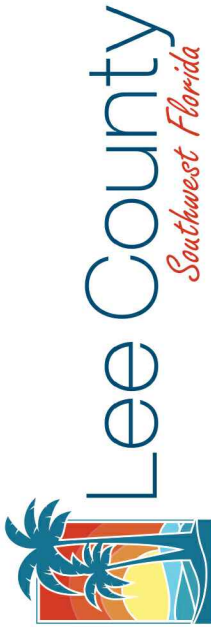


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FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.B. #642 & L.B. #642



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1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702

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CONSTRUCTION



BOWDITCH POINT PARK
RESTORATION FOR
LEE COUNTY, FLORIDA

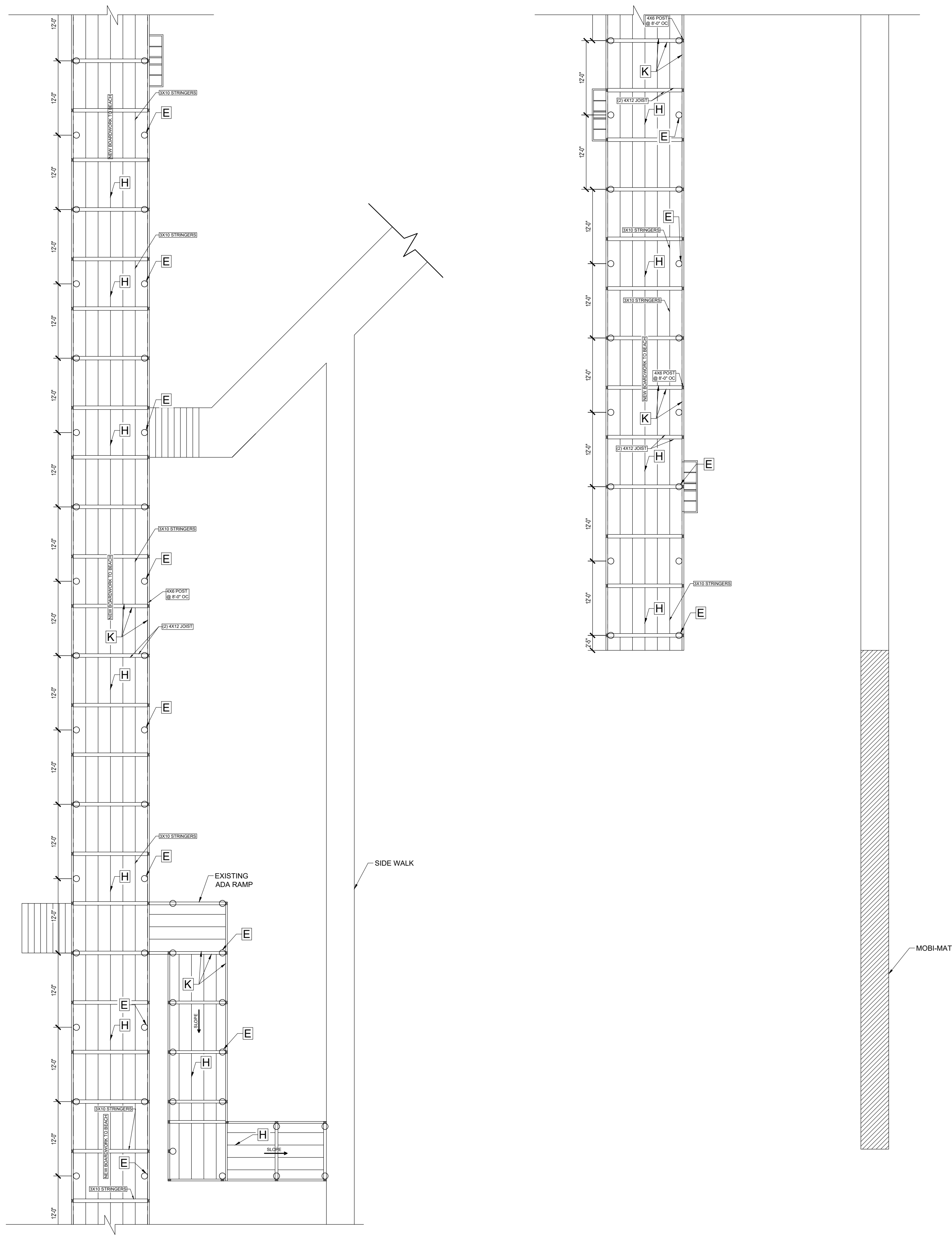
REVISIONS	DESCRIPTION	DATE			
			NO.		

DATE:	07-30-2025
PROJECT NO.	25095.001
FILE NO.	~~~~
SCALE:	N/A

PROPOSED
FOUNDATION PLAN

SHEET NUMBER

S100.1



PROPOSED BOARDWALKS FRAMING PLAN

$$3/32'' = 1'-0''$$


PLAN NOTES:

1. SEE STRUCTURAL NOTES SHEET S-5.
2. TOP OF SLAB ELEVATIONS ARE TRUE ELEVATIONS ABOVE MEAN SEA LEVEL. VERIFY AND COORDINATE ELEVATIONS WITH CIVIL DRAWINGS.
3. INDICATES "B" MASONRY WALLS. REINFORCE WITH #5 VERTICAL AT 48" O.C. U.N.O. PROVIDE AN ADDITIONAL #5 VERTICAL AT EACH FIRST CELL EACH SIDE OF OPENING, WALL INTER-SECTIONS, AND AT CORNERS. GROUP CELLS SOLID.
4. PROVIDE SPACED 2X6 WOOD DECKING AT ALL WOOD FRAMING. NAIL EACH 2X6 TO EACH SUPPORT WITH TWO 12D FACE NAILS. SEE ARCHITECTURAL DRAWINGS FOR SPACING.
5. SLAB SHALL BE A 6" CONCRETE SLAB W/11#5 BARS @ 12" O.C. EACH WAY AND MID-SLAB. CLASS "C" SPLICE LAP OR STAGGER LAP CLASS "B"
6. FOR DIMENSIONS NOT SHOWN SEE ARCHITECTURAL DRAWINGS.

KEY NOTES:

- E** 12" DIAMETER WD. PILE. (SEE SHT. S-1 FOR LOCATIONS.)
- F** FOUNDATION FOR BANNER TOWER. SEE SHEET S-5
- G** (2) 2X12 WD. BEAM TYP. WHERE SHOWN.
- H** 2X12 WD. JOISTS @ 2'-0" O.C. TYPICAL U.N.O.
- J**
- K** 4X12 WOOD BEAM TYPICAL WHERE SHOWN.
SHALL BE #15R SOUTHERN PINE.
- L** 8" DIAMETER PIPE. SEE ARCHITECTURAL FOR LOCATIONS.
- M** 8X8 WOOD POST WITH SIMPSON COLUMN
BASE CB88 AND (2) 3" DIAMETER THRU BOLTS
AT BASE.
- N** REMOVABLE FLOOD PROOF PANEL.
- O** 4X4 POST FOR SCREEN WALL ENCLOSURE.
USE BC4 SS POST BASE W/1 #4 X 2'-0" BAR
LOCATIONS W/ARCH.
- P** #6 X 12'-0" @12" O.C. BOTTL. (1 3/4" CLR.) TO ALT.
W/ #5 @12" O.C. CONT. MID REINF. CENTER
ADDITIONAL BARS IN SPAN AS SHOWN.

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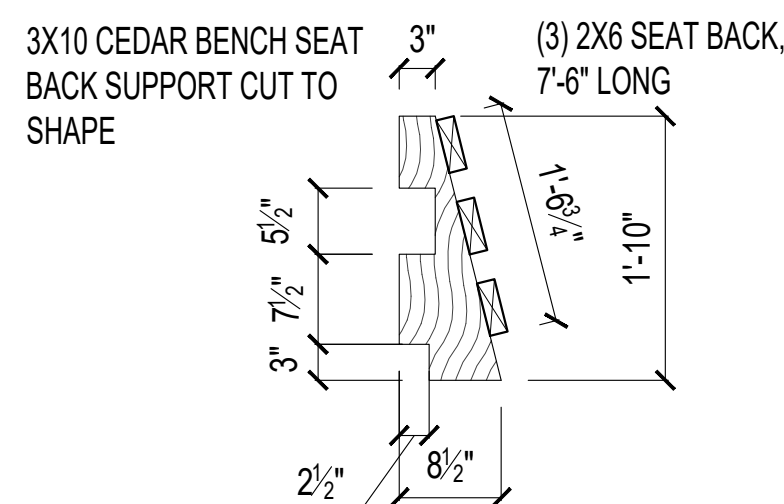
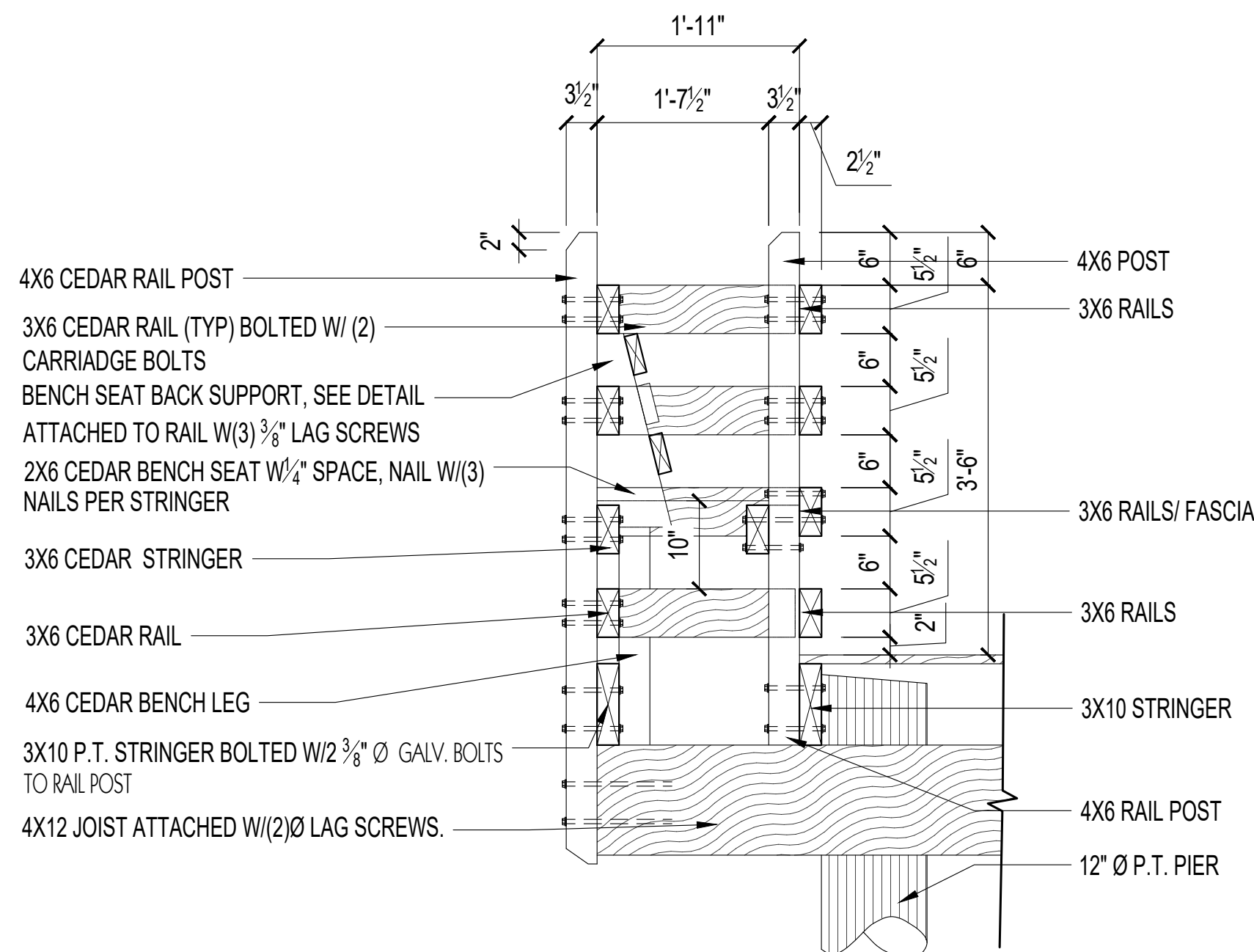
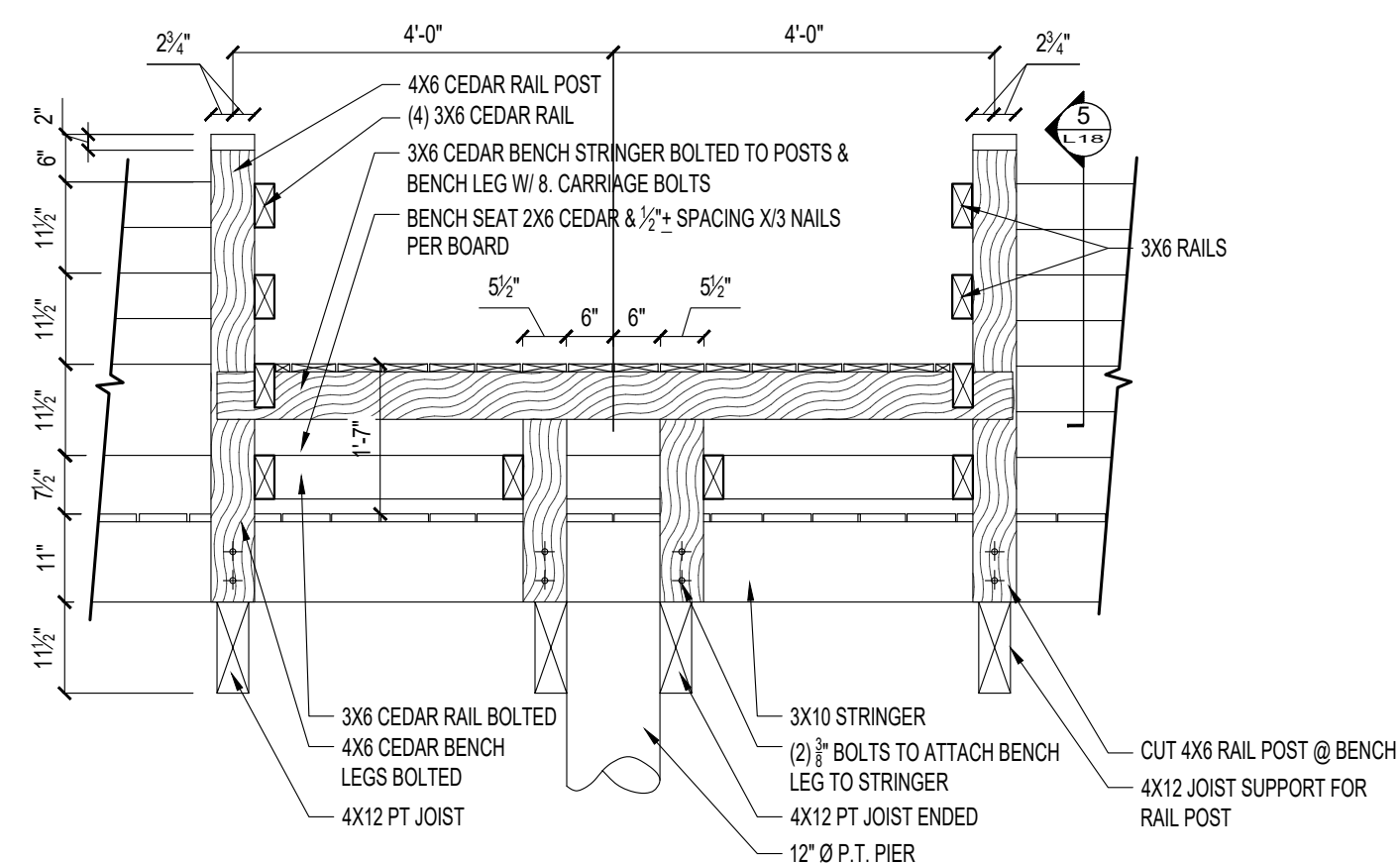
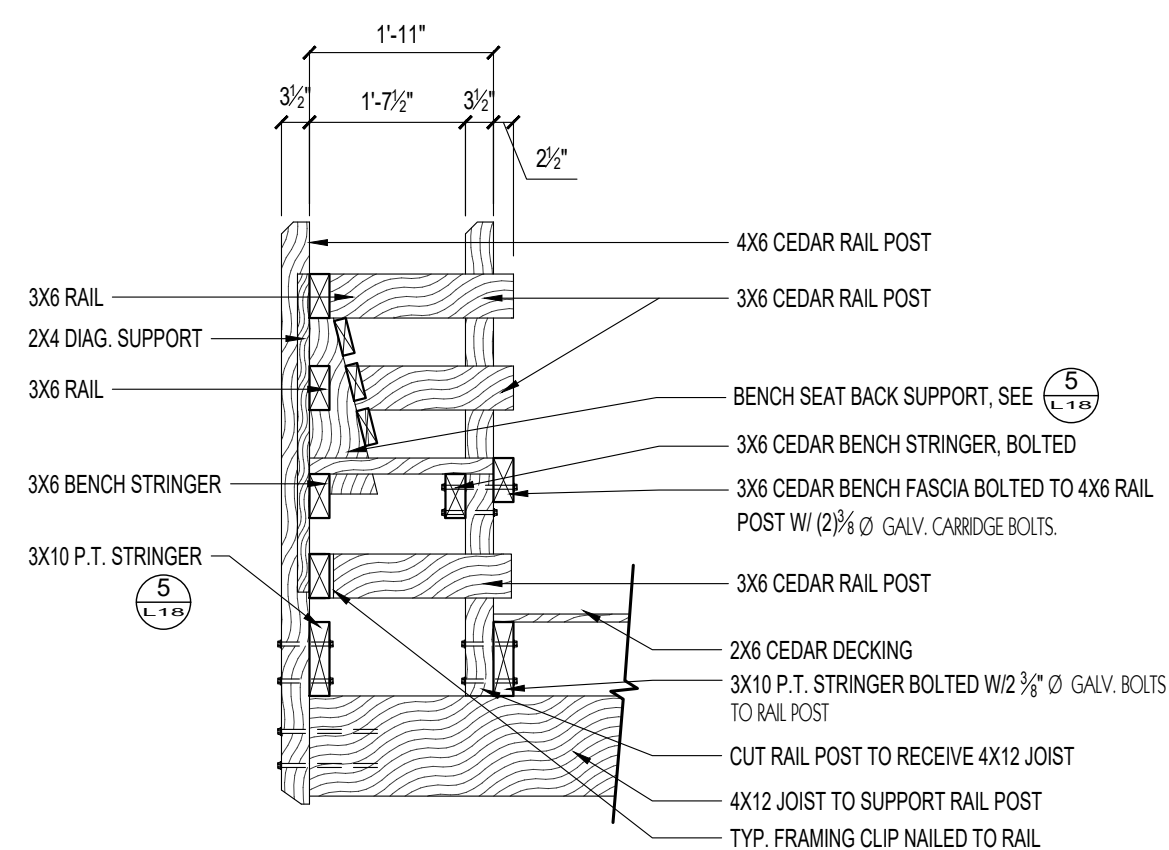
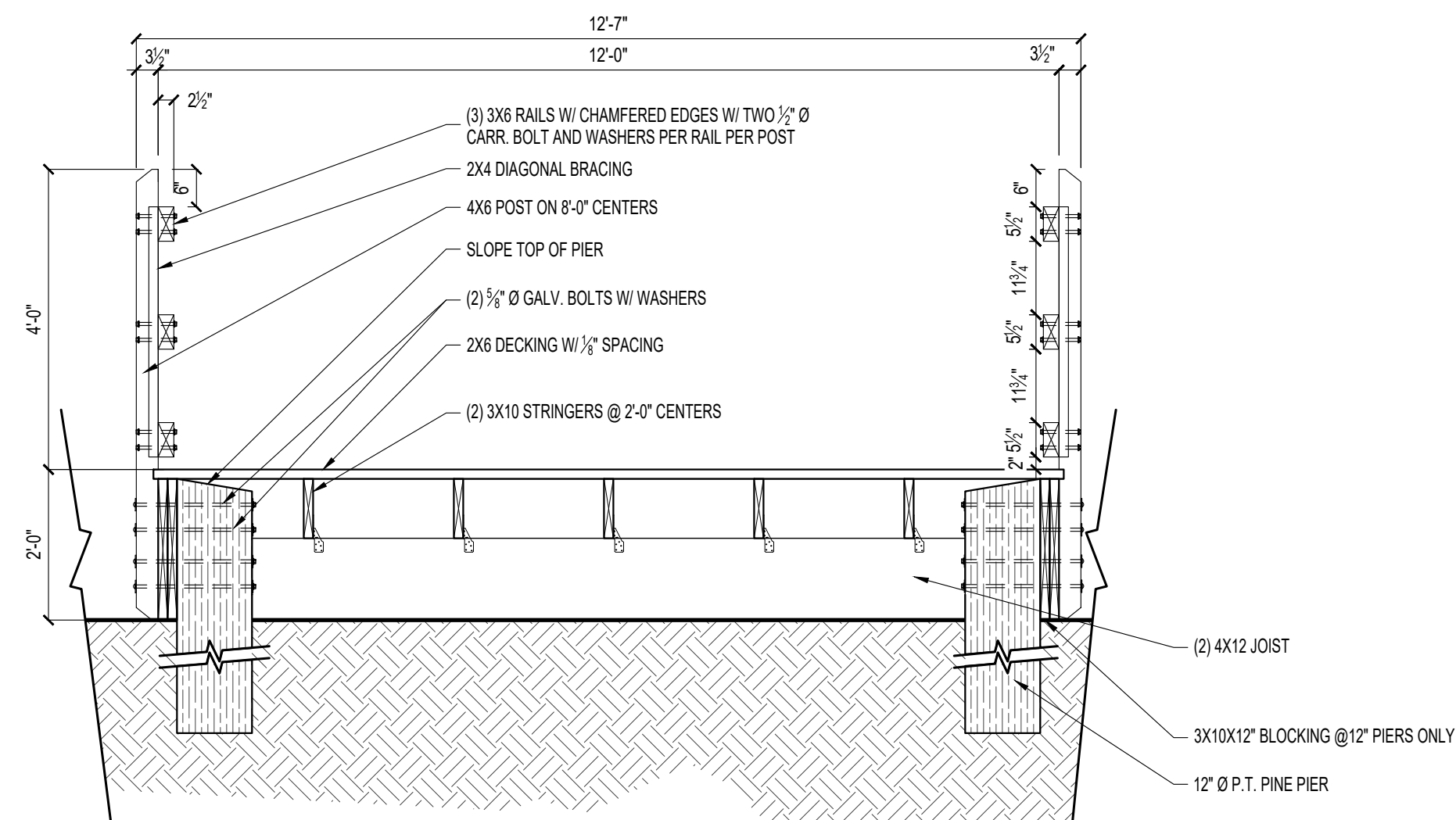
These plans are in Compliance with Florida Building Code 2023 for wind parameters indicated.

WIND PARAMETERS

Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate $V_{ult}=159$ MPH / Nominal $V_{nom}=123$ MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: $C_{pi}=0.0$ (Windward)
Component & Cladding Wind Pressure: per Calcs
FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBI 23-232)
GEOLOGICAL DATA
Data Source: TIERRA PROJECT # 0511-23-232
Vertical Bearing Capacity: 8"PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE

FLOOD PARAMETERS

FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)
GEOTECHNICAL PARAMETERS
Data Source: *TIERRA PROJECT NO. 6511-23-232*
Vertical Bearing Capacity: 8" PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE



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CONSTRUCTION**



BOWDITCH POINT PARK
RESTORATION FOR
LEE COUNTY, FLORIDA

[illegible]

BOARDWALK SECTIONS

SHEET NUMBER

S500

THE WEILER ENGINEERING CORPORATION

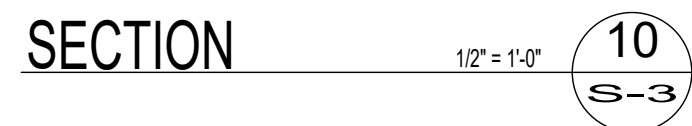
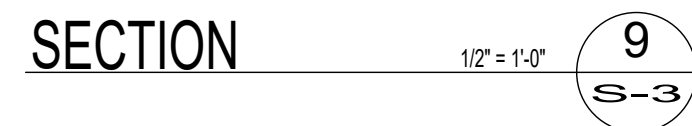
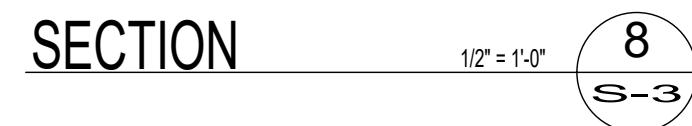
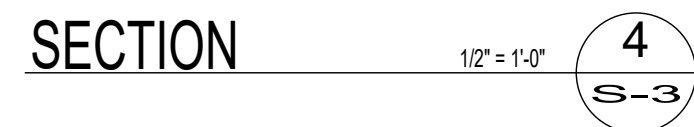
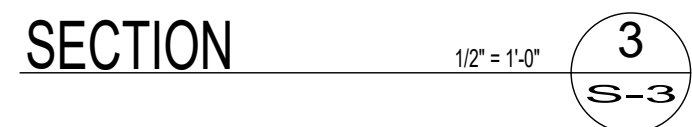
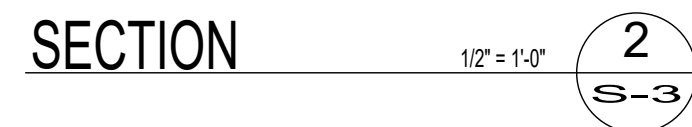
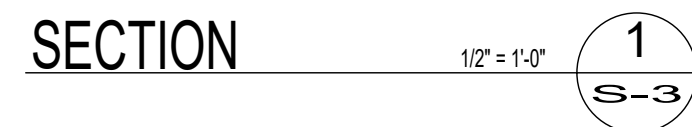
These plans are in Compliance with Florida Building Code 2023 for wind parameters indicated.

WIND PARAMETERS
Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate $V_{ult} = 159$ MPH / Nominal $V_{red} = 123$ MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: ±0.00 (Open)
Component & Cladding Wind Pressure: per Calcs
FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C054G
Base Flood Elevation: 5.11
100-year design flood Rainfall: 4.5 in (FBC 23 Fig. 1611.1)
GEO TECHNICAL PROJECT
Data Source: *TERRA PROJECT* No. 611.23-232
Vertical Bearing Capacity: 8"PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE

REVISIONS	
NO.	DATE DESCRIPTION

DATE:	07-30-2025
PROJECT NO.	25095.001
FILE NO.	
SCALE:	N/A

PROGRESS PRINT - NOT FOR CONSTRUCTION - DO NOT REPRODUCE



DETAILS SIMILAR AT CORNER
WD. POST CONNECTION, IN VIEW
OF HEADED STUDS WELDED TO
BOTTOM OF SADDLE. SADDLE TO
BE BOLTED TO POST W/ (2) 3/4" Ø
THRU-BOLTS. SEE SIMPSON
COLUMN CAP "CC".

These plans are in Compliance with Florida Building Code 2023 for wind parameters indicated.

WIND PARAMETERS
Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate $V_{ult}=159$ MPH / Nominal $V_{nom}=123$ MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: ±0.0 (Open)
Component & Cladding Wind Pressure: per Calcs
FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: 6.5 ft
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)
GEOTECHNICAL PARAMETERS
Data Source: TIERRA PROJECT NO. 6511-23-232
Vertical Bearing Capacity: 8"PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE

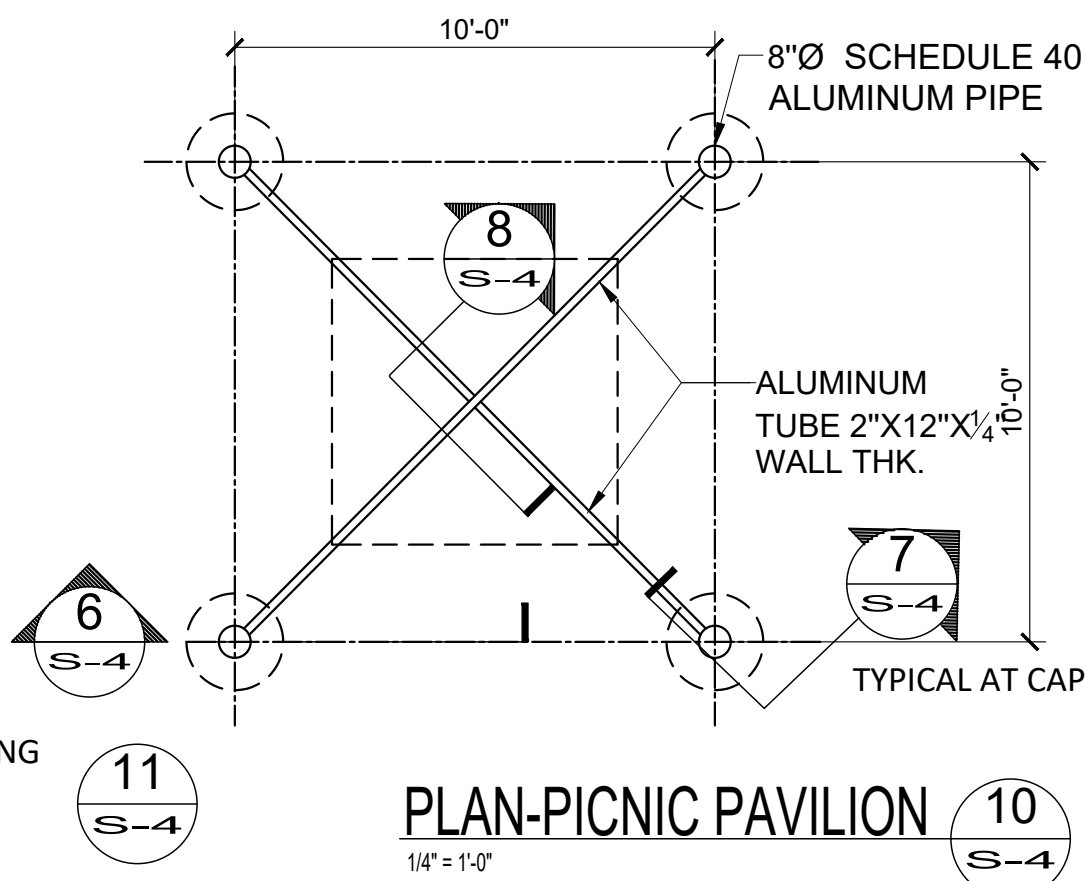
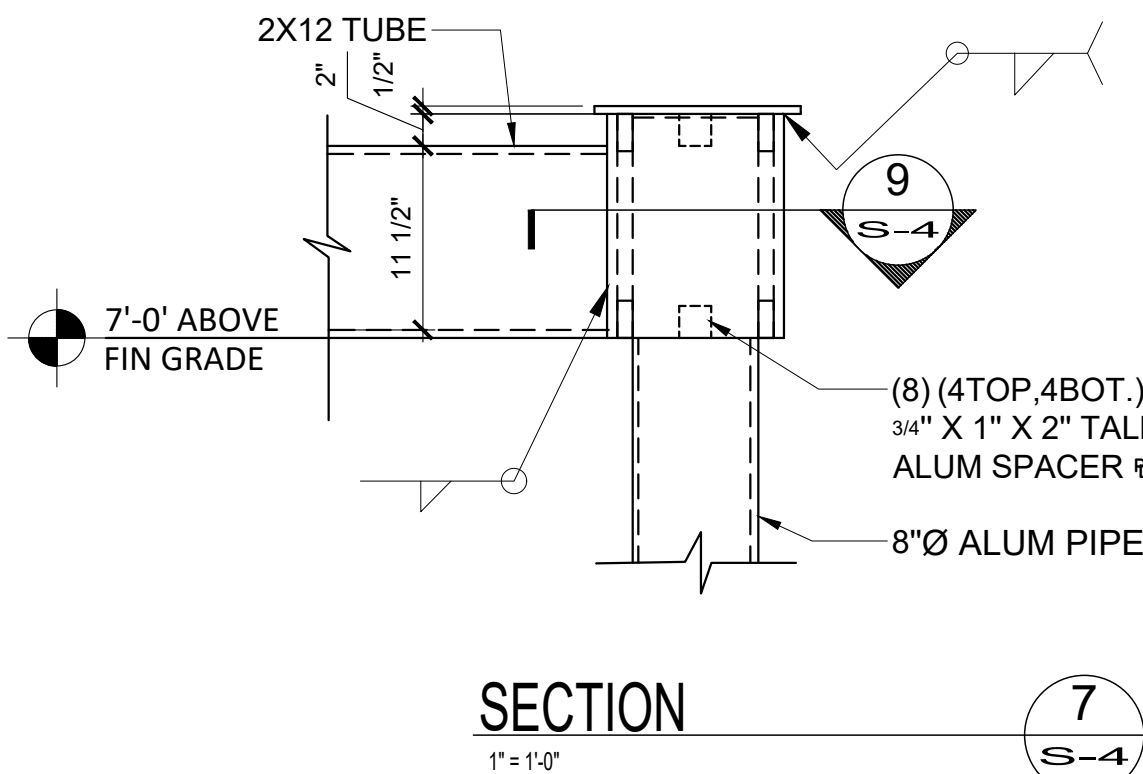
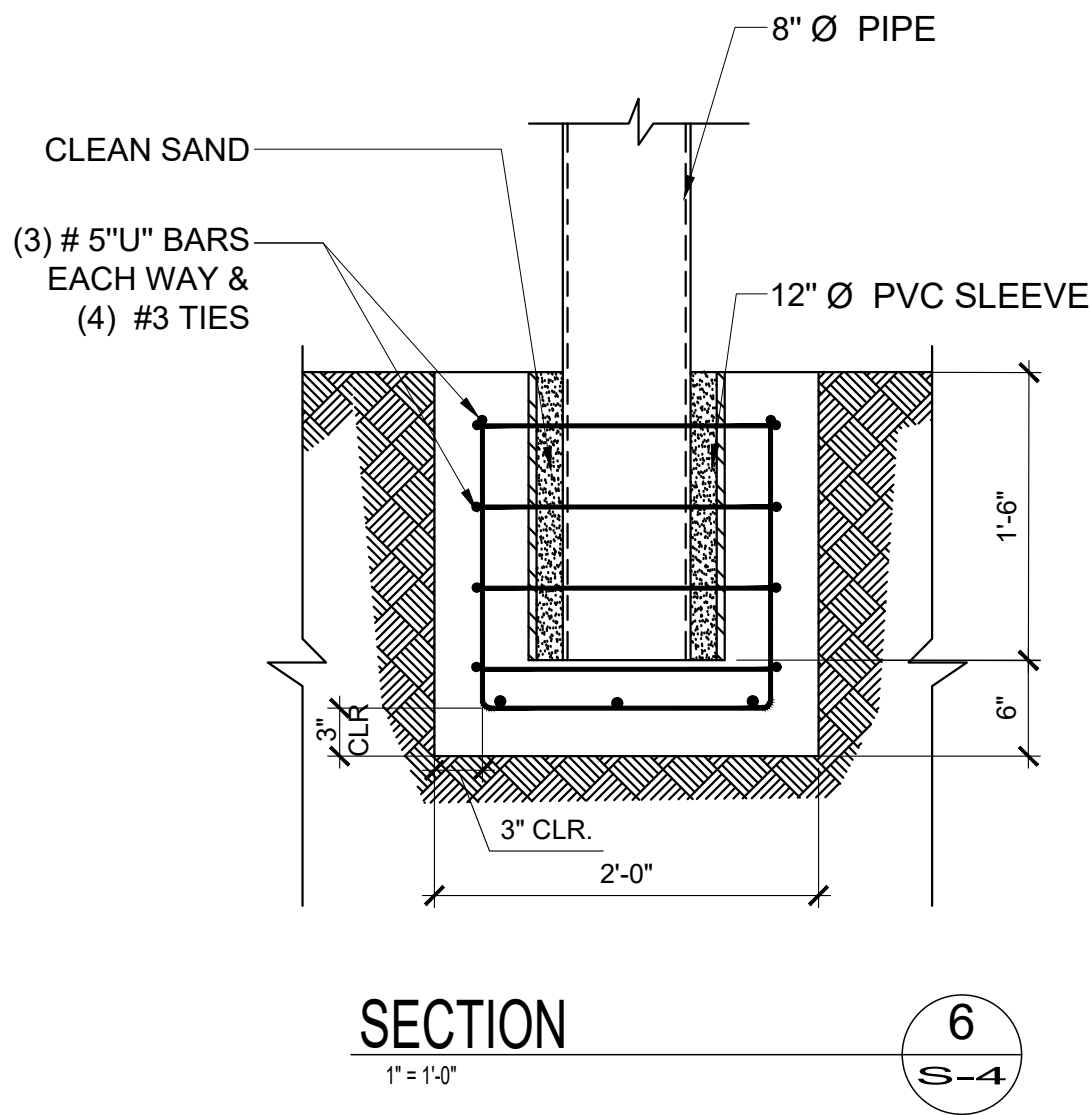
REVISIONS	DESCRIPTION	DATE
NO.		

DATE:	07-30-2025
PROJECT NO.	25095.001
FILE NO.	~~~~
SCALE:	N/A

PLAN-PICNIC
PAVILION
& DETAILS

SHEET NUMBER

S601



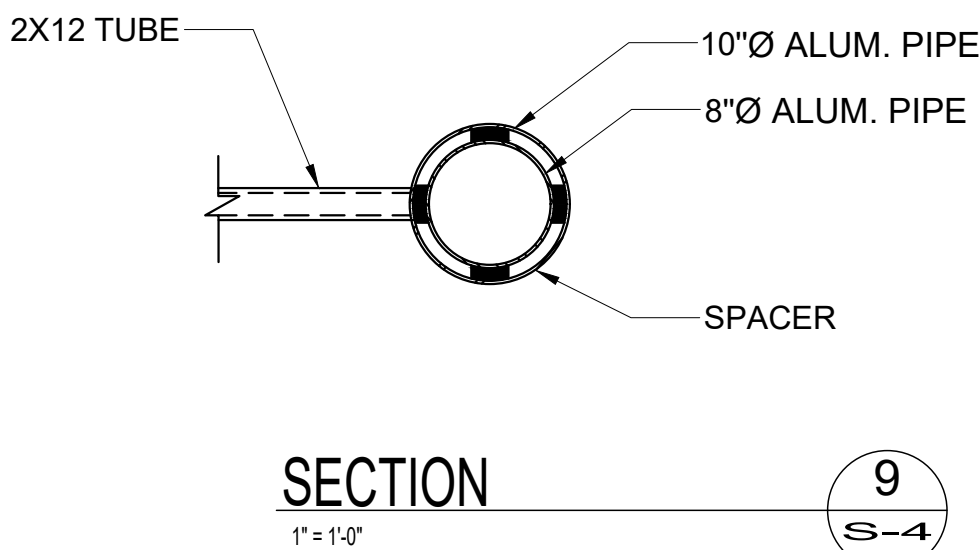
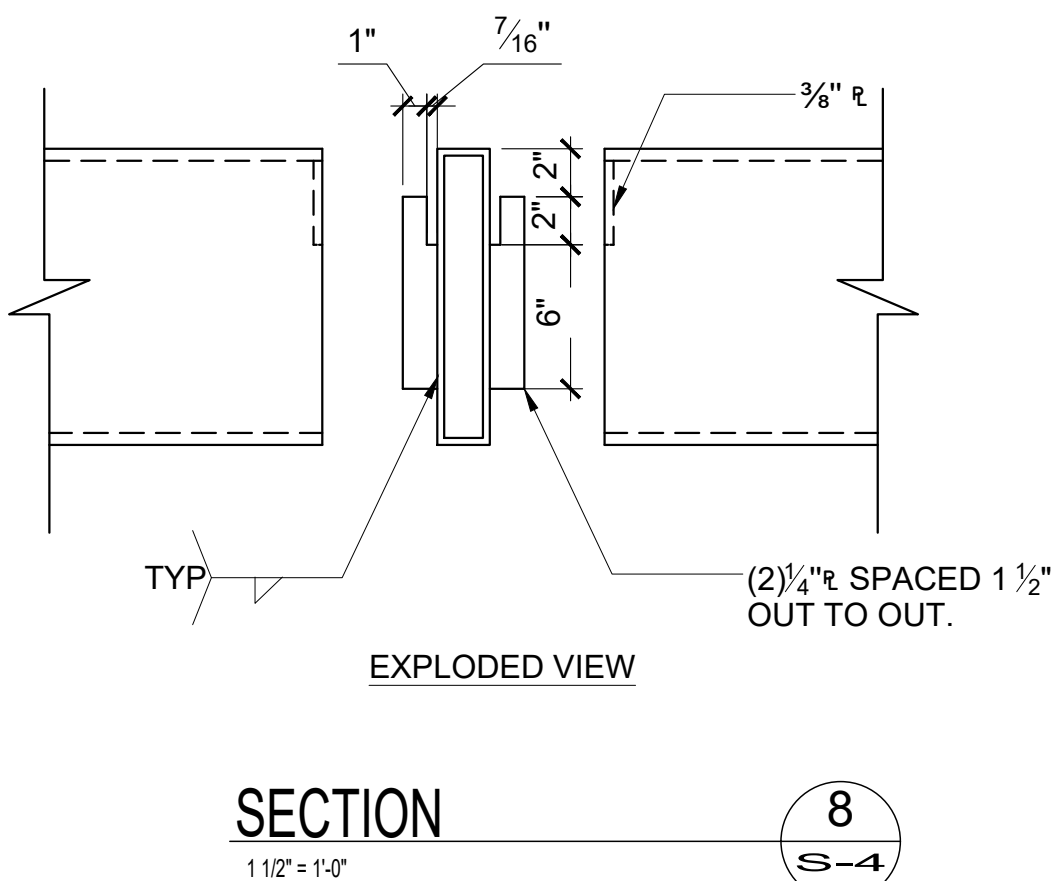
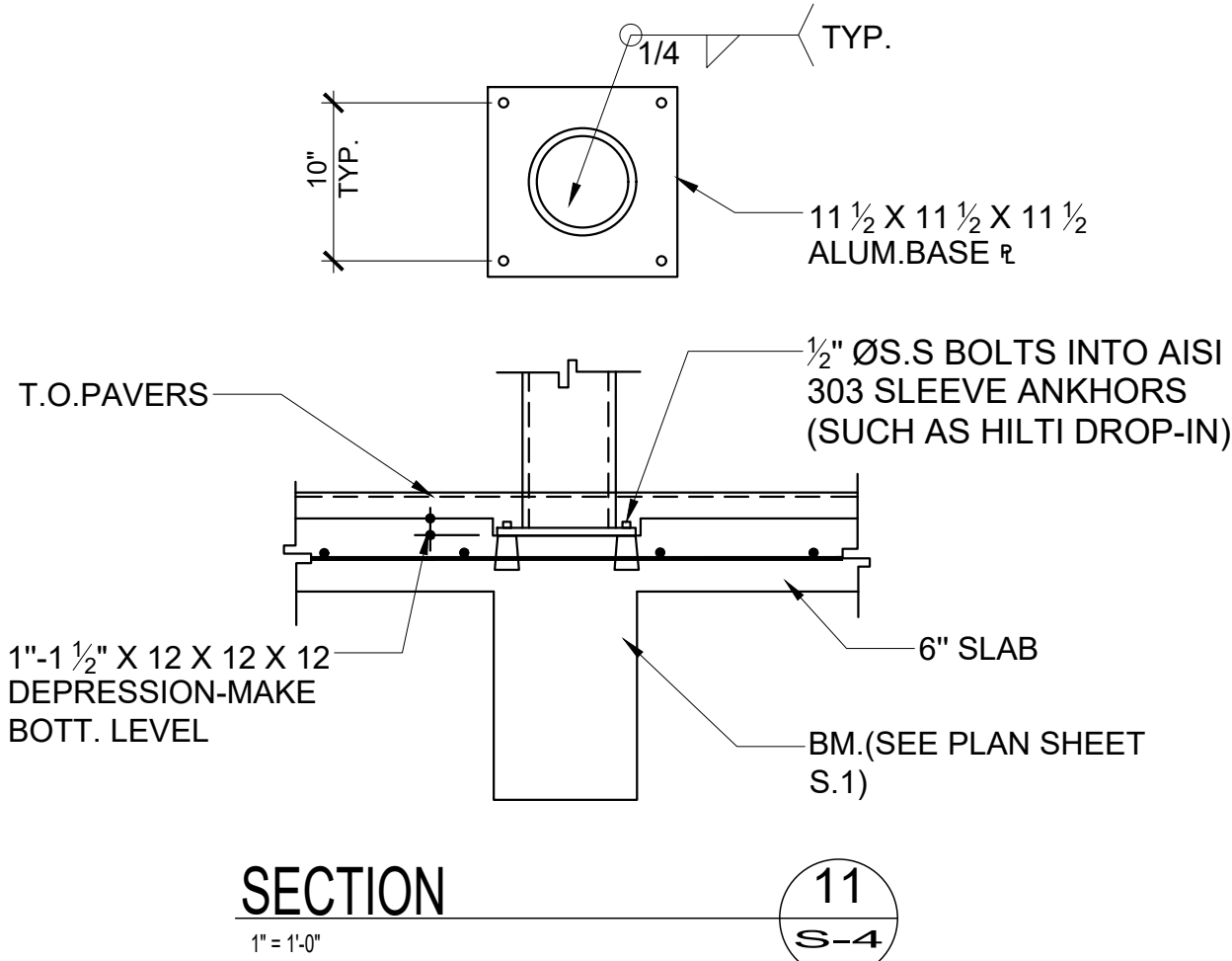
PLAN NOTES

- ALL ALUMINUM IS ALLOY 6061.
- NOTE THAT REQUIRED POLE LENGTH VARY SLIGHTLY BECAUSE OF MOUNTING CONCRETE DECK SLOPE PROVIDE MIN. 7" CLEARANCE UNDERSIDE OF 2X 12 TO DECK.
- POLES SHALL BE PLUMB AND ALUMINUM 2X12 CROSS TUBES SHALL BE LEVEL
- MAINTENANCE BLDG.: CLEARANCE TOP & BOTTOM REINF. 1 1/2"

THE WEILER ENGINEERING CORPORATION

These plans are in Compliance with Florida Building Code 2023 for wind parameters indicated.

WIND PARAMETERS
Method of Design: ASCE 7-22
Building Risk Category: II
Design Wind Speed: Ultimate V_{ult} = 159 MPH / Nominal V_{nom} = 123 MPH
Wind Importance Factor: 1.0 / Wind Exposure: D
Internal Pressure Coefficient: ± 0.00 (Open)
Component & Cladding Wind Pressure: per Calcs
FLOOD PARAMETERS
FEMA FIRM Map Number: 12071C0554G
Base Flood Elevation: AE-11
100-year, 1-hour Design Rainfall: 4.5 in (FBC 2023 Fig. 1611.1)
GEOTECHNICAL PARAMETERS
Data Source: TIERRA PROJECT NO. 6511-23-232
Vertical Bearing Capacity: 8" PILE: 4 TONS, 10" PILE: 5 TONS
Lateral Bearing Pressure: 1 TON PER PILE



**BOUNDARY, TOPOGRAPHIC AND
MEAN HIGH WATER SURVEY
FOR
BOWDITCH POINT PARK
(STRAP No.: 24-46-23-W1-0080D.0400)
AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTIONS 13, 14, 23 & 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA**

NOTES:

1. DATE OF LAST FIELDWORK: APRIL 25, 2025
2. SURVEYED PARCEL PHYSICAL ADDRESS: 50/58 ESTERO BLVD, FORT MYERS BEACH, FL., 33931.

3. COORDINATES AND HORIZONTAL DATA SHOWN HEREON ARE IN FEET AND ARE PROJECTED ONTO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83), 2011 ADJUSTMENT.

4. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF LOT 45, ISLAND SHORES CLUB SECTION, WHEREIN SAID SOUTH LINE BEARS S.71°53'52"W.

5. COORDINATES SHOWN HEREON ARE IN U.S. SURVEY FEET AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM (NAD83/2011) FOR THE WEST ZONE OF FLORIDA AND WERE ESTABLISHED UTILIZING TRIMBLE RTK GPS REDUNDANT OBSERVATION PROCEDURES FROM TWO FIXED BASE STATIONS OF KNOWN GEODETIC POSITION. THE BASE STATIONS USED IS PART OF THE TRIMBLE VRS NOW NETWORK (VRS). THE BASE STATION AND SURVEY MONUMENT HAVE THE RECORD POSITION LISTED BELOW:

STATION	LATITUDE	LONGITUDE	STATE PLANE COORDINATES (FT)	
FLSI(FPRN CORRS)	N26°28'29.11618"	W82°09'31.66948"	N: 778,280.484	E: 604,221.121
FLFM(FPRN CORRS)	N26°35'27.50618"	W81°51'50.98491"	N: 820,515.684	E: 700,556.957

6. VERTICAL DATA (ELEVATIONS) SHOWN HEREON ARE IN FEET AND ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) AND ARE BASED ON A CLOSED LEVEL LOOP ORIGINATING FROM NATIONAL GEODETIC SURVEY (N.G.S.) BENCHMARK 872 5366 TIDAL 2, (PID AD1372), WITH A PUBLISHED ELEVATION OF +02.27 FEET(NAVD88). SEE BENCHMARKS ON SHEETS 5 & 6 OF 7.

7. THE LOCATION OF THE MEAN HIGH WATER MEANDER LINE WAS DETERMINED BY EXTENDING THE MEAN HIGH WATER ELEVATION OF +0.26 FEET (NAVD88), BASED ON APPROVAL LETTER FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DATED 12/09/25. THE MEAN HIGH WATER MEANDER LINE, THE +0.0 FOOT CONTOUR AND THE APPROXIMATE SEASONAL HIGH WATER WERE LOCATED IN THE FIELD ON APRIL 25, 2025.

8. THIS MEAN HIGH WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES

9. THE SURVEYED PARCEL LIES IN F.E.M.A. FLOOD HAZARD ZONE VE ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM'S DIGITAL FLOOD INSURANCE RATE MAPS (D.F.I.R.M.) 12071 C05546G WITH AN EFFECTIVE DATE OF NOVEMBER 17, 2022, THE FLOOD HAZARD ZONES ALONG WITH THEIR CORRESPONDING BASE FLOOD ELEVATIONS ARE DEPICTED HEREON. THE PARCEL ALSO LIES WITH A COASTAL BARRIER RESOURCE SYSTEM (CBRS) AREA.

10. THIS SURVEY MEETS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:10,000

11. THE LOCATION OF THE 1991 COASTAL CONSTRUCTION CONTROL LINE WAS BASED ON FOUND ORIGINAL MONUMENTS "A-25-2" AND "A-25-A" PER THE PLAT RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA. SEE DETAIL SHEET 2 OF 7.

12. THE LOCATION OF THE 1978 COASTAL CONSTRUCTION SETBACK LINE WAS BASED ON FOUND ORIGINAL MONUMENTS PER THE PLAT RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

13. THIS SURVEY COMPLIES WITH THE REQUIREMENTS FOR SURVEYS PER CHAPTER 62B-33.0081
FLORIDA ADMINISTRATIVE CODE.

14. UNDERGROUND IMPROVEMENTS AND/OR ENCROACHMENTS WERE NOT LOCATED AS A PART OF THIS SURVEY.

15. THIS SURVEY DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.

16. NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON THE SURVEYED PARCEL BY THIS FIRM. THIS SURVEY WAS PERFORMED FOR THE PURPOSE SHOWN HEREON AND DOES NOT MAKE ANY REPRESENTATION AS TO THE DELINEATION OF ANY JURISDICTIONAL LINES EXCEPT AS SHOWN OR NOTED. THIS SURVEY DOES NOT PURPORT TO DELINEATE THE REGULATORY JURISDICTION OF ANY FEDERAL, STATE OR LOCAL AGENCY.

17. THIS SURVEY DOES NOT DETERMINE PROPERTY OWNERSHIP OR PROPERTY RIGHTS. THIS SURVEY LOCATED THE BOUNDARY IN ACCORDANCE WITH AND IN RELATION TO THE LEGAL DESCRIPTION.

18. ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.

19. OFFSITE EASEMENTS BENEFITING THE SUBJECT PROPERTY ARE SHOWN ONLY WHERE THEY CONNECT TO THE SUBJECT PROPERTY.

20. SURVEYED PARCEL CONTAINS 17.89 ACRES, MORE OR LESS

21. SURVEY MADE WITH THE REVIEW OF "IN HOUSE TITLE SEARCH" PREPARED BY LEE COUNTY DEPARTMENT OF COUNTY LANDS, STRAP: 24-46-23-W1-0080D.0400, FOLIO: 10127008, EFFECTIVE DATE: FEBRUARY 5, 2025, AT 5:00 PM.

(THE FOLLOWING ARE ITEMS AS LISTED IN THE ABOVE REFERENCED TITLE SEARCH.)

1. PLAT OF ISLAND SHORES CLUB SECTION, RECORDED MARCH 29, 1952 IN PLAT BOOK 9, PAGE 41, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (AFFECTS SURVEYED PARCEL, SUBJECT PARCEL LIES WITHIN SAID PLAT, SHOWN ON SURVEY)

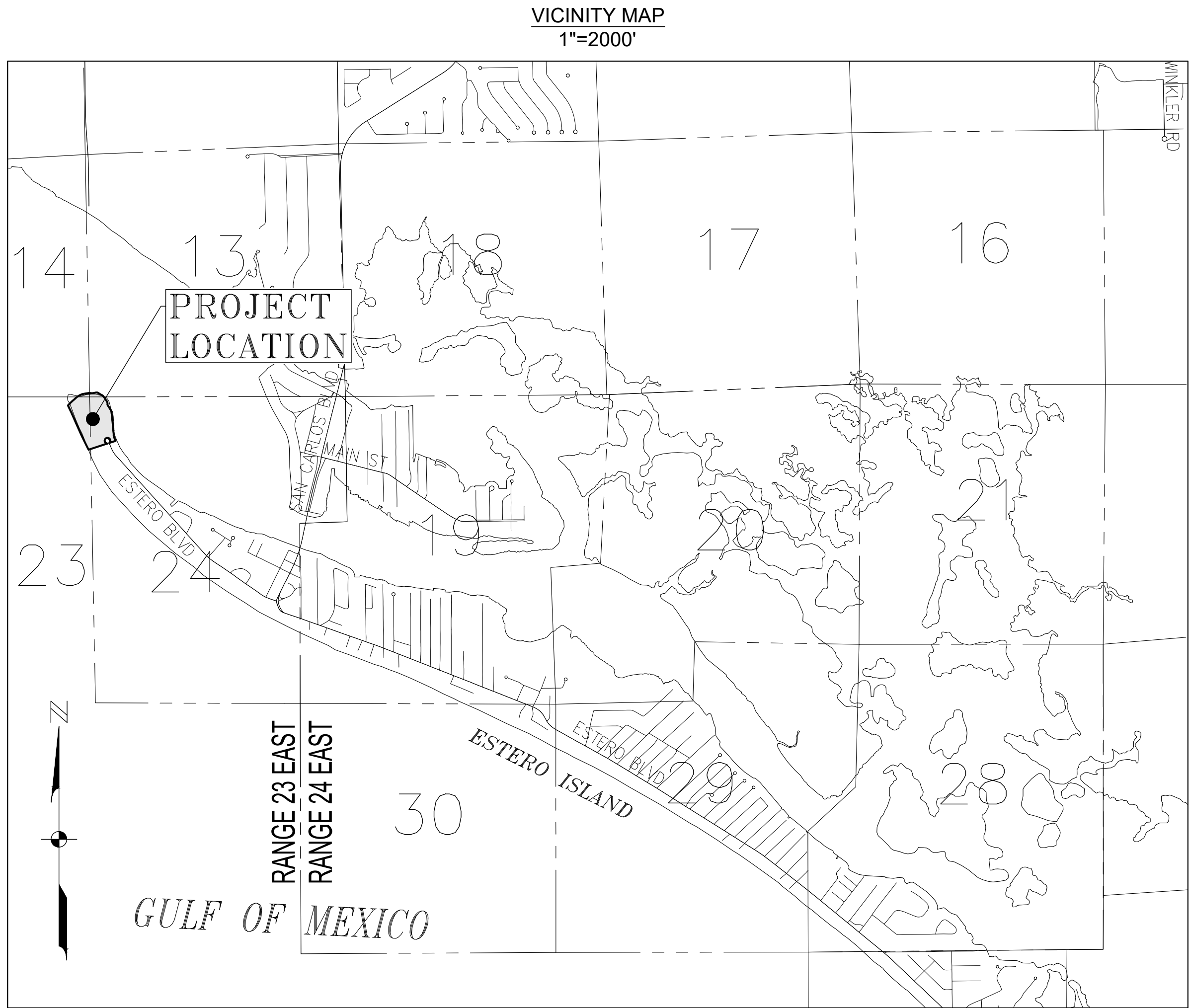
2. DEED OF RESTRICTIONS, BY JOHN WALTMAN, JOINED BY HIS WIFE, DORIS WALTMAN TO ALL FUTURE OWNERS OF ALL LOTS ISLAND SHORES CLUB SECTION, RECORDED APRIL 7, 1952 IN DEED BOOK 217, PAGE 67; DEED OF RESTRICTIONS RECORDED FEBRUARY 9, 1954 IN DEED BOOK 232, PAGE 359, BOTH RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. **(AFFECTS SURVEYED PARCEL, BLANKET IN NATURE)**

3. RIGHT OF WAY EASEMENT, BY TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO UNITED STATES OF AMERICA TRACT NO. 104E GULF COAST SHRIMP BOAT HARBOR, FORT MYERS, FLA., RECORDED OCTOBER 11, 1962 IN OFFICIAL RECORDS BOOK 155, PAGE 444, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. **(DOES NOT AFFECT SURVEYED PARCEL, CHANNEL RIGHT-OF-WAY EASEMENT LIES WITHIN THE WATERS ADJACENT TO SURVEYED PARCEL, SHOWN ON SURVEY)**

4. LEE COUNTY ORDINANCES RELATING TO GARBAGE AND SOLID WASTE COLLECTION, RECORDED NOVEMBER 30, 1990 IN OFFICIAL RECORD BOOK 2189, PAGES 3281 AND 3334, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (AFFECTS SURVEYED PARCEL, BLANKET IN NATURE, NON-PLOTTABLE)

5. EASEMENT, BETWEEN LEE COUNTY PARKS & REC AND FLORIDA POWER & LIGHT, RECORDED FEBRUARY 10, 1994 IN OFFICIAL RECORDS BOOK 2470 PAGE 2567, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. **(AFFECTS SURVEYED PARCEL, EASEMENT SHOWN ON SURVEY)**

6. SOVEREIGN SUBMERGED LANDS EASEMENT, BY THE BOARD OF TRUSTEES OF THE INTERNATIONAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, RECORDED APRIL 24, 2002 IN OFFICIAL RECORDS BOOK 3631, PAGE 7, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (AFFECTS SURVEYED PARCEL, SUBMERGED LAND EASEMENT FOR CONSTRUCTED JETTY LIES ADJACENT TO THE NORTHWESTLY PORTION OF THE SURVEYED PARCEL, SHOWN ON SURVEY)



0 1000 2000 4000
(INTENDED DISPLAY SCALE: 1"=2000')

DESCRIPTION

(PER DEPARTMENT OF COUNTY LANDS IN HOUSE TITLE SEARCH)

ALL THAT PART OF ISLAND SHORES CLUB SECTION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 9, PAGE 41, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TOGETHER WITH ALL LANDS ACCRETED THERETO, LYING NORTHWESTERLY OF A LINE DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE LINE COMMON TO LOTS 39 AND 40 OF BLOCK D OF SAID SUBDIVISION WITH THE WATERS OF MATANZAS PASS, RUN SOUTHWESTERLY ALONG SAID COMMON LINE TO ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF BLOCK F OF SAID SUBDIVISION; THENCE CONTINUE IN A STRAIGHT LINE ACROSS SAID BLOCK F TO THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID BLOCK F WITH THE LINE COMMON TO LOTS 44 AND 45 OF THE UNNUMBERED BLOCK IN SAID SUBDIVISION; THENCE SOUTHWESTERLY ALONG SAID LINE COMMON TO SAID LOTS 44 AND 45 TO THE WATERS OF THE GULF OF MEXICO AND THE END OF SAID LINE CONTAINING APPROXIMATELY 14.5 ACRES MORE OR LESS AT THIS TIME.

EXCEPTING THE TURNAROUND PREVIOUSLY DEED TO LEE COUNTY, FLORIDA DESCRIBED AS 60
RADIUS WHOSE CENTER LIES BETWEEN LOTS 40 AND 50. [SURVEYOR'S NOTE: THE TURNAROUND
AREA IS DESCRIBED IN ORB 1151, PG 1945]

THIS SURVEY IS ONLY FOR THE BENEFIT OF:

- TOWN OF FORT MYERS BEACH
- LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY.
I HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF
THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE
APPLICABLE PROVISIONS OF CHAPTER 5J-17.05, FLORIDA
ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472, FLORIDA
STATUTES.

THIS SURVEY HAS BEEN DIGITALLY SIGNED BY:
MARK D. HAINES (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5312
ON THE DATE ADJACENT TO THE SEAL.

THIS CERTIFICATION IS TO THE DATE OF LAST FIELD WORK AS SHOWN IN NOTE 1 AND NOT THE SIGNATURE DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED, AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

REVISIONS	
DATE	DESCRIPTION
07/19/25	REVISE I UPDATE COORDINATES FOR BOUNDARY & C/COL

DATE: 04/25/25
PROJECT NO. 2024T020-000
FILE NO. 24-46-23
SCALE: AS SHOWN

COVER
SHEET

SHEET NUMBER

1 OF 7

BOUNDARY, TOPOGRAPHIC AND
MEAN HIGH WATER SURVEY

BOWDITCH POINT PARK
(STRAP NO.: 24-46-23-W1-0080D.0400)
AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTIONS 13, 14, 23, 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

REVISIONS

DATE	DESCRIPTION
07/16/25	REUSE & UPDATE COORDINATES FOR BOUNDARY & C.C.L.

DATE: 04/25/25
PROJECT NO. 20247020-000
FILE NO. 24-46-23
SCALE: 1"=60'

BOUNDARY
DETAIL

SHEET NUMBER

2 OF 7

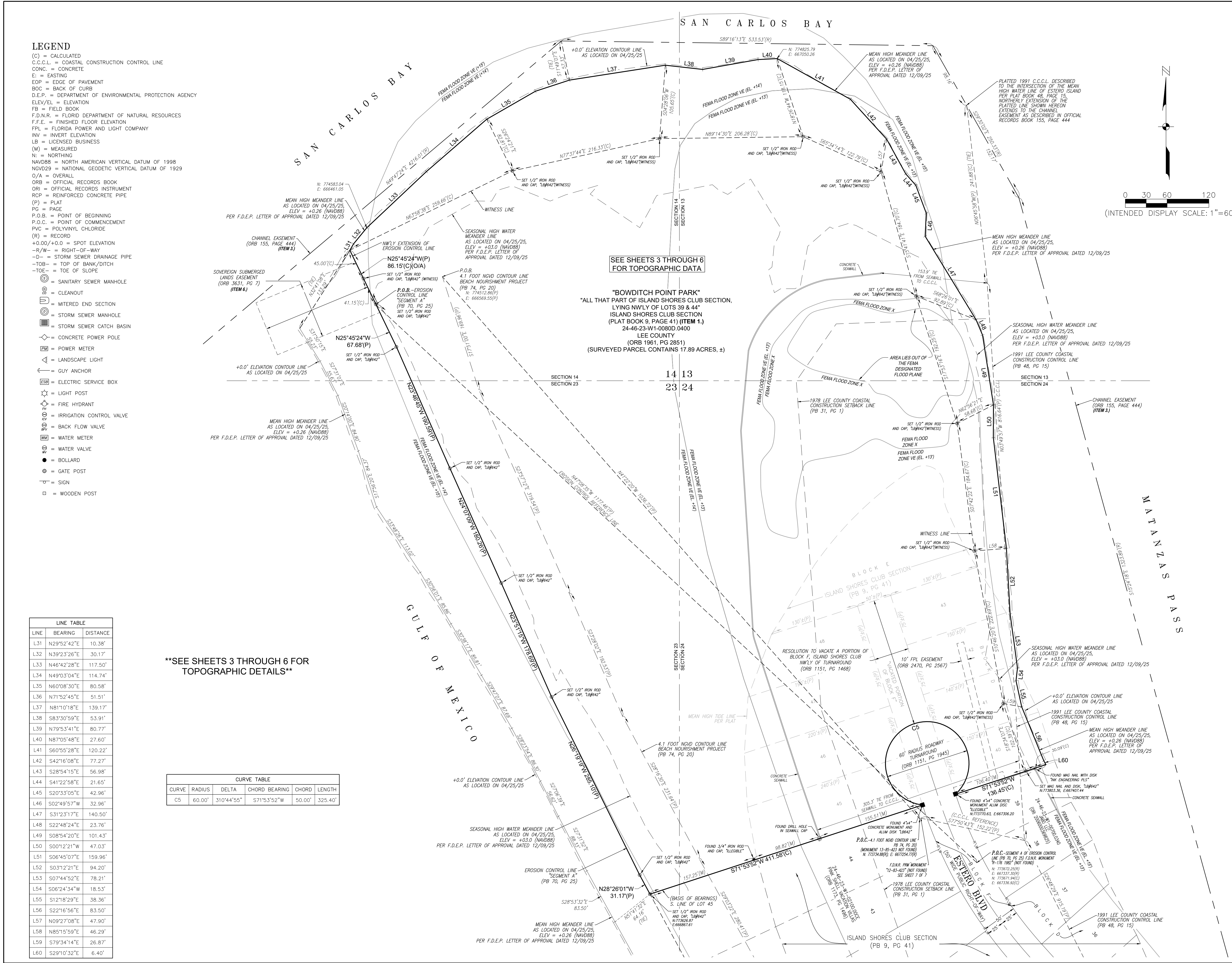
LEGEND

- (C) = CALCULATED
C.C.C.L. = COASTAL CONSTRUCTION CONTROL LINE
CONC. = CONCRETE
E = EASTING
EOP = EDGE OF PAVEMENT
BOC = BACK OF CURB
D.E.P. = DEPARTMENT OF ENVIRONMENTAL PROTECTION AGENCY
ELEV/EL = ELEVATION
FB = FIELD BOOK
F.D.N.R. = FLORIDA DEPARTMENT OF NATURAL RESOURCES
F.F.E. = FINISHED FLOOR ELEVATION
FPL = FLORIDA POWER AND LIGHT COMPANY
INV = INVERT ELEVATION
LB = LICENSED BUSINESS
(M) = MEASURED
N = NORTHING
NAVD88 = NORTH AMERICAN VERTICAL DATUM OF 1998
NOVD29 = NATIONAL GEODETIC VERTICAL DATUM OF 1929
O/A = OVERALL
ORB = OFFICIAL RECORDS BOOK
ORI = OFFICIAL RECORDS INSTRUMENT
RCP = REINFORCED CONCRETE PIPE
(P) = PLAT
PG = PAGE
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
PVC = POLYVINYL CHLORIDE
(R) = RECORD
+0.00/+0.0 = SPOT ELEVATION
-R/W- = RIGHT-OF-WAY
-D- = STORM SEWER DRAINAGE PIPE
-TOB- = TOP OF BANK/DITCH
-TOE- = TOE OF SLOPE
⊙ = SANITARY SEWER MANHOLE
⊙ = CLEANOUT
⊙ = MITERED END SECTION
⊙ = STORM SEWER MANHOLE
⊙ = STORM SEWER CATCH BASIN
⊙ = CONCRETE POWER POLE
PM = POWER METER
⊙ = LANDSCAPE LIGHT
⊙ = GUY ANCHOR
ESB = ELECTRIC SERVICE BOX
⊙ = LIGHT POST
⊙ = FIRE HYDRANT
⊙ = IRRIGATION CONTROL VALVE
⊙ = BACK FLOW VALVE
WM = WATER METER
⊙ = WATER VALVE
● = BOLLARD
⊙ = GATE POST
⊙ = SIGN
□ = WOODEN POST

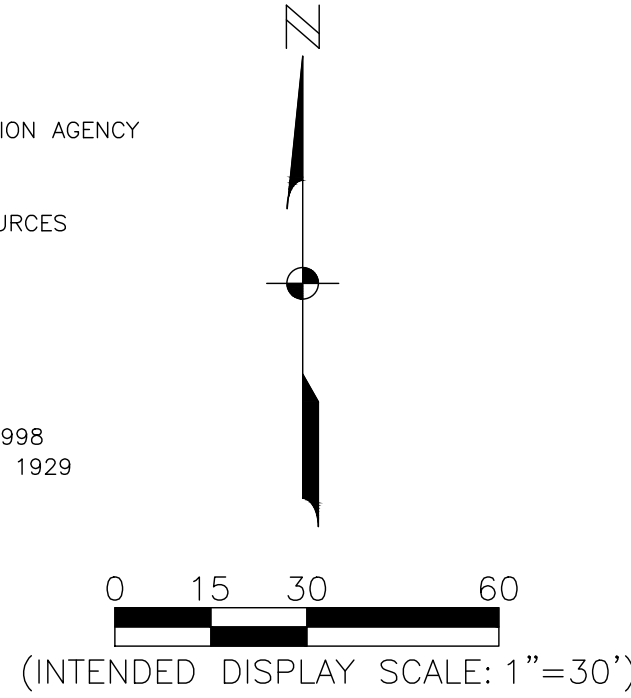
LINE TABLE		
LINE	BEARING	DISTANCE
L31	N29°52'42"E	10.38'
L32	N39°23'26"E	30.17'
L33	N46°42'28"E	117.50'
L34	N49°03'04"E	114.74'
L35	N60°08'30"E	80.58'
L36	N71°52'45"E	51.51'
L37	N81°10'18"E	139.17'
L38	S83°30'59"E	53.91'
L39	N79°53'41"E	80.77'
L40	N87°05'48"E	27.60'
L41	S60°55'28"E	120.22'
L42	S42°16'08"E	77.27'
L43	S28°54'15"E	56.98'
L44	S41°22'58"E	21.65'
L45	S20°33'05"E	42.96'
L46	S02°49'57"W	32.96'
L47	S31°23'17"E	140.50'
L48	S22°48'24"E	23.76'
L49	S08°54'20"E	101.43'
L50	S00°12'21"W	47.03'
L51	S06°45'07"E	159.96'
L52	S03°12'21"E	94.20'
L53	S07°44'52"E	78.21'
L54	S06°24'34"W	18.53'
L55	S12°18'29"E	38.36'
L56	S22°16'56"E	83.50'
L57	N09°27'08"E	47.90'
L58	N85°15'59"E	46.29'
L59	S79°34'14"E	26.87'
L60	S29°10'32"E	6.40'

**SEE SHEETS 3 THROUGH 6 FOR
TOPOGRAPHIC DETAILS**

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C5	60.00'	310°44'55"	S71°53'52"W	50.00'	325.40'



(C) = CALCULATED
 C.C.C.L. = CASTAL CONSTRUCTION CONTROL LINE
 CONC. = CONCRETE
 E. = EASTING
 EOP = EDGE OF PAVEMENT
 BOC = BACK OF CURB
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 INV = INVERT ELEVATION
 LB = LICENSED SURVEYOR
 (M) = MEASURED
 N. = NORTHING
 NAVD83 = NORTH AMERICAN VERTICAL DATUM OF 1998
 NGVD29 = NORTH AMERICAN GEODETIC VERTICAL DATUM OF 1929
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 -R/W- = RIGHT-OF-WAY
 D- = STORM SEWER DRAINAGE PIPE
 -TOB- = TOP OF BANK/DITCH
 -TOE- = TOE OF SLOPE



BOUNDARY, TOPOGRAPHIC AND MEAN HIGH WATER SURVEY

BOWDITCH POINT PARK
(STRAP NO.: 24-46-23-W1-0080D.0400)
AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTIONS 13, 14, 23, 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

REVISIONS	
DATE	DESCRIPTION
07/19/25	REVISE & UPDATE COORDINATES FOR BOUNDARY & CCOL

DATE: 04/25/24

PROJECT NO. 20247020-00

FILE NO. 24-46-2

SCALE: 1"=3'

SHEET NUMBER

3 OF 7

BOUNDARY, TOPOGRAPHIC AND MEAN HIGH WATER SURVEY

(STRAP NO.: 24-46-23-W1-0080D.0400)
AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTIONS 13,14,23,24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

REVISIONS

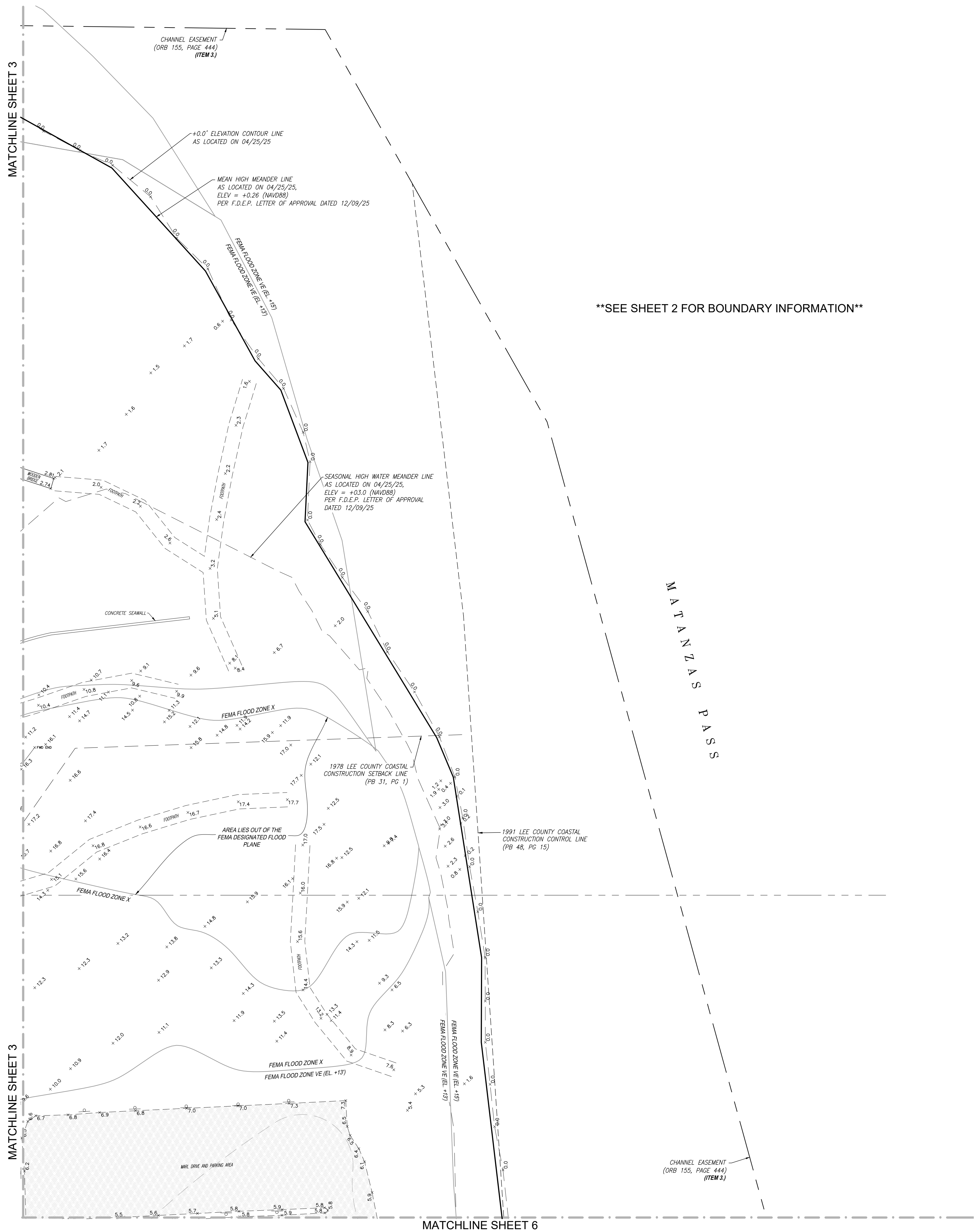
DATE	DESCRIPTION
07/18/25	REINSE & UPDATE COORDINATES FOR BOUNDARY & CCCL

DATE:	04/25/25
PROJECT NO.	20247020-000
FILE NO.	24-46-23
SCALE:	1"=30'

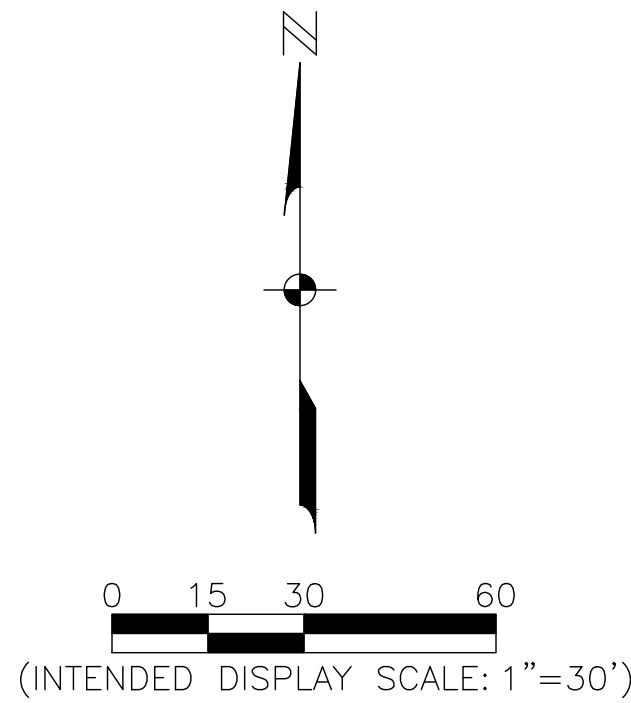
TOPOGRAPHIC
DETAIL

SHEET NUMBER

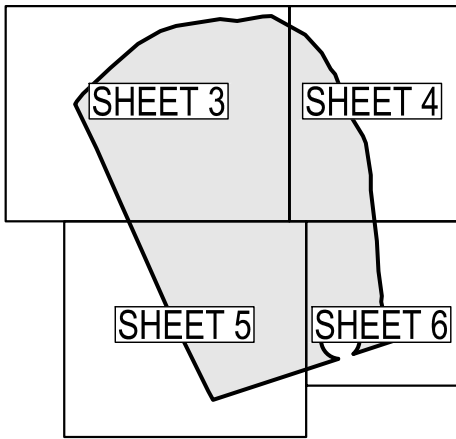
4 OF 7



****SEE SHEET 2 FOR BOUNDARY INFORMATION****



TOPOGRAPHIC LOCATION
KEY MAP



LEGEND

= CALCULATED
 C.C.C.L. = COASTAL CONSTRUCTION CONTROL LINE
 CONC. = CONCRETE
 E = EASTING
 EOP = EDGE OF PAVEMENT
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 = BACK FLOW VALVE
 = WATER METER
 = WATER VALVE
 = BOLLARD
 = GATE POST
 = SIGN
 = WOODEN POST

BOUNDARY, TOPOGRAPHIC AND MEAN HIGH WATER SURVEY

BOWDITCH POINT PARK
 (STRAP NO. : 24-46-23-W1-0080D.0400)
 AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
 PUBLIC RECORDS OF LEE COUNTY, FLORIDA
 SECTIONS 13,14,23,24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

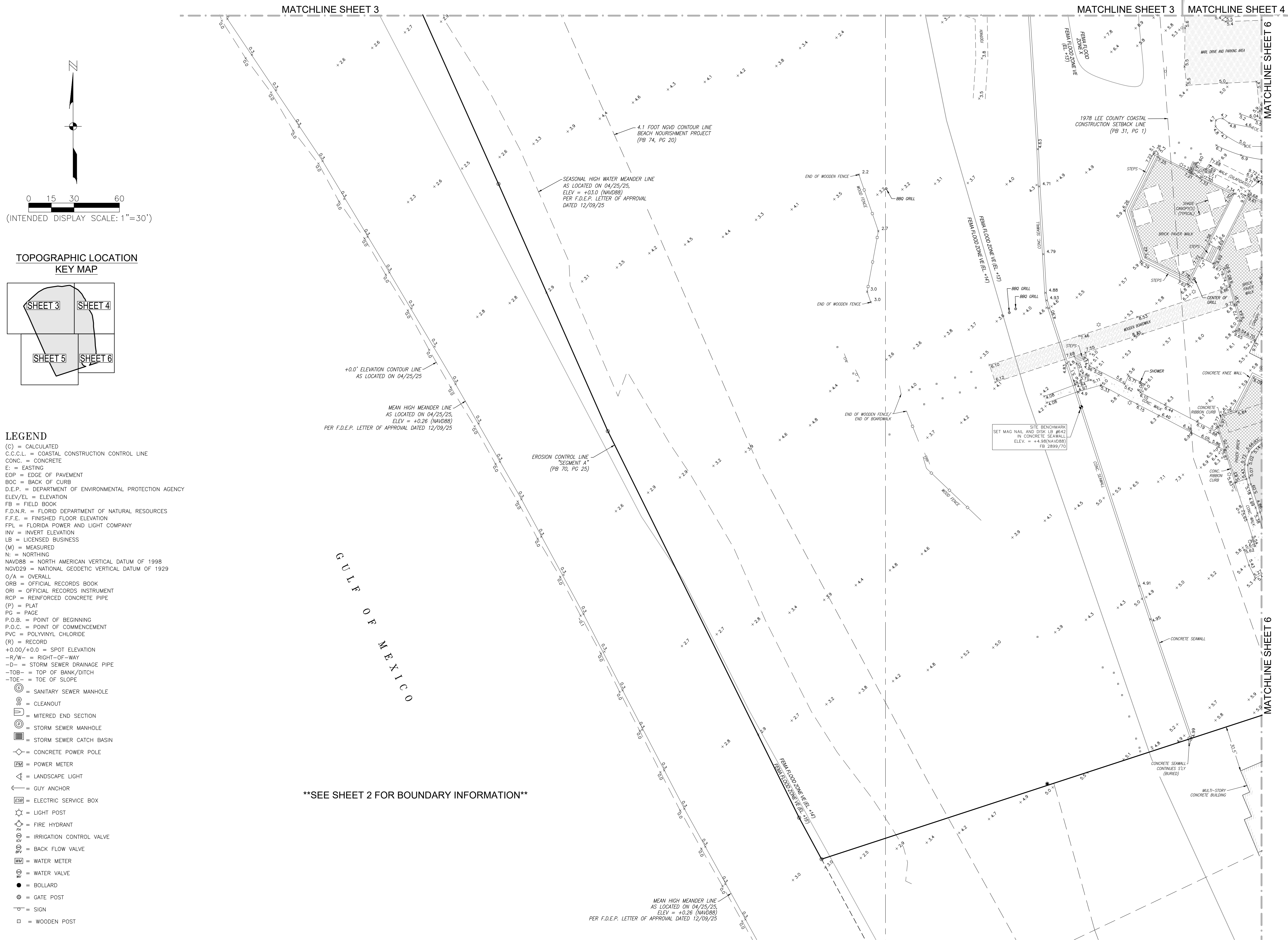
REVISIONS	
DATE	DESCRIPTION
07/16/25	REVISE & UPDATE COORDINATES FOR BOUNDARY & COL

DATE:	04/25/25
PROJECT NO.	20247020-000
FILE NO.	24-46-23
SCALE:	1"=30'

TOPOGRAPHIC DETAIL

SHEET NUMBER

5 OF 7



BOUNDARY, TOPOGRAPHIC AND MEAN HIGH WATER SURVEY

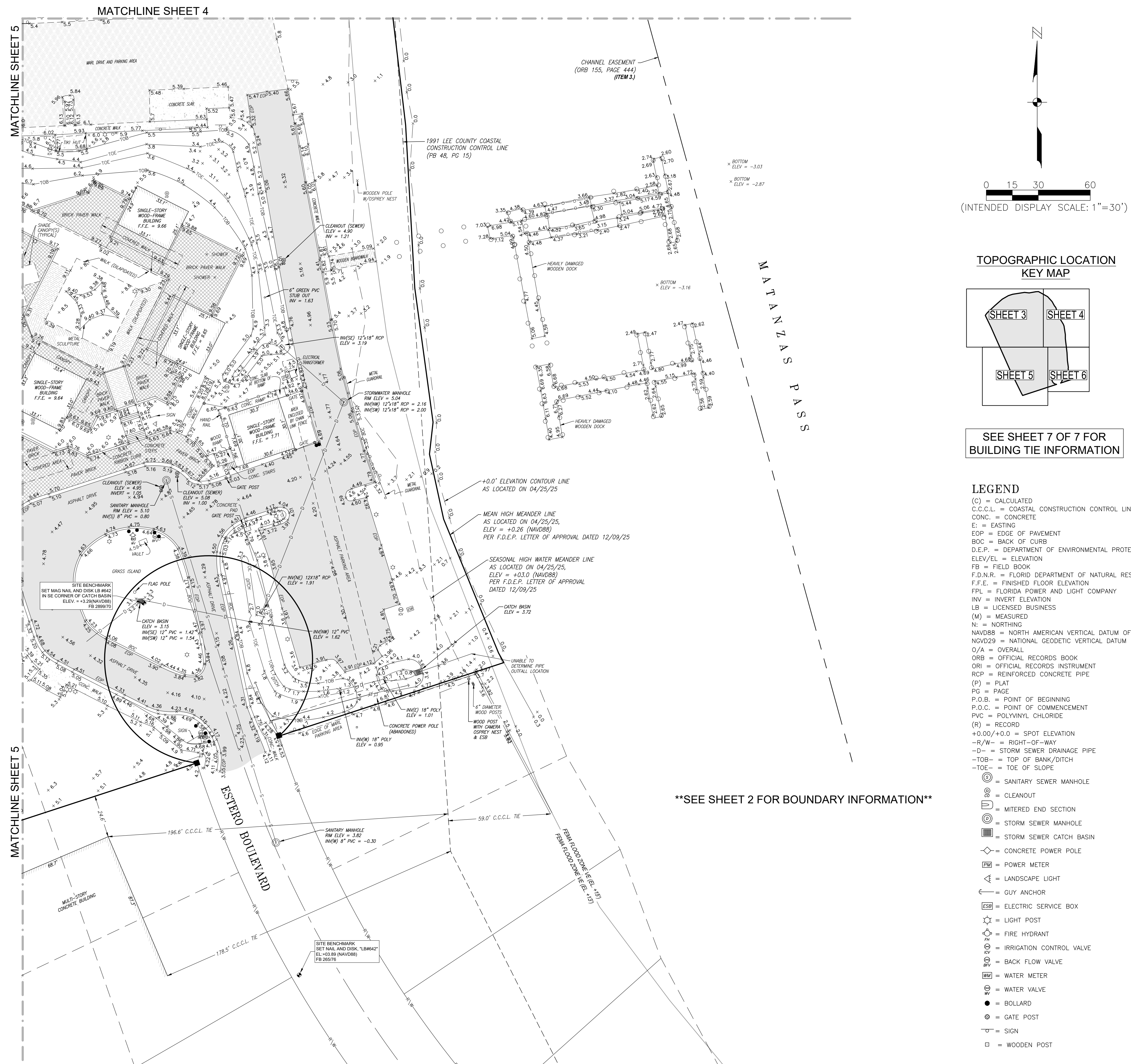
BOWDITCH POINT PARK
(STRAP NO.: 24-46-23-W1-0080D, 0400)
AS RECORDED IN OFFICIAL RECORDS BOOK 1961, PAGE 2851,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTIONS 13, 14, 23, 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

[illegible]

TOPOGRAPHIC
DETAIL

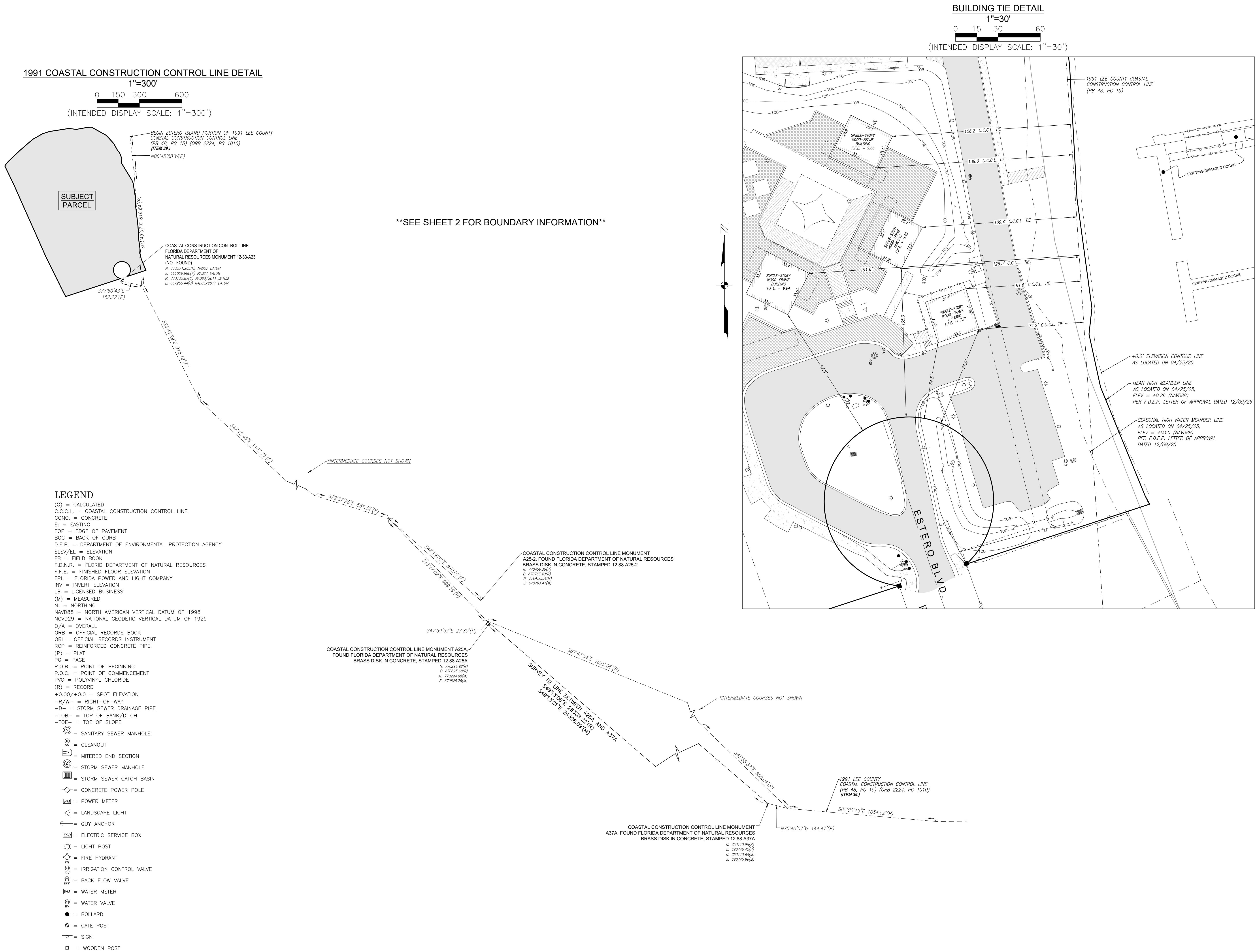
SHEET NUMBER

6 OF 7



REVISIONS					
DATE	DESCRIPTION				
07/19/25	REVISE & UPDATE COORDINATES FOR BOUNDARY & CCLL				

DATE:	04/25/25
PROJECT NO.	20247020-000
FILE NO.	24-46-23
SCALE:	AS SHOWN



RESOLUTION NUMBER 25-277

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250217 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF BOARDWALKS, PAVER DECK, SIDEWALK, DECKING AND BENCHES IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 50/58 ESTERO BOULEVARD COMMONLY REFERED TO AS STRAP NUMBER 24-46-23-w1-0080d.0400; 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 Johnson Engineering, LLC on behalf of owner Lee County, is requesting a special exception to allow like-for-like replacement or repair of 179'+/- boardwalk, 1,600'+/- of paver deck, 1,370'+/- sidewalk, 75'+/- boardwalk, decking, and benches.

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-0080D.0400; and

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

WHEREAS, the Property is located in the “Community Facility” 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 September 09, 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 October 6, 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 a tiki hut in Environmentally Critical zoning district seaward of 1978 CCCL as shown in the stie plan attached as Exhibit A.

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 which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; 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. Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- C. Construction may not occur during sea turtle season.
- D. 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of October, 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 October, 2025.

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250116 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF A TIKI HUT IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 6612 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Town Council takes into account the recommendations made by the LPA.

What the action accomplishes:

If the special exception request is granted, it will allow the applicant like-for-like replacement of a tiki hut in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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 a tiki hut 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 hut into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of a tiki hut in the EC zoning district.

On September 09, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for SEZ20250116, a request to allow like-for-like replacement of a tiki hut in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Attachments:

1. Resolution 25-278 , SEZ 20250116 for 6612 Estero- Island winds condo
2. LPA Staff report
3. Exhibit A- aerial image
4. Exhibit B- site plan
5. Exhibit C-Application packet
6. Exhibit D- Photos of pre-storm tiki hut

Financial Impact:

Unknown

6. **Alternative Action**

Denial/ Approval of SEZ20250116, a request to allow like-for-like replacement of 1 tiki hut in the Environmentally Critical zoning district

7. **Management Recommendations:**

Approval with conditions for SEZ20250116, a request to allow like-for-like replacement of 1 tiki hut in the Environmentally Critical zoning district.

8. **Recommended Approval:**

Jason Smalley, Senior Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-278

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250116 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF A TIKI HUT IN EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 6612 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, applicant David Nusbaum on behalf of owner Island Winds Condominium Association, is requesting a special exception to allow like-for-like replacement of a tiki hut in Environmentally Critical zoning district seaward of 1978 CCCL; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-02100.00CE; 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 September 09, 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 October 6, 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 a tiki hut 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 which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; 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.
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- D. A new special exception must be applied for each time the structure is repaired.

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- 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. Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
 - C. Construction may not occur during sea turtle season.
 - D. 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 October, 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 October, 2025.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250116

CASE NAME: Special Exception for like-to-like replacement of 1 tiki hut in EC zoning district, for the property located at 6612 Estero Blvd.

LPA

HEARING DATE: September 09, 2025 at 9:00 am

TOWN COUNCIL

HEARING DATE: October 06, 2025 at 9:00 am

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi, LEED AP ND/ Jason Green, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: David Nusbaum/ Island Winds Condominium Association

Request: To allow like-for-like replacement of 1 tiki hut in the Environmentally Critical zoning district.

Subject property: See attached site plan

Physical Address: 6612 Estero Boulevard

STRAP #: 34-46-24-W4-02100.00CE

FLU: Medium Residential and Recreational

Zoning: Residential, Multifamily and Environmentally Critical

Adjacent zoning and land uses:

North:	LOW DENSITY RESIDENTIAL Single family residential
South:	GULF OF MIEXICO
East:	MEDIUM RESIDENTIAL AND RECREATIONAL Commercial resort and Environmentally Critical
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 a tiki hut 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 hut into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of a tiki hut in the EC zoning district.

On September 09, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for SEZ20250116, a request to allow like-for-like replacement of a tiki hut in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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 1974, before the establishment of the 1978 CCCL. The property has supported this tiki hut since 2012 and was destroyed during hurricane Ian in 2022. The Applicant is proposing the reconstruction of the tiki hut which lies in the EC district and beyond the 1978 CCCL.

Neighborhood Compatibility:

The Island Winds Condo Association has been at this location with this layout since 1974. The proposed replacement of the tiki hut is similar to pre-Ian conditions. Granting a special exception for the proposed replacement of the tiki hut 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 tiki hut was 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 the tiki hut 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 a tiki hut will all be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

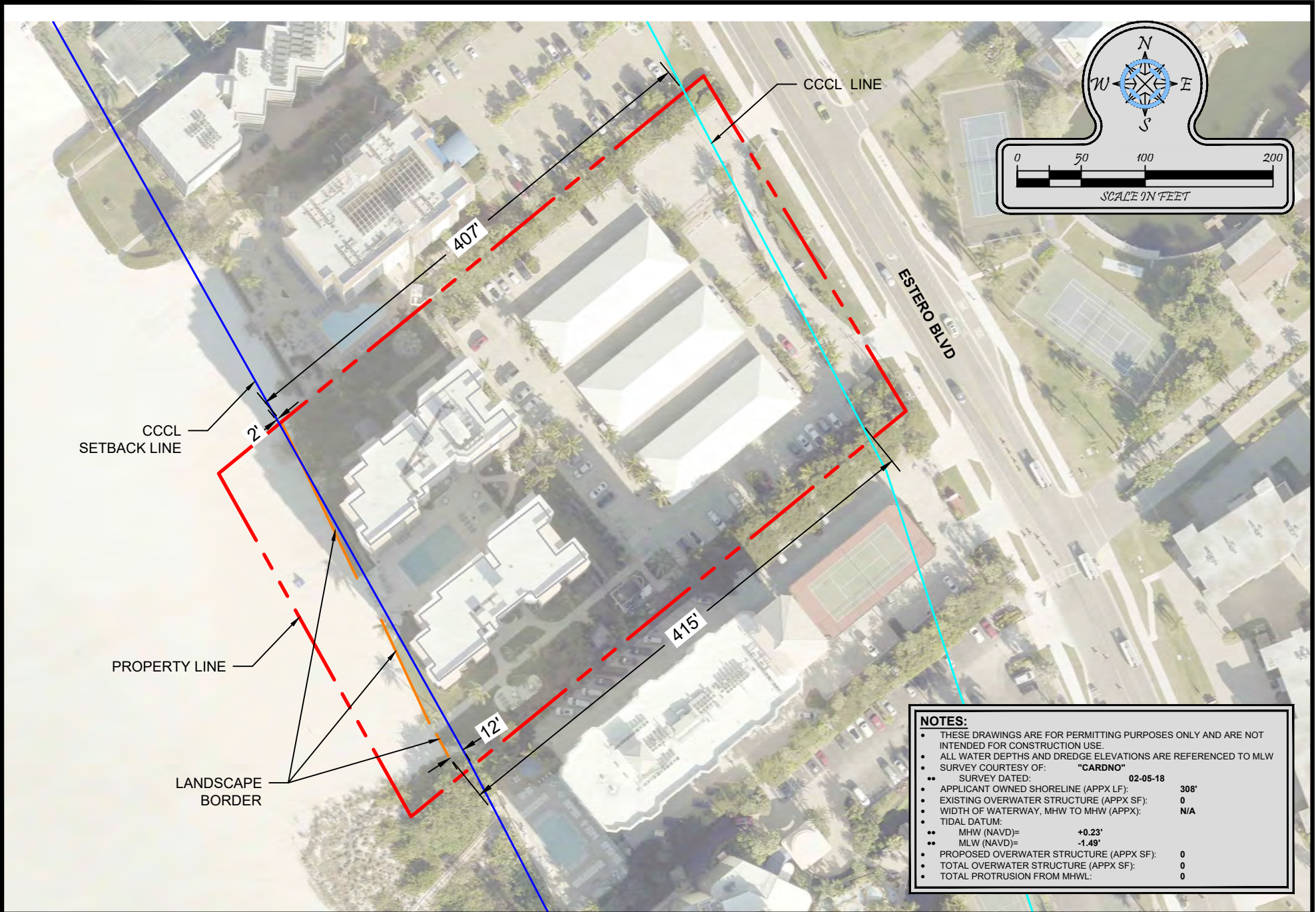
Staff finds that the special exception to replace a tiki hut in EC zoning district is in compliance with LDC Sec. 34-88(b). Therefore, staff **recommends approval with conditions** of SEZ20250116 for the like-to-like reconstruction of the existing tiki huts.

On September 09, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for SEZ20250116, a request to allow like-for-like replacement of a tiki hut

in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

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) Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- 3) Construction shall not occur during sea turtle season.
- 4) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.



- NOTES:**
- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
 - ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
 - SURVEY COURTESY OF: "CARDNO"
 - SURVEY DATED: 02-05-18
 - APPLICANT OWNED SHORELINE (APPX LF): 308'
 - EXISTING OVERWATER STRUCTURE (APPX SF): 0
 - WIDTH OF WATERWAY, MHW TO MHW (APPX): N/A
 - TIDAL DATUM:
 - MHW (NAVD)= +0.23'
 - MLW (NAVD)= -1.49'
 - PROPOSED OVERWATER STRUCTURE (APPX SF): 0
 - TOTAL OVERWATER STRUCTURE (APPX SF): 0
 - TOTAL PROTRUSION FROM MHWL: 0



Turrell, Hall & Associates, Inc.
 Marine & Environmental Consulting
 3584 Exchange Ave. Naples, FL 34104-3732
 Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

6610 ESTERO BLVD **CCCL PLAN**

RY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	JJ	REV#	REV BY	DATE	CHK BY	CHANGED
DRAWN BY:	RMJ	1.	-	-	-	-
CREATED:	02-15-23	2.	-	-	-	-
JOB NO.:	23005	3.	-	-	-	-
SHEET NO.:	04 OF 04	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 34 TOWNSHIP- 46 S RANGE- 24 E

16'x20' Authentic Tiki Hut
 Located 20' from the north
 property line and 321' from
 the south property line.
 2' seaward of the 1978 CCL
 Same location as the pre-lan
 Tiki Hut.

CCL Setback Line

SEAWATCH-ON-THE-
 CONDOMINIUM PLAT BOOK 7, PAGE 7.
 LESS A.
 THE DES.

490'(D)
 BASIS OF BEARING
 NORTH LINE OF PARCEL "B"
 295.62'

FOUND 3" X 3" CONCRETE MONUMENT
 (NO IDENTIFICATION)
 S 50°53'05" W
 490'(D)
 85.57'

PARCEL "B"
 S 51°03'59" W
 30.38'
 S 38°56'01" W
 25.67'

SEE
 SITE DETAIL

PARENT PARCEL
 ISLAND WIND CONDO
 TAX PARCEL NO. 34-48-24-W4-02100.00
 OFFICIAL RECORD BOOK 2888, PAGE 488

13 STORY BUILDING

PARCEL "A"

GULLING BEACH RESORT
 A COMMERCIAL RESORT CONDOMINIUM
 CONDOMINIUM PLAT BOOK 27, PAGE 45

FLOOD ZONE: VE
 BASE FLOOD ELEVATION = 14' NAVD'88

APPROXIMATE LOCATION OF LINE
 SEPARATING FLOOD ZONE

APPROXIMATE LOCATION OF LINE
 SEPARATING FLOOD ZONE

FLOOD ZONE: VE
 BASE FLOOD ELEVATION = 13' NAVD'88

APPROXIMATE LOCATION OF LINE
 SEPARATING FLOOD ZONE

500'(D)
 LIMITS OF PLAT

POINT OF BEGINNING
 PARCEL "A"

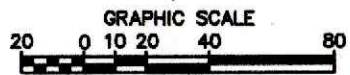
306.99' W
 151.65'(D)
 POINT OF TERMINUS: 20' WIDE
 CENTERLINE OF AT&T 20' WIDE
 INGRESS AND EGRESS EASEMENT

FOUND 1 1/2" IRON
 (NO IDENTIFICATION)

N

GULF OF MEXICO

321'
 BASE FLOOD ELEVATION = 16' NAVD'88



(IN FEET)
 SCALE FOR 24" X 36" SHEET: 1" = 40'
 SCALE FOR 11" X 17" SHEET: 1" = 80'



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: 6610 Estero Blvd. Fort Myers Beach, FL 33931

STRAP Number: 34-46-24-W4-02100.00CE

Applicant: Island Winds Condominium Assoc Phone: 239-414-8804

Contact Name: Dave Nusbaum-President Phone: 239-442-8907

Email: manager@islandwindsflorida.com Fax: NA

Current Zoning District: Multifamily Residential

Future Land Use Map (FLUM) Category: Mixed Residential/Recreational

FLUM Density Range: _____ Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Island Winds Condominium Phone: 239-414-8804

**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: 6610 Estero Blvd., Fort Myers Beach, FL 33931

Email: manager@islandwindsflorida.com Fax: NA

Contact Name: Dave Nusbaum-President Phone: 260-442-8907



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: Tim Ryan-Property Manager Phone: 239-414-8804
Address: 6610 Estero Blvd., Fort Myers Beach, FL 33931
Email: manager@islandwindsflorida.com Fax: NA

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

Name: Dave Nusbaum-President Phone: 262-442-8907
Address: 6610 Estero Blvd. Unit 523, Fort Myers Beach, FL 33931
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: _____

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.

Signature

Printed Name

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 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, David Nusbaum Exhibit 5-1 (name), as President (title)
of Island Winds Cond Assoc. (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

Island Winds Condo Assoc.

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

Signature

David Nusbaum

Typed or Printed Name

President

Title

4/21/25

Date

STATE OF FL COUNTY OF LEE

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: 34-46-24-W24-02100.00CE

Property Address: 6610/6612 Estero Blvd Common area uses above Strap #

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: MCPHIE PARK

Book: 8 Page: 59 Unit: 2 Block: 1 Lot(s): 4

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) 300 feet
Depth (please provide an average width if irregular in shape) 500 feet
Frontage on street: 300 feet. Frontage on waterbody: 306 feet
Total land area: 150,000 ☐ acres ☒ square feet

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

Approximately 1.3 miles north of Big Carlos Pass bridge located at
6610 Estero Blvd. immediately north of Gull Wing Resort

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☒ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☒ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☒ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-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: Island Winds Tiki Hut Replacment
Authorized Applicant: David Nusbaum
LEOPA STRAP Number(s): 34-46-24-W4-02100.00CE
Island Winds Condominium Assoc. 6610/6612 Ester Blvd.

Current Property Status: Condominium
Current Zoning: Multi Family Residential
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☒	Use of premises in the EC (Environmentally Critical) zoning district for:
	Build a like for like Tiki Hut that was destroyed by Hurricane Ian
☒	Use of premises in the <u>Multi Family Residential</u> zoning district for:
	Recreational use by condominium owners



Case# _____

Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

See Exhibit N-1

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:
See Exhibit N-2
See Exhibit N-3 & N-3a
See Exhibit N-4

Granting the requested Special Exception could impact surrounding properties as follows:
Tiki Hut will not impact the surrounding properties.
As noted in the attached letter from Timothy Hall, Senior Ecologist, Turrell Hall and Associates, the reconstruction of the Island Winds' tiki hut will not result
in any adverse impacts to sea turtles or their nesting (Exhibit 6-5a)
As noted in the attached letter from Michael Antinelli, PE, Brizaga, the section of
the beach located between FDEP monuments R-200 and R-203 immediately
adjacent to Island Winds, has been documented to be neither stable or slightly
erosional, but accretional. (Exhibit 6-5b)

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

Michelle H. Kaiser, Esq., LL.M., M.B.A.
Senior Attorney
Phone: 239.552.3205 Fax: 239.263.1633
MKaiser@beckerlawyers.com



Becker & Poliakoff
Six Mile Corporate Park
12140 Carissa Commerce Court, Suite 200
Fort Myers, Florida 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

April 9, 2025

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers, Florida 33931

**Re: Island Winds Condominium Bath and Racquet Club Association, Inc.
Town of Fort Myers Beach Special Exception Application - Tiki Hut**

To Whom It May Concern:

Please be advised this Firm represents Island Winds Condominium Bath and Racquet Club Association, Inc. (the "Association"). In that capacity we have been directed to provide this letter of opinion to the Town of Fort Myers Beach concerning the Association's Special Exception application to reconstruct its tiki hut that was destroyed in Hurricane Ian.

Specifically, Section 34-201(a)(1)b.3. of the Town of Fort Myers Beach Municipal Code of Ordinances provides as follows:

(a) *Initiation of application.* An application for a rezoning, development of regional impact, special exception, appeal from administrative action, or variance may be initiated by:

(1) A landowner, or his authorized representative, for his own property; provided, however, that:

...

b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.

...

3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

This opinion letter is intended to comply with Section 34-201(a)(1)b.3., cited above, confirming that following our examination of the Declaration of Condominium, the Articles of Incorporation, and Bylaws for the Association, there is no prohibition in such documents concerning the Association's authority to submit the subject Special Exception application.

The subject Special Exception application does not violate any rights of a Unit Owner contained in the foregoing documents and there is no federal or state law regulating condominiums which would prohibit the Association with filing the subject Special Exception Application.

We express no opinion in this letter as to any consent, approval, authorization, or other action or filing necessary for future assertions by the Association. We express no opinion as to the laws of any jurisdiction other than the laws of the State of Florida and the laws of the United States of America.

The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the State of Florida and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

This opinion is given solely for the use and benefit only of the Association as it pertains to its Special Exception application and is limited in its use to reliance by the Town of Fort Myers Beach and may not be relied upon by any other parties, furnished to any other party, quoted, or otherwise used without the prior express written consent of the undersigned Firm.

The Town of Fort Myers Beach

April 9, 2025

Page 3

This opinion is as of the date hereof and we disclaim any obligation to advise you of any change which hereafter may be brought to our attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michelle H. Kaiser".

Michelle H. Kaiser, Esq., LL.M., M.B.A.
For the Firm

MHK/JEA/KOB/oms

cc: Island Winds Condominium Bath and Racquet Club Association, Inc.
Joseph E. Adams, Esquire
Katie O. Berkey, Esquire, AICP

April 18, 2025

TO: ALL UNIT OWNERS

Re: Island Winds Condominium Bath and Racquet Club Association, Inc.
Hurricane Ian / Tiki Hut Reconstruction
Town of Fort Myers Beach Special Exception Application

**FOLLOW UP NOTICE
INITIATION OF SPECIAL EXCEPTION APPLICATION WITH THE
TOWN OF FORT MYERS BEACH TO RECONSTRUCT THE TIKI HUT**

Dear Unit Owners of Island Winds Condominium Bath and Racquet Club Association, Inc.:

As you are aware, Hurricane Ian destroyed our Tiki Hut on the beach. In order to reconstruct the Tiki Hut as it previously existed, the Town of Fort Myers Beach requires Island Winds Condominium Bath and Racquet Club Association, Inc. (the "Association") to file a Special Exception application (the "Application"). To initiate the Application, the Fort Myers Beach Municipal Code of Ordinances Section 34-201(a)(1)b requires the Association to give all Unit Owners actual written notice of the Application and the Application may be initiated with the agreement of no less than seventy-five percent (75%) of the total number of condominium Unit Owner.

On April 11, 2025, the Association provided written notice of the Application to all Unit Owners requesting their acknowledgement and consent to initiate the Application. Notice is hereby given that on April 18, 2025, at least seventy-five percent (75%) of the Unit Owners consented to the initiation of the Application. The result of the consents were as follows:

UNITS THAT CONSENTED TO INITIATE THE APPLICATION:	= 85
UNITS THAT DID NOT CONSENT	= 15
TOTAL VOTING INTERESTS	= 100
75% OF VOTING INTERESTS	= 75

Having received the requisite consent to initiate the Application, the Association will now apply to the Town of Fort Myers Beach for a Special Exception to reconstruct the Tiki Hut.

Sincerely,



Tim Ryan, Property Manager

Island Winds Condominium Bath and Racquet Club Association, Inc.

Special Exception Application Head Count			
Names and Unit Number	Yes/No	Names and Unit Number	Yes/No
Anne E Ehrnfelt Rev Trust - 101	Yes	Dr. Kwang Ho & Dong You Cho - 801	Yes
David & Gail Holman - 102	Yes	Patricia Huff - 802	Yes
John Otteson - 103	Yes	Michael & Stacy Steidel - 803	Yes
Gerhard Stadler - 123	NR	Perry Kathleen Skaurud Famil Trust - 804	Yes
Bryan Real Estate LLC - 201	Yes	Tim & Sue McCord - 821	Yes
Paul & Mary Balash - 202	NR	Steven Ulrich - 822	Yes
JG Carr LLC - 203	Yes	James & Anne Freiburger - 823	Yes
Joseph & Janet Scheiner - 204	Yes	Robert J Edwards Revocable Liv Trust - 824	Yes
Nancy & Mary Bateman - 221	Yes	Nathaniel J Goetz - 901	Yes
Manager's Unit	Void	Edwin & Carey Feildhouse - 902	Yes
Dan & Joellyn Brough - 223	Yes	James & Trinny Smith - 903	Yes
John Lemmons - 224	Yes	Nancy & Mary Bateman - 904	Yes
Betty Bentle - 301	Yes	Warren & Ellen Schoen - 921	Yes
Larry & Jean Wiedeman - 302	Yes	Texcana Holding Company - 922	No
Richard & Felicia Warner - 303	Yes	Charles & Carolyn Angell - 923	Yes
Gale & Dolores Hill - 304	NR	Zeno Chicarilli - 924	Yes
Daniel & Monica Hoeft - 321	NR	Michael & Stacy Steidel - 1001	Yes
Bill & Beva Huser - 322	Yes	Gary Pugliano - 1002	NR
Alexey Pavlinchuk - 323	NR	American High Lift Richard Palmer - 1003	Yes
Robert Martin - 324	Yes	Phillip & Patricia Thornberry - 1004	Yes
Jeanne Lombardo - 401	Yes	Kathleen Skaurud Perry - 1021	Yes
James David Myers - 402	Yes	Island Winds LLC Jennifer Lee - 1022	Yes
Pierre & Arlene Adams - 403	Yes	Brad & Jill McEldowney - 1023	Yes
Gary & Julia Perelli - 404	Yes	Richard & Mary Sabina - 1024	Yes
Lloyd & Mary Karmeier - 421	Yes	Craig & Donna Marvin - 1101	Yes
John & Patricia Rittinger - 422	Yes	John & Valerie Vranicer - 1102	Yes
Joanne Culter - 423	Yes	Jim & Janet Orbik - 1103	Yes
Joanne Culter 424	Yes	Preston Farmer - 1104	Yes
David & Marisa DeLuke - 501	Yes	Rob & Michelle Diplotti - 1121	Yes
Mark-Justin & Heather DeGrandis - 502	NR	Tim & Sue McCord - 1122	Yes
John Newell - 503	Yes	Susan Shaw - 1123	Yes

John & Mary Keener - 504	Yes	John & kimberly Miller - 1124	Yes
Thomas & Julie Miller - 521	Yes	Janet Michell - 1201	No
Gary Miller - 522	Yes	Bobbi Connor - 1202	Yes
Dave & Julie Nusbaum - 523	Yes	Richard & Beatrice Muzyka - 1203	Yes
JG Carr LLC - 524	Yes	Denise Bettenhausen - 1204	Yes
Dale & Delores Hill - 601	NR	Bill & Mary Ellen Borman - 1221	Yes
Elaine Kuracina - 602	Yes	Frank & Beatrice Troiano - 1222	Yes
James & Alvera Morgan Estate - 603	Yes	Ken & patricia Lawson - 1223	NR
Joseph & Patricia Burtka - 604	Yes	Craig & Donna Marvin - 1224	Yes
Tom & Carole Kelley - 621	Yes	Gregory & Kristy Mills - PH 1	Yes
Kathy Dixon - 622	Yes	Joseph Rinaldi - PH 2	NR
Dr. Rogelio & Lynette Allanique - 623	NR	Antoinette Cancelliere - PH 3	Yes
Linda Miller - 624	Yes	Thomas & Joanne Etter - PH 4	Yes
Roger Jacobsen - 701	Yes	Russ & Amy Grosjean - PH 21	Yes
Theodore & Karen Bots - 702	Yes	Charles & Nancy Creech - PH 22	Yes
David & Kandi Sudduth - 703	Yes	Odino Soligo - PH 23	No
David & Beth Bishop - 704	NR	Brian & Sarah Richmond - PH 24	Yes
Jet Container Company Mark Schmitt - 721	Yes		
Vern A Hunter Trust - 722	Yes		
Vern A Hunter Trust - 723	Yes		
Mike & Candy House - 724	Yes		





Island Winds Condominium Association, Inc. 6610 Estero Blvd. Fort Myers Beach, FL 33931

1. **Request:**

Meeting Date: October 6, 2025

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-15.

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, are requesting a rezoning of their property 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 2 dwelling units existed 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.

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

Attachments:

1. Ord 25-15, RPD20250181 for 138-140 Delmar Ave
2. Ord 25-15, business-impact-estimate RPD20250181, 138-140 Delmar Ave
3. Exhibit A- Master Concept Plan
4. EXHIBIT B- Conditions of Approval, Schedule of Uses and Deviations
5. 138/140 Delmar Ave Staff Report
6. Exhibit C- survey
7. Exhibit D - Application
8. 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:

Lizzette Roman, Town Clerk Administrative Coordinator
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/29/2025
Approved - 9/29/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

ORDINANCE 25-15

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/PROVING 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 25-15 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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: (25-15)

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.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

¹ See Section 166.041(4)(c), Florida Statutes.

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to allow residential planned development for the 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.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

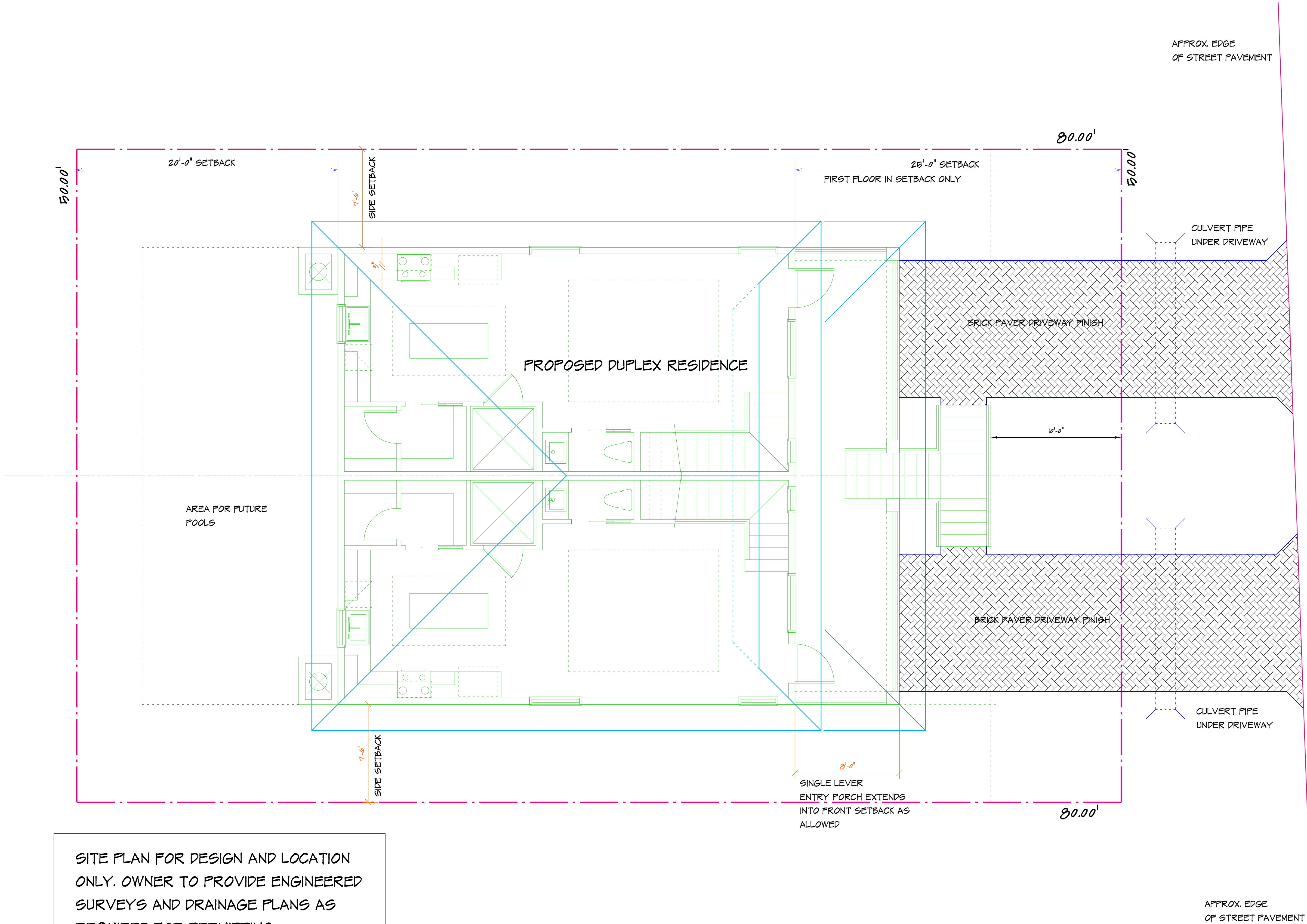
The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

One property owner will be impacted by this proposed ordinance.

4. Additional information the governing body deems useful (if any):

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [Town/] staff solicited comments from businesses in the [Town] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [own] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses).



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

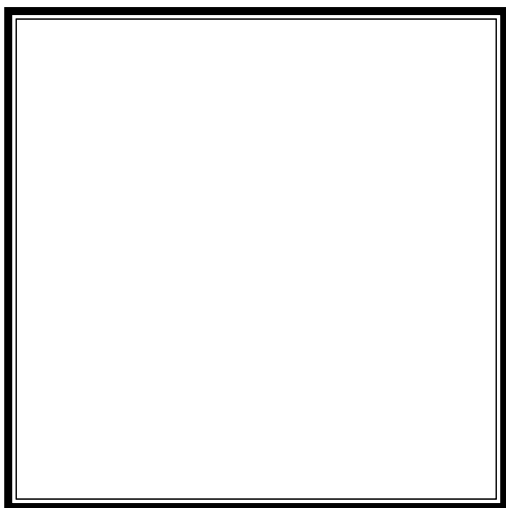
CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

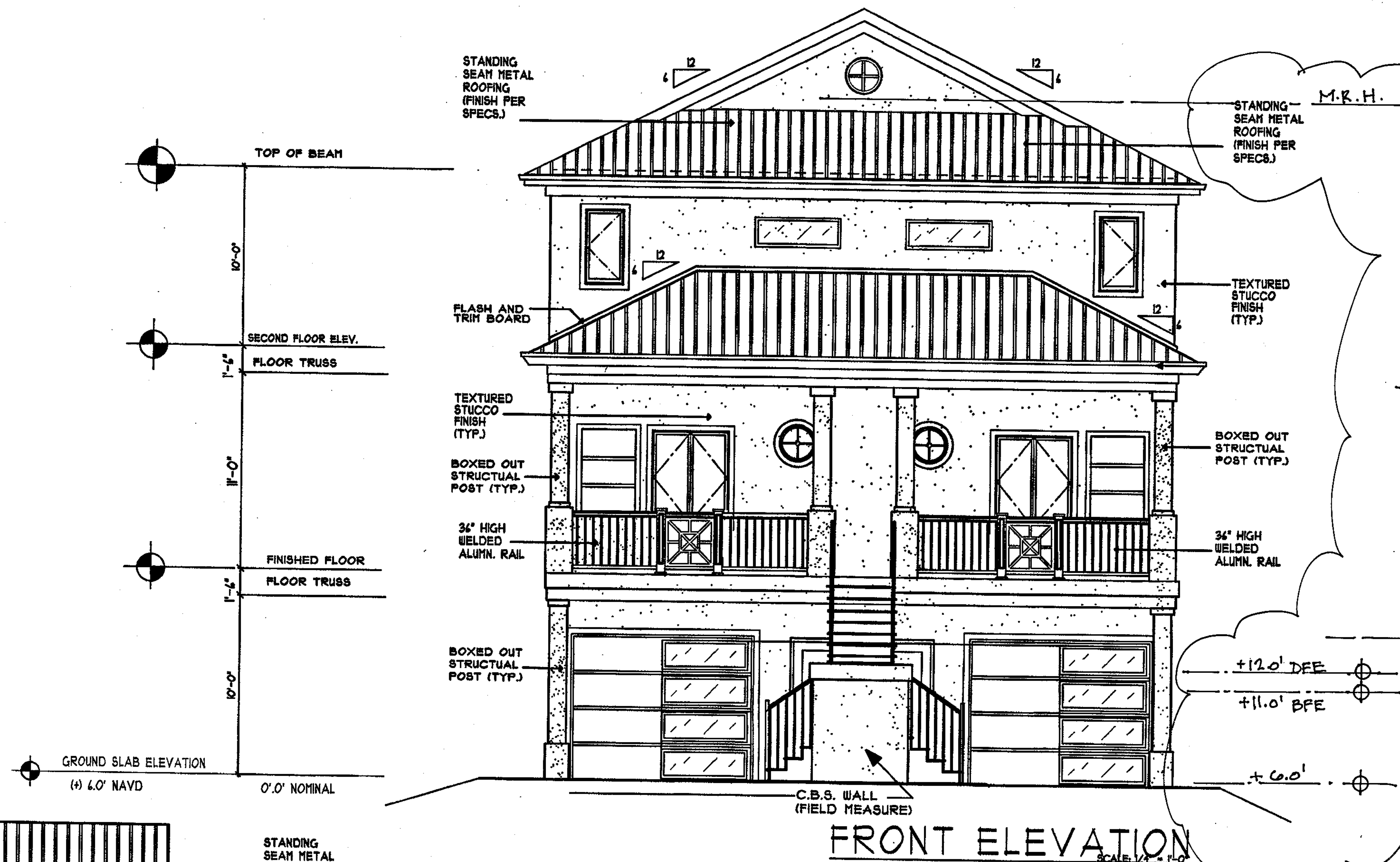
DELMAR AVENUE

FT. MYERS, BEACH FLORIDA

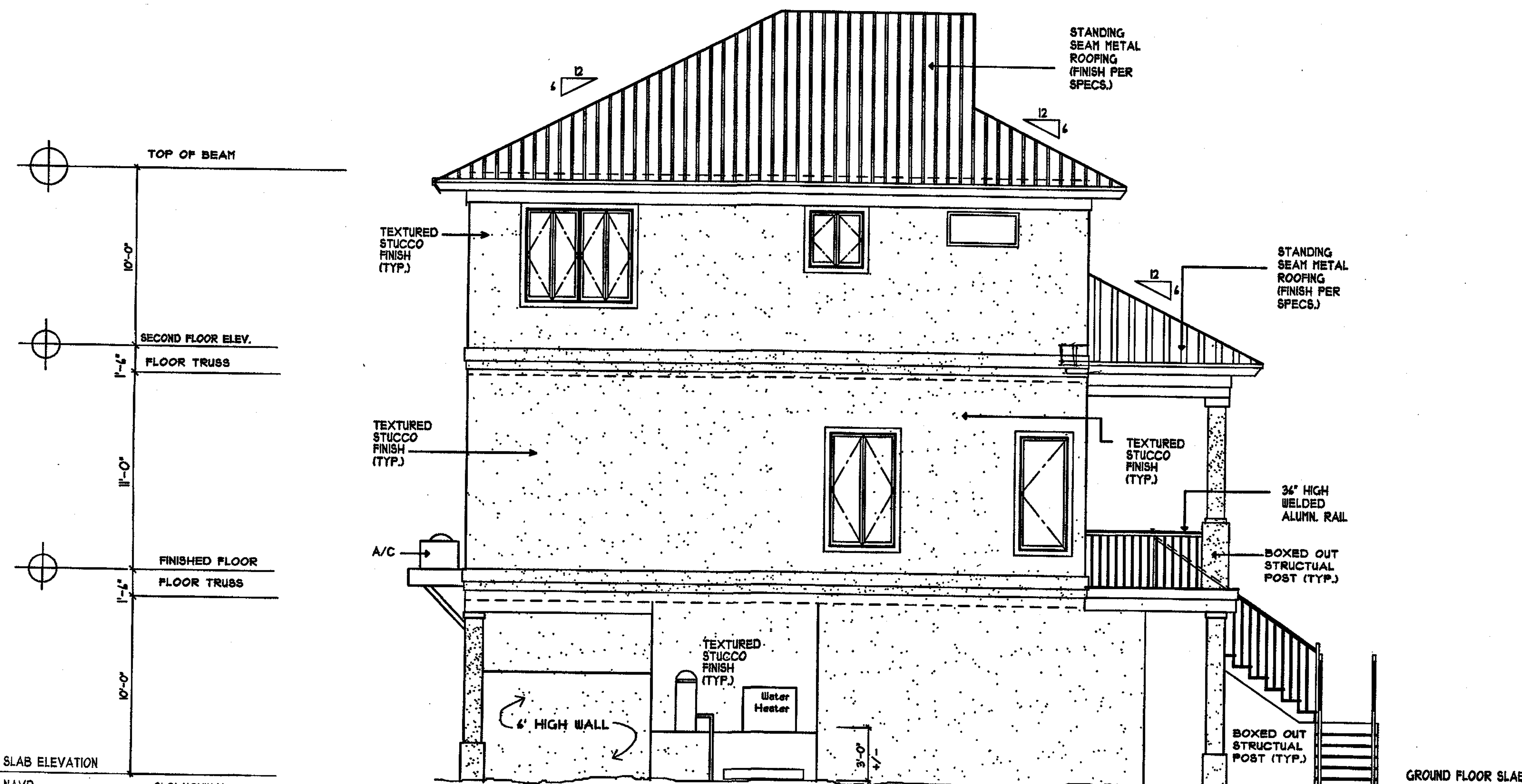


SHEET

SP - 1



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



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

Revisions	
1	6-30-25

Job Number	
Date	12-12-24
Drawn By	JC
Checked By	
Drawing Scale	AS NOTED

STUDIO

one

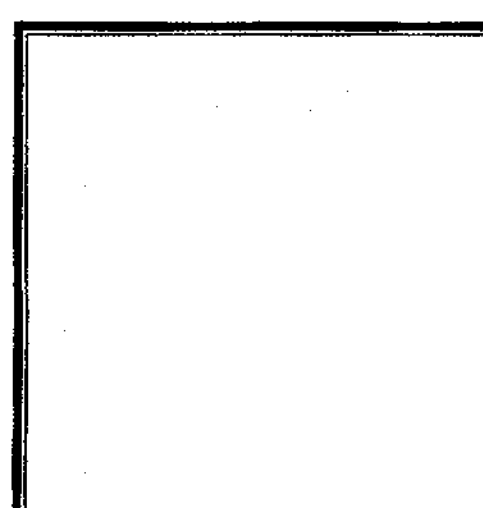
DESIGN

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	JG
Checked By	
Drawing Scale	AS NOTED

STUDIO

one

DESIGN

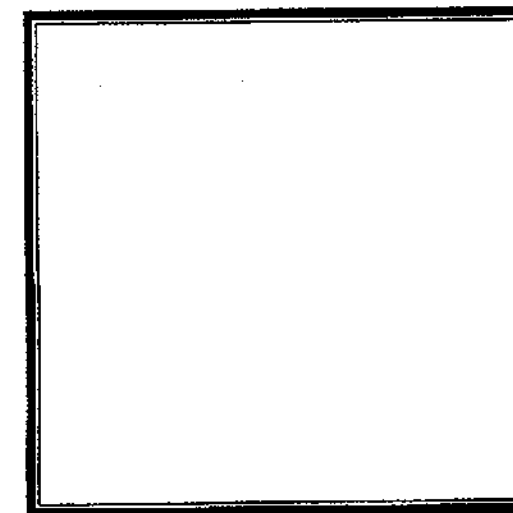
CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

138 / 140 DELMAR AVENUE

FT. MYERS, BEACH FLORIDA



SHEET

A - 14

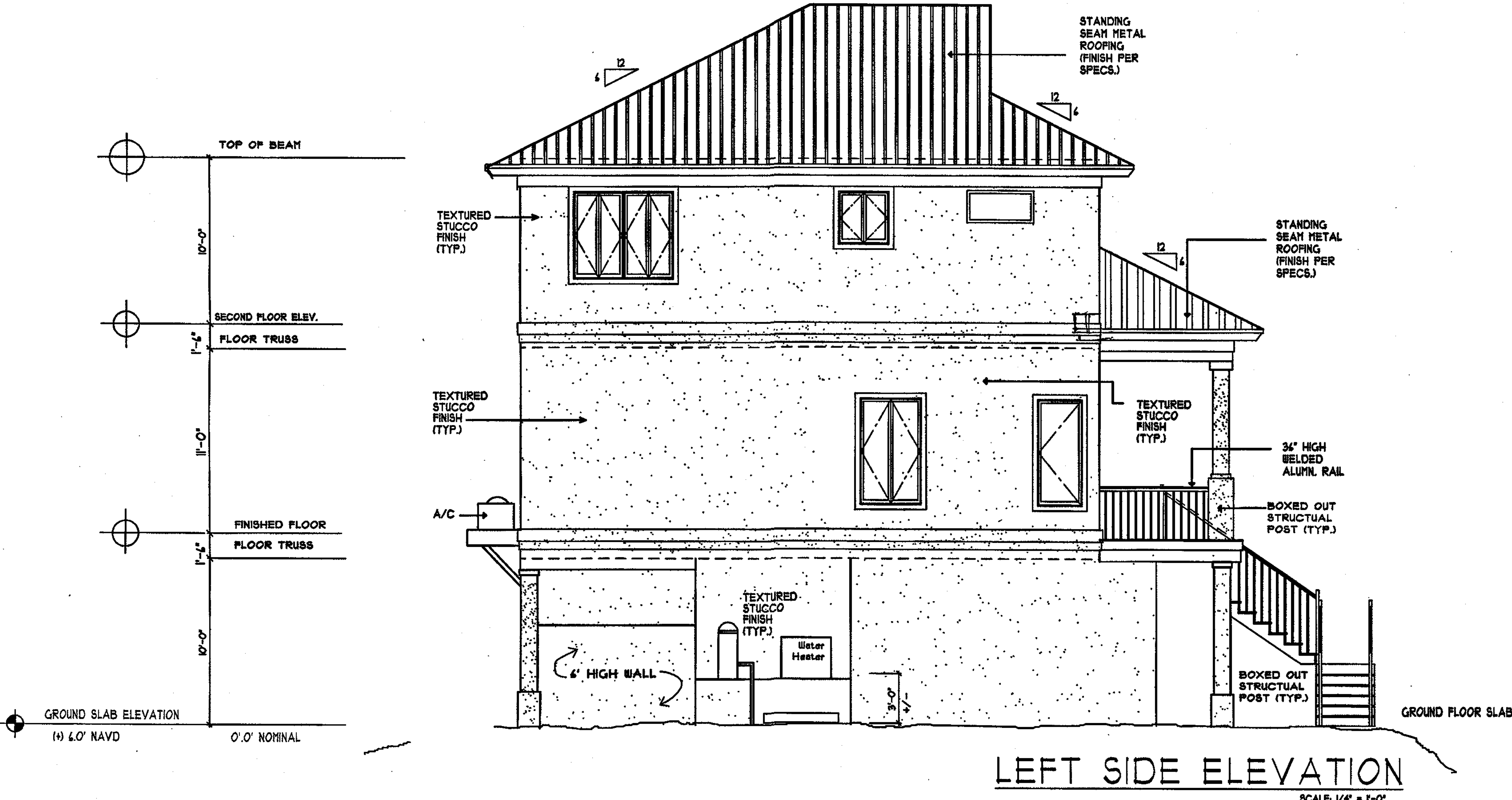
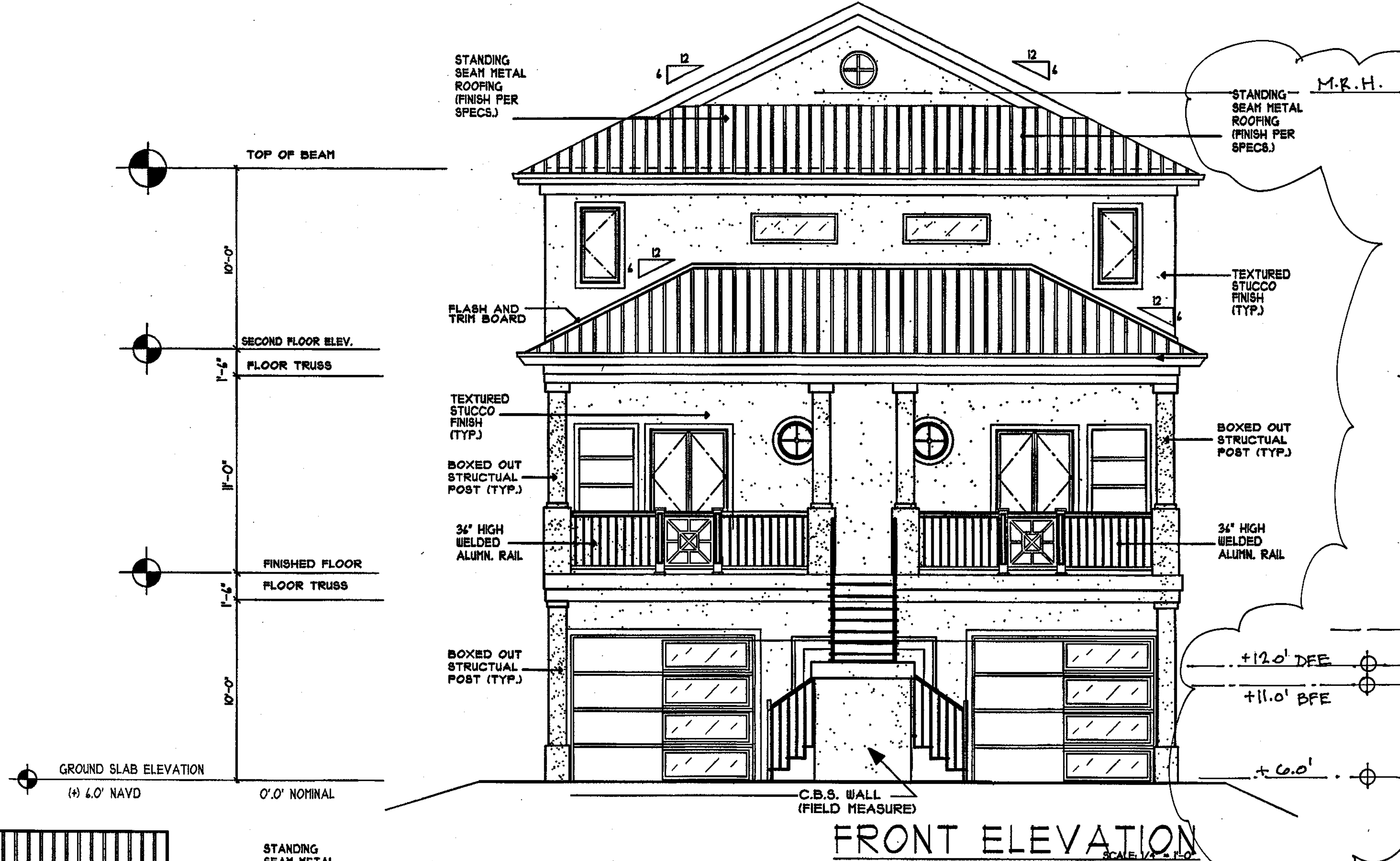


EXHIBIT B: CONDITIONS OF APPROVAL, SCHEDULE OF USES AND REQUESTED DEVIATIONS

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

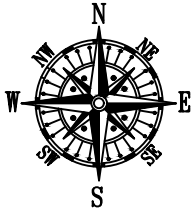


PROPERTY ADDRESS:

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



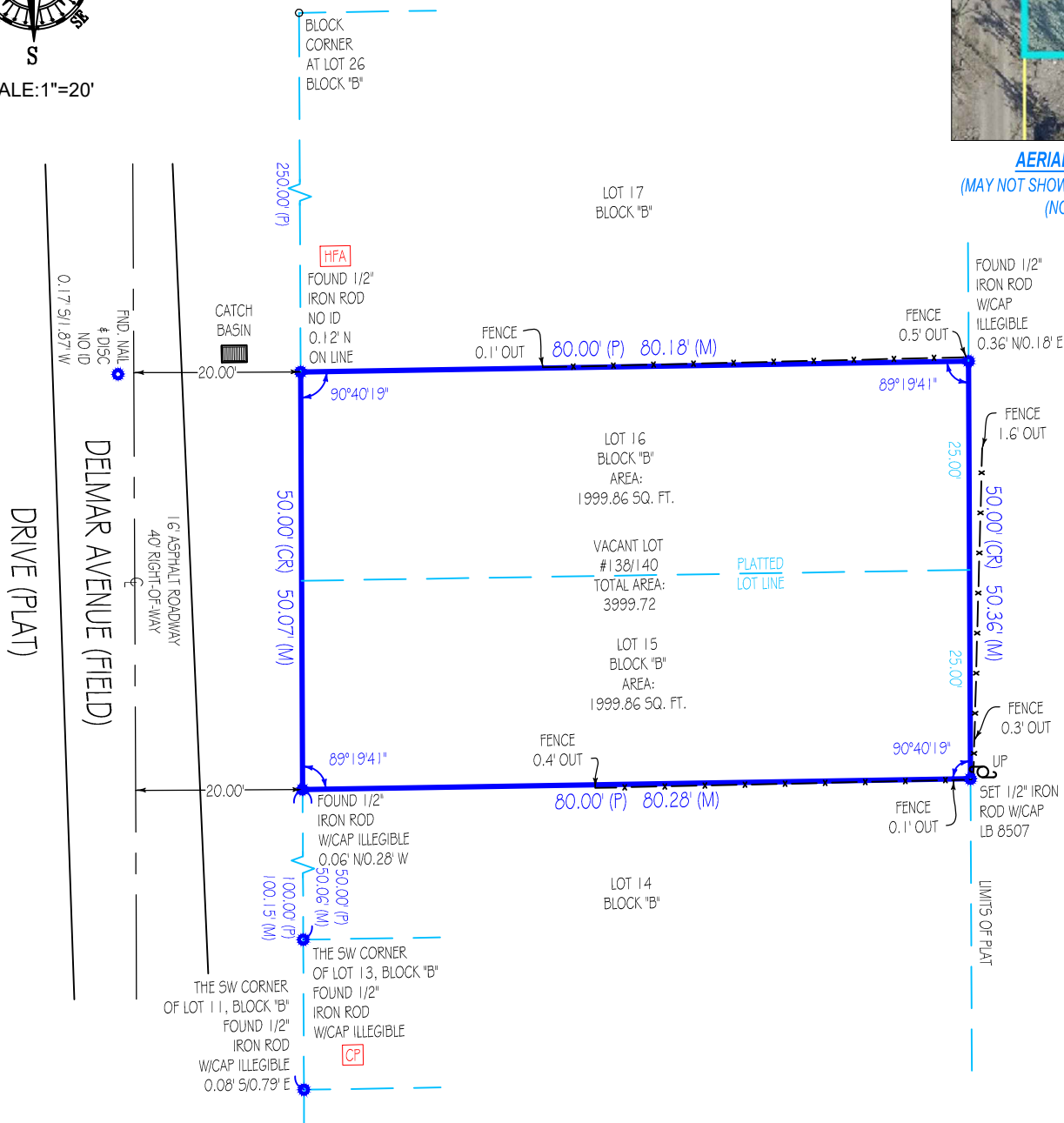
SCALE: 1"=20'

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.



LICENSED BUSINESS No. 8507

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

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

☎ = UTILITY POLE	⊙ = WELL	♿ = HANDICAP PARKING SPACE
★ = LIGHT POLE	⊕ = CENTER LINE	
☐ = CATCH BASIN	ℓ = PARTY WALL	
⚡ = FIRE HYDRANT	AC = AIR CONDITIONER	⊕ = SEC. QTR. CORNER
⊗ = MANHOLE	⊕ = SEPTIC LID	
⊕ = WATER VALVE	X = ELEV. SHOT	✦ = SECTION CORNER
□WM = WATER METER		

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

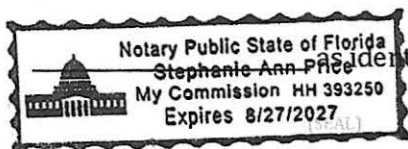
Printed Name

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.

E. Decision-making Compliance

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

[illegible]

F. Schedule of deviations and written justification

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

LDC Sec. 34-638(2)b - requesting deviation of stairs in front to an additional 5 feet. The code as we understand it allows for 10-feet into the 25-foot setback. The stairs as designed encroach 15-feet.
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.

G. Administrative amendments to approved Master Concept Plan

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

Does not apply

PART 2 Submittal Requirements

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

Required Items

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

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

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: October 6, 2025

This quasi-judicial agenda item is a First Reading and Public Hearing on proposed Ordinance 25-17. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 3, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 110-130 CONNECTICUT STREET (PARCEL 1) AND 134/138 CONNECTICUT STREET (PARCEL 2) FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00151.0010 AND 29-46-24-W1-00151.001A AND OWNED BY FIRST BAPTIST CHURCH OF FORT MYERS, INC., AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 AND AMENDED BY RESOLUTION 24-247 FOR THE PURPOSE OF REDEVELOPMENT OF THE PARCELS 1 AND 2 TO ALLOW REBUILDING A CHURCH FACILITY AND 12 SINGLE-FAMILY HOMES; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Town Council takes into account the LPA's recommendations.

What the action accomplishes:

If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 03, 2025 at 9:00 AM or at another time identified by Town Council.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has spilt the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). The Development Agreement would also approve the rezoning of Parcel 1 from Institutional to Residential Conservation, in accordance with the application of the required criteria in the Land Development Code and evidence in the record.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant

has agreed to enter into a development agreement containing restrictions to address possible future adverse impacts on the neighborhood.

On September 9, 2025, the LPA unanimously voted (6-0) to recommend approval with conditions for the proposed home rule development agreement request to allow a church facility and 12 single-family homes for the property located at 110-130 Connecticut Street and 134/138 Connecticut Street.

Attachments:

1. Final Ord 25-17 Development Agreement
2. Draft 3 Exhibit A to Ordinance 25-17 FBC Dev. Agreement REVISED JG 09.28.25 (Clean Copy)
3. Exhibit A-1 to DA Parcel 1 Sketch and Description
4. Exhibit B-1 to DA Parcel 2 Sketch and Description
5. Exhibit F to DA - SITE PLAN
6. LPA Staff Report DA Beach Baptist-UPDATED
7. Ordinance 25-17 Business Impact Estimate - FMB Baptist Church HR Development Agreement
8. Ft Myers Beach Response Letter no. 2
9. DA Narrative - First Baptist Church of Ft. Myers Beach
10. Title Certification -combined
11. Affidavit of Authorization
12. 9-7-25 Power point First Baptist_FMB

Financial Impact:

Unknown

6. Alternative Action

Approve/ Approve with conditions/ Deny the request for a home rule development agreement to allow a church facility and 12 single-family homes for the property located at 110-130 Connecticut Street and 134/138 Connecticut Street.

7. Management Recommendations:

Contingent upon all code violations being addressed

8. Recommended Approval:

Jason Green, Community Development Services
Georgina Cid, Community Development Manager
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/29/2025
Approved - 9/30/2025
Final Approval - 9/30/2025

ORDINANCE NO. 25-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 110-130 CONNECTICUT STREET (PARCEL 1) AND 134/138 CONNECTICUT STREET (PARCEL 2) FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00151.0010 AND 29-46-24-W1-00151.001A AND OWNED BY FIRST BAPTIST CHURCH OF FORT MYERS, INC., AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 AND AMENDED BY RESOLUTION 24-247 FOR THE PURPOSE OF REDEVELOPMENT OF THE PARCELS 1 AND 2 TO ALLOW REBUILDING A CHURCH FACILITY AND 12 SINGLE-FAMILY HOMES; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2-100 of the Town's Land Development Code ("LDC"), authorizes the Town to enter into a Home Rule Development Agreement pursuant to Article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, First Baptist Church of Fort Myers Beach, Inc. ("Property Owner") has requested approval of this Home Rule Development Agreement pursuant to Section 2-96 of the LDC and Resolution 24-73, as amended by Resolution 24-247; and

WHEREAS, Fort Myers BBC Residential, LLC, a Delaware limited liability company (hereinafter "BBC Residential") is the contract purchaser of approximately 2.05 +/- acres of land owned by Property Owner and located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" as Parcel 1; and

WHEREAS, Parcel 2 is approximately 1.10 +/- acres and located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "B" attached hereto as Parcel 2. Parcel 1 and Parcel 2 are collectively referred to as the "Property"; and

WHEREAS, the Property Owner seeks to rezone Parcel 1 of the Property from Institutional to Residential Conservation (RC) to permit the construction of 12 single-family dwelling units by its BBC Residential or its related company; and

WHEREAS, Property Owner seeks to redevelop Parcel 2 as a Place of Worship (church) to serve its existing and future church adherents as well as the residents of Fort Myers Beach; and

WHEREAS, Property Owner has authorized S.J. Collins Development LLC to act as its agent for purposes of securing the Development Agreement with the Town; and

WHEREAS, First Baptist Church of Fort Myers Beach and S.J. Collins Development LLC have entered into that certain Development Agreement, dated May 28, 2024, as amended by that certain First Amendment to Development Agreement, dated June 11, 2024 (the “S.J. Collins Development Agreement”) that sets forth the rights and obligations of Property with respect to redevelopment of the Place of Worship (church) on Parcel 2 as set forth in Exhibit C to the Home Rule Development Agreement; and

WHEREAS, Parcel 2 is the prior location of the Place of Worship, which sustained significant damage from Hurricane Ian; and

WHEREAS, Parcel 2 is currently zoned IN, which permits a Place of Worship as defined in Section 34-2, LDC as a permitted use; and

WHEREAS, the Town and the Property Owner desire to enter into this Home Rule Development Agreement to provide for the approval and a comprehensive understanding of the redevelopment parameters for Parcels 1 and 2, consistent with the Town’s Land Development Code and Comprehensive Plan as set forth in the Home Rule Development Agreement; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency(“LPA”) on the 9th day of September, 2025, and the LPA reviewed the proposed Home Rule Development Agreement and by a vote of 6-0 to recommend approval with conditions to the Town Council; and

WHEREAS, the Town Council held its first reading and public hearing of Ordinance 25-17 containing the Home Rule Development Agreement at its October 6th , 2025 Town Council meeting, during which the Town Council heard testimony from Town staff, the Property Owner and interested parties as well as review of the agenda materials and thereafter voted ___ to ___ to schedule a Second Reading and adoption hearing on the ___ day of _____, 2025; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the ___ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, Ordinance 25-17 was advertised in the _____ on the ___ day of _____, 2025; and

WHEREAS, thereafter the Town Council held the second and final reading and public hearing to adopt of Ordinance 25-17, containing the Home Rule Development Agreement on _____, 2025 and **approved/approved with conditions/denied** the request by a vote of ___ to ___; and

WHEREAS, the Town Council determined that adoption of the ordinance, as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

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

Section 2. The Town Council hereby formally approves the Home Rule Development Agreement attached hereto as Exhibit “A” to Ordinance 25-17 and authorizes the Property Owner to proceed with the development as further outlined therein.

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

Section 4. If any section, subsection, sentence, clause, word, 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 Ordinance shall take effect as of the date of adoption.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice-Mayor	_____
John R. King, Council Member	_____
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**

Vose Law Firm, Town Attorney

Exhibits:

Exhibit A: Development Agreement

DRAFT

HOME RULE DEVELOPMENT AGREEMENT

(As Approved _____ (date))

THIS HOME RULE DEVELOPMENT AGREEMENT (hereinafter “Agreement” or “Development Agreement”) is entered into this _____ day of _____, 2025, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter “Town”), having its principal office at 6231 Estero Blvd, , Fort Myers Beach, FL, and **FIRST BAPTIST CHURCH OF FORT MYERS BEACH, INC.**, a Florida corporation, whose address is 130 Connecticut Street, Fort Myers Beach, Florida 33931 (“Property Owner”) Property Owner and the Town may hereinafter be individually referred to as “Party” and collectively referred to as the “Parties.”

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

WHEREAS, the Property Owner has requested approval of this Development Agreement pursuant to Section 2-96 of the LDC and Resolution 24-73, as amended by Resolution 24-247 regarding its real property located at 110-130 Connecticut Street and 134/138 Connecticut Street Fort Myers Beach, FL, (collectively referred to as “the Property”); and

WHEREAS, Fort Myers BBC Residential, LLC, a Delaware limited liability company (hereinafter “BBC Residential”) is the contract purchaser of Parcel 1, approximately 2.05 +/- acres of the Property, located landward of the 1978 Coastal Construction Control Line (hereinafter “CCCL”), and more specifically described in Exhibit “A” (“Parcel 1”) and

WHEREAS, BBC Residential is owned by S. J. Collins Enterprises, LLC, a Georgia limited liability company authorized to do business in the State of Florida, who will be the developer of Parcel 1 (“Developer”); and

WHEREAS, the remainder of the Property is approximately 1.10 +/- acres in size and is located within the Town directly adjacent to Parcel 1, and landward of the 1978 Coastal Construction Control Line (hereinafter “CCCL”), being legally described in Exhibit "B" attached hereto (hereinafter, “Parcel 2,” with Parcel 1 and Parcel 2 being collectively referred to as the “Property”); and

WHEREAS, the Property Owner is requesting a rezoning of Parcel 1 in the Home Rule Development Agreement from Institutional to Residential Conservation (RC) zoning, subject to conditions and deviations which will permit the construction of 12 single-family dwelling units by Developer subsequent to acquisition of Parcel 1 by BBC Residential; and

WHEREAS, Property Owner seeks to redevelop its Place of Worship (“Church”) on Parcel 2 of the Property to serve existing and future members of the Church, which previously had sustained extensive damage from Hurricane Ian in 2022, and residents of the Town; and

WHEREAS, Property Owner has authorized Developer, to serve as its agent for purposes of securing the Development Agreement with the Town; and

WHEREAS, Property Owner and Developer have entered into that certain Development Agreement, dated May 28, 2024, as amended by that certain First Amendment to Development Agreement, dated June 11, 2024, which sets forth the rights and obligations of Property Owner and Developer with respect to redevelopment of Parcel 2, the relevant provisions of which are attached hereto as Exhibit C; and

WHEREAS, Parcel 2 is currently zoned IN, which will continue to allow use of Parcel 2 as a church as defined in Section 34-2, LDC; and

WHEREAS, the Town and the Property Owner desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the proposed redevelopment of Parcels 1 and 2 of the Property, in a manner consistent with Sections 2-96 and 2-100 of the Town's Land Development Code, Resolution 24-73, as amended by Resolution 24-247, and the Town's Comprehensive Plan ("Applicable Regulations"), as set forth herein due to the unified nature of the proposed redevelopment of the Property; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 9th day of September, 2025, and the LPA reviewed the proposed Agreement and by a vote of 6 to 0 recommended approval of the Agreement, subject to conditions; and to the Town Council; and

WHEREAS, the Town Council conducted two public hearings on the 6th day of October, 2025, and the ___ day of November, 2025, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

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

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the ___ day of _____, 2025, 10 days prior to Second Reading as required by Section 166.041(4), Florida Statutes; and

WHEREAS, Ordinance 25-17 was advertised on the ___ day of _____, 2025 in the _____; 10 days prior to Second Reading; and

WHEREAS, the Town Council determined that adoption of Ordinance 25-17, containing the Development Agreement, was in the best interests of the health, safety, welfare, and morals of the Town's residents.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein as authorized by and consistent with the Applicable Regulations, and for other good and valuable

consideration, the receipt of which the parties hereby acknowledge, the Town and the Property Owner agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference as legislative findings in further support of the approvals contained herein. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. Parcels 1 and 2 as described in Exhibits A and B are subject to the terms and conditions of this Agreement.

3. Ownership. Property Owner is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 456803 recorded in Book 445, Page 536 on January 25, 1968, and Instrument No. 500060 recorded in Book 519, Pages 363-65 on March 11, 1969, both in the Official Records of Lee County, Florida. Developer hereby represents and warrants to the Town that it is lawfully authorized to represent the Property Owner as its agent pursuant to the S.J. Collins Development Agreement, relevant provisions of which are attached hereto as Exhibit C. The Town has received a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Property Owner and Developer's representations.

4. Proposed Development and Use of the Property. The proposed uses and development of Parcels 1 and 2 as set forth in the recitations hereof (hereinafter the "Proposed Development") will be consistent with the following as shown on the Site Plan attached as Exhibit F:

A. Parcel 1 – Residential Development

(1) Primary Use.

Parcel 1 is hereby rezoned to Residential Conservation (RC), which will allow the construction of 12 single family homes, based on the Town Council's approval and acceptance of competent and substantial evidence as set forth in Exhibit D consistent with and as required by Applicable Regulations.

(2) Other Permitted and Prohibited Uses.

The permitted uses of Parcel 1 will be limited to the uses permitted in the Residential Conservation (RC) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing by amendment to this Agreement.

The following uses shall be prohibited unless otherwise mandated by Florida law:

- (a) Bed and Breakfast
- (b) Community Residential home
- (c) Home Care
- (d) Daily rental of dwelling unit

(3) Building Setbacks.

- (a) For lots that are adjacent to Estero Blvd, building setbacks shall be a minimum of 25 feet from the public street right of way.

- (b) For lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of 15 feet from the public street right of way.
 - (c) Building setbacks from Alleys shall be a minimum of 10 feet from the alley easement/right-of-way line.
 - (d) Building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
 - (e) Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.
- (4) Alleys.
- (a) Alleys shall have a minimum pavement width of 20 feet with 2' gutters on each side.
 - (b) Alleys up to 250 feet shall not be required to have a cul-de-sac or hammerhead turn around if serve 10 or fewer lots.
 - (c) Minimum alley separation from Parcel 2 driveway shall be 25 feet.
- (5) Drainage. Parcels 1 and 2 will have a shared stormwater management system

B. Parcel 2 – Place of Worship

- (1) Definition.
The term of “Place of Worship” shall be defined as in Section 34-2 of the LDC.
- (2) Primary Use.
The primary use of Parcel 2 will be for a Place of Worship facility, inclusive of religious worship and fellowship and traditional church activities, including but not limited to worship services, Sunday school, youth meetings, and other related religious gatherings.
- (3) Other Permitted and Prohibited Uses.
- (a) Parcel 2 will retain the Institutional (IN) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing by amendment to this Agreement.
 - (b) No temporary or permanent living quarters or dwelling unit(s) will be provided on-site.
 - (c) No overnight parking of Recreational Vehicles.
 - (d) No social services, or rehabilitation programs will be conducted on-site.
- (4) Building Setbacks.
- (a) For buildings that are adjacent to a public street right of way, building setbacks shall be a minimum of 20 feet from the public street right of way.
 - (b) Building setbacks from side lot lines shall be a minimum of 7 feet from side lot lines,

- (c) Building setbacks from rear lot lines shall be a minimum of 20 feet from the rear lot line.
- (5) Parking. Parking will be provided per the requirements in Section 34- 2052 of the LDC, as it may be amended.
- (6) Maximum Sanctuary Square Footage.
 - (a) Gross Floor Area: The Gross Floor Area is 7,000 square feet.
 - (b) Height: The structure will be limited to a maximum height of 35 feet as measured pursuant to Section 34-631, LDC. The structure is limited to 3 habitable floors.
 - (c) Elevation: The building will meet the one foot above base floor or other applicable FEMA and Standard Building Code elevations.
- C. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.
- D. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- E. Conflicts. Any conflict between the matters set forth in this paragraph and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this Paragraph. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended.
- F. Public Facilities. The following public facilities will serve the Proposed Development on the Property:
 - (a) Potable Water: Potable water will be supplied by the Town of Fort Myers Beach. The Town presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a development order application. The Developer is responsible for improvements to the utility system required to service the proposed development.
 - (b) Sanitary Sewer: Wastewater services will be provided by Lee County Utilities (LCU). LCU presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a development order. The Developer is responsible for

improvements to the utility system required to service the Proposed Development.

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

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

(e) Fire and Rescue: Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. The applicant for a building permit will be required to pay Fire and EMS impact fees.

(f) Public Schools: Parcel 2 does not include any residential development and will have no impact on the School District. The Developer of Parcel 2 will not be required to provide a letter of capacity from Lee County School District.

In the event new or additional facilities are needed to serve the project, the Developer will bear the burden of the cost of such facilities to be constructed consistent with the dual rational nexus test, and provide a schedule to the Town to assure that the public facilities and services will be available concurrent with the impact of the development project for those facilities subject to concurrency consistent with Section 163.3180, F.S.

5. Impact Fees. Impact fees, when adopted by Town Ordinance for all new development and change in use, will be calculated at time of issuance of a building permit and payment will be required consistent with Section 163.31801, F.S. Site-related improvements will be evaluated by the Town during the review of the development order application.

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

- Town of Fort Myers Beach Development Order
- Town of Fort Myers Beach Building Permit
- South Florida Water Management District Environmental Resource Permit
- South Florida Water Management District Water Use Permit (dewatering)
- South Florida Water Management District Water Use Permit (irrigation)
- FDEP Wastewater Permit
- LCDOH Potable Water Permit
- Lee County Limited Review Development Order pursuant to

Section 10-297, LDC
Lee County Right-of-Way Permit

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

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

- (a) Vehicular access to and from Parcel 2 from Connecticut Street will be limited to a single access for the north side; and
- (b) On-site traffic management will be provided by the First Baptist Church of Fort Myers Beach during peak hours of use; and
- (c) Maintenance of the sidewalks along Connecticut Street on Parcel 2; and
- (d) Redevelop the Connecticut Street frontages on Parcel 2 consistent with landscape requirements set forth for the IN zoning district as set forth in the LDC; and
- (e) Provide a buffer zone in accordance with the standards set forth in Section 10-416, LDC between the place of worship and the existing adjacent single- family residences to the northwest and southwest of Parcel 2.
- (f) Allow the use of the parking lot by governmental entities as a staging area post storm event or other Act of God.

8. Deviations. The Deviations set forth in Exhibit E to this Agreement are incorporated by reference as if fully set forth herein, and are granted pursuant to this Agreement.

9. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Applicable Regulations, including but not limited to the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the Property that is the subject of this Agreement. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required for a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

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

- (a) Utilities, which include water, sewer, gas, electricity, cable television, and other utilities will be reviewed during the development order review process; and
- (b) Drainage plans will be reviewed in accordance with Section 10-321, LDC; and
- (c) Grading plans and elevation requirements of the Town, including, but not limited to those related to the National Flood Insurance Program, will be reviewed during the Development Order review; and
- (d) The developer will provide a traffic impact statement as required by Section 10-286, LDC; and
- (e) Parking will be provided as required by Section 34-2020; and
- (f) All other Town requirements necessary for the initial building permits to build the proposed project on the Property shall have been satisfied.
- (g) Any matter or thing required to be performed under existing ordinances of the Town will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

11. Amendment.

- (a) This Agreement may be amended with the Parties' mutual consent, in writing signed by both Parties.
- (b) This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council.

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

If to the Developer:

Stephen J. Collins
S.J. Collins Enterprises, LLC
P.O. Box 214
Fairburn, Georgia 30213

with a copy to:

Jeffrey F. Montgomery, Esq.
Cushing, Morris, Armbruster & Montgomery, LLLP 191
Peachtree Street, NE

Suite 4500
Atlanta, Georgia 30303

If to the Town:

Town Manager
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL XXXXX

Town Manager

With a copy to:

Town Attorney
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL XXXXX

If to Property Owner:

First Baptist Church of Fort Myers Beach
Address
City, State, ZIP

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

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

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

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

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

18. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

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

20. Third Party Beneficiaries. The Parties acknowledge that BBC Residential and its respective successors and assigns are intended third party beneficiaries hereof and are entitled to the enforcement of applicable provisions and rights hereunder.

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

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

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

(a) The execution, delivery and performance of this Agreement by the Developer and a third party will not violate any law, or the terms of any agreement by which they are bound.

(b) The Town and Developer have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.

(c) This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

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

FIRST BAPTIST CHURCH OF FORT MYERS BEACH, INC.

Witness: _____

Print Name: _____

Address: _____

City/State: _____

Witness: _____ (Corporate Seal)

Print Name: _____

Address: _____

City/State: _____

**STATE OF FLORIDA
COUNTY OF LEE**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared _____ to me known to be _____ and that he acknowledged executing the same, freely and voluntarily, and who [] is personally known to me, or [] produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2025.

(NOTARY SEAL)

Signature of Notary
Print Name: _____

ATTEST:

**TOWN OF FORT MYERS BEACH,
FLORIDA**, a Florida municipal corporation

Amy Baker, Town Clerk

Date: _____

Dan Allers, Town Mayor

Date: _____

**Approved as to form and legality for use and reliance
only by the Town of Fort Myers Beach, Florida:**

Vose Law Firm, LLP, Town Attorney

Exhibits:

- A. Legal Description of Parcel 1
- A-1 Sketch of Parcel 1
- B Legal Description of Parcel 2
- B-2 Sketch of Parcel 2
- C Excerpt of Agreement between Developer and the First Baptist Church
of Fort Myers Beach
- D Rezoning Criteria and Findings
- E Deviations
- F Site Plan

Exhibit A – Parcel 1

**SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA**

LEGAL DESCRIPTION

PARCEL 1:

A LOT OR PARCEL OF LAND LYING IN LOT 51 OF THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 1 AT PAGE 58 WHICH IS DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET RUN S 42°31'34" E, A DISTANCE OF 244.09 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 342.13 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE RUN N 57°45'44" W, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD, A DISTANCE OF 252.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.10 ACRES MORE OR LESS.



Exhibit B – Parcel 2

**SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA**

LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF LOT 51 IN THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, N 47°28'26" E, A DISTANCE OF 163.41 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, RUN S 57°44'01" E, A DISTANCE OF 253.00 FEET TO A THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 229.78 FEET; THENCE DEPARTING SAID EASTERLY LINE OF LOT 51, RUN N 42°31'34" W, A DISTANCE OF 244.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.10 ACRES MORE OR LESS.



Exhibit C

S.J. Collins Development Agreement Excerpt

Developer will subsequently seek to obtain: (a) the proper zoning and plan approval for the Project, (b) all required platting and subdivision of the Church Property from the remainder of the Property, (c) all final and unappealable permits, licenses, approvals, rezonings or variances by all public authorities and/or applicable third parties, upon terms and conditions acceptable to Owner in its sole discretion, as may be necessary for the construction and use of the Project as a church and supporting activities. Developer will also provide pre-, during- and post-construction consulting, administration and management services to further the design and develop the Property according to the Development Requirements and shall oversee the performance of services by the architect, general contractor, engineers and contractors under the Major Contracts and assist in the negotiation of same, which services are further detailed in the Scope of Work attached hereto as **Exhibit C**. The foregoing Developer duties set forth in this Section 2.2 are herein referred to as the “**Services**.” Notwithstanding any provision herein to the contrary, Developer’s discretion or obligations with respect to material development activities shall be subject to Owner’s reasonable approval.

Exhibit D

Parcel 1 – Rezoning IN to Residential Conservation

Rezoning procedures are governed by LDC sec. 34-85 which requires that the Town Council hear and decide all applications for changes in zoning district boundaries. The following criteria was considered and reached based on competent and substantial evidence presented to the Town Council in reaching its decision to rezone Parcel 1. The 12 dwelling units proposed for Parcel 1 is consistent with FLU1-A-1 in seeking to develop twelve homesites at a maximum floor area ratio of 40%. The homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood. The Development Agreement allows for reduced setbacks for these homes in order to provide access alleyways. The alleyways ensure that there are no driveways along Estero Boulevard. The access alleys add two curb cuts on Connecticut Street, which will minimally impact the neighborhood. The design also allows for common green space and appropriate stormwater collection areas.

Accompanying each item is the applicant response following by Staff determination.

- (1) There is no error or ambiguity in the record that must be corrected.
- (2) Whether there exist changed or changing conditions which make approval of the request appropriate.
 - a. Applicant response: The site was a fully developed site prior to the 2022 Hurricane Ian event; it featured 4343 sf of religious facilities owned and operated by the Baptist Church. The entire religious facility was destroyed during the 2022 hurricane event. The 2.1 acre rezoning is to support the reconstruction of the Baptist church by selling off the Estero Blvd. portion of the land to provide funding for church reconstruction on the remaining portion. The pending reconstruction of the site's church makes the request appropriate.
 - b. Staff determination: In 2022 Hurricane Ian impacted all of Fort Myers Beach. The site could continue to be appropriately utilized as a Church or other institutional uses. As the surrounding neighborhood has remained the same or similar composition as prior to the hurricane Ian the conditions that would impact zoning rules are unchanged.
- (2) The impact of a proposed change on the intent of this chapter.
 - a. Applicant response: Based on compliance with the Mixed Residential Future Land Use designation and the adjoining and adjacent RC zoned and developed properties, there is no impact on the intent of LDC Chapter 34.
 - b. Staff determination: There is no impact on the intent of LDC Chapter 34.
- (3) The testimony of any applicant.
- (4) The recommendation of staff and of the local planning agency.
- (5) The testimony of the public.
- (6) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
 - a. Applicant response:
The RC zoning request is consistent with Town of Fort Myers Beach Comprehensive Land Use Plan's objectives, policies, intensities and uses. The increase in single-family houses within an existing neighborhood, as well as the reduction in land utilized for a commercial-like facility comply with the Comprehensive Plan. The consistency assessment is as follows:

Land Use Element

Policy FLU-1-A-1 *Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights. The Land Development Regulations shall ensure that improvements which potentially impact the appearance of Estero Boulevard, as well as major activity centers such as Times Square and Villa Santini, the mixed-use districts, the town's shoreline, scenic views of the waterfront and tidal waters, public parks and other public grounds and institutions are managed and enhanced through application of the site plan review process. Community character is reflected in Floor to Area Ratios (FAR), lot sizes, house sizes, site placement, height, architectural features and existing vegetation. The Town shall strive to stabilize and preserve neighborhoods and establish urban design standards which protect and promote quality of life, in order to prevent tear downs, encourage re-use, infill and new development.*

Response: The RC zoning is consistent with FLU1-A-1 in seeking to develop approximately eight 4,000 sf homesites at a maximum floor area ratio of 40%. The small homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood.

Policy FLU-1-A-4. *Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable. The Town shall not vacate, diminish, or otherwise impair publicly owned pathways, sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan unless there is documented evidence that physical public access is destabilizing unaltered shorelines.*

Response: The RC zoned parcel will require sidewalk construction and Type D 15-ft wide landscaping along Estero Blvd and Connecticut Street frontage. New sidewalk construction will facilitate public beach access. The zoning is consistent with FLU 1-A-4.

Policy FLU-1-B-4 MIXED RESIDENTIAL *Designed for subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre except those developments previously vested with 10 units under the "platted overlay" may continue.*

Response: The zoning is consistent with FLU 1-B-4 Medium Density Residential (formally Mixed Residential) and its density maximum limit of 6 units per acre. The resulting small homes on small lots maintain the town's neighborhood and housing type variety. There is a cap of 12% of land to be utilized for non-residential activities within the Mixed Residential future land use category. The land area being utilized for the church is being reduced and not increased, which does comply with the goals of the Comp. Plan.

Policy FLU1-C-4 BUILDING HEIGHTS *The Land Development Code shall limit the height of new buildings under most conditions to three stories or 30 feet above flood elevation except where otherwise noted in this Comprehensive Plan Land Use categories and to provide for workforce housing units protected by a minimum 30- year covenant.*

Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height Town of Fort Myers Beach rules. The rezoning is consistent with FLU 1-C-4.

Housing Element

Goal HOU-1 *Ensure adequate levels of attainable housing within FMB for residents of all ages.*

Objective HOU-1-A *Maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working in town.*

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out.*

Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 405- ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes. The rezoning is consistent with Objective HOU 1-A and Policy HOU 1-A-2.

- b. Staff determination: The application for rezoning complies with the following section of the Town of Fort Myers Beach Comprehensive Plan:
 - Policy FLU-1-A-4
 - Policy FLU-1-B-4 MEDIUM RESIDENTIAL
 - Policy FLU1-C-4 BUILDING HEIGHTS
 - Goal HOU-1 and Objective HOU-1-A and Policy HOU-1-A-

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

- a. Applicant response: The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The request will meet all performance and locational standards identified within the LDC and without the need for code variances. The subject parcel is of the size and configuration that allows for a small 12 unit subdivision that conforms to RC zoning performance standard identified within page one of this Request Statement.
- b. Staff determination: Staff concurs

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

- a. Applicant response: All required urban services are available to adequately serve the new fire station and future phase mixed uses.
- b. Staff determination: Staff concurs

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

- a. Applicant response: The site was comprehensively developed to support a Religious Facility. The site is currently characterized by almost 100% impervious with no onsite natural systems. The request does not include any impact to the environmentally critical areas.
- b. Staff determination: Staff concurs

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

- a. Applicant response: The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The new RC 12 unit subdivision will be compatible with the adjacent and adjoining RC Connecticut Street and Andre Mar Dr neighborhoods. The requested 12 unit subdivision will meet all FBC and FEMA regulations. The RC subdivision will not cause any damage, hazards or nuisances to surrounding land uses since it will contain the identical land use.
- b. Staff determination: Staff concurs

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

- a. Applicant response: A summary Estero Blvd LOS analysis is as follows. The former Church generated a weekend AM Peak 2.12 trips (Church - Code 560 ITE 11th Ed.; AM Peak Hour Sunday 0.49 per 1000 GFA for 4343 sf; general urban/suburban). The proposed 12-unit subdivision will generate a weekday PM Peak 7.52 trips (SF Detached - Code 210 ITE 11th Ed.; PM Peak Hr 0.94 Per Unit urban/suburban). The difference between the former church use and the new SF use is 5.39 peak hour trips. Based upon the 2023 Lee County Concurrency Report, the subject Estero Boulevard road segment, between Pescadora Avenue and Voorhis Street, has a regulatory capacity of 726 peak hour trips. The report projects 637 future 2027 peak hour trips with a projected LOS C. The RC zoning's 7.52 trips will not have an impact on the current level of service of Estero Boulevard existing or future Level of Service. Finally, the project will have direct access onto Connecticut Street, which will reduce potential service speeds and volume along Estero Blvd.
- b. Staff determination: Staff concurs that addition of 12 homes should not have an impact on the Level of Service (LOS) for Estero Boulevard.

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

- a. Not Applicable

Exhibit -E

Deviation Request for Parcel 1:

1. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of 15 feet from the public street right of way.
2. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for Building setbacks from Easement ROW line shall be a minimum of 10 feet from the alley easement/right-of-way line.
3. Relief from Sec 34-638 Minimum Setbacks which requires a Rear Setback of 20 ft to allow building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
4. Relief from Sec 34-638 Minimum Setbacks which requires a Side-Non Waterfront Setback of minimum 6.5 ft for lots less than 50 ft wide, 7.5 ft for lots 50 ft up to 75 ft and 10 ft for lots wider than 75 ft to allow for Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.
5. Relief from Sec 34-285 which requires a minimum setback for Local Street of 125 ft to allow a Minimum alley separation from Parcel 2 driveway shall be 25 feet.

Neighborhood Compatibility:

The subject parcel is located 1.7 miles south of Time Square and along Estero Blvd. The future land use map classification is Mixed Residential and is within the designated Quiet Center portion of Fort Myers Beach. The subject parcel features 250-ft +/- LF of frontage along Estero Blvd and 409-ft +/- frontage along Connecticut Street. It is noted that Connecticut Street is the primary access for the FMB Mound House recreational complex. The property adjoins and is adjacent to 7,000 sf to 8,000 sf + RC zoned homesites. These homesites support single-family and two-family homes. The subject site was cleared and developed for the Baptist Church. It has no natural site features. The church was destroyed by Hurricane Ian in 2022.

Additionally, the applicant has offered to allow the Town or County to utilize the parking lot of the church for staging during a state of emergency. Staff recommend the drafting of an agreement regarding the terms of this arrangement.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code.

SKETCH AND DESCRIPTION
EXHIBIT "A"

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

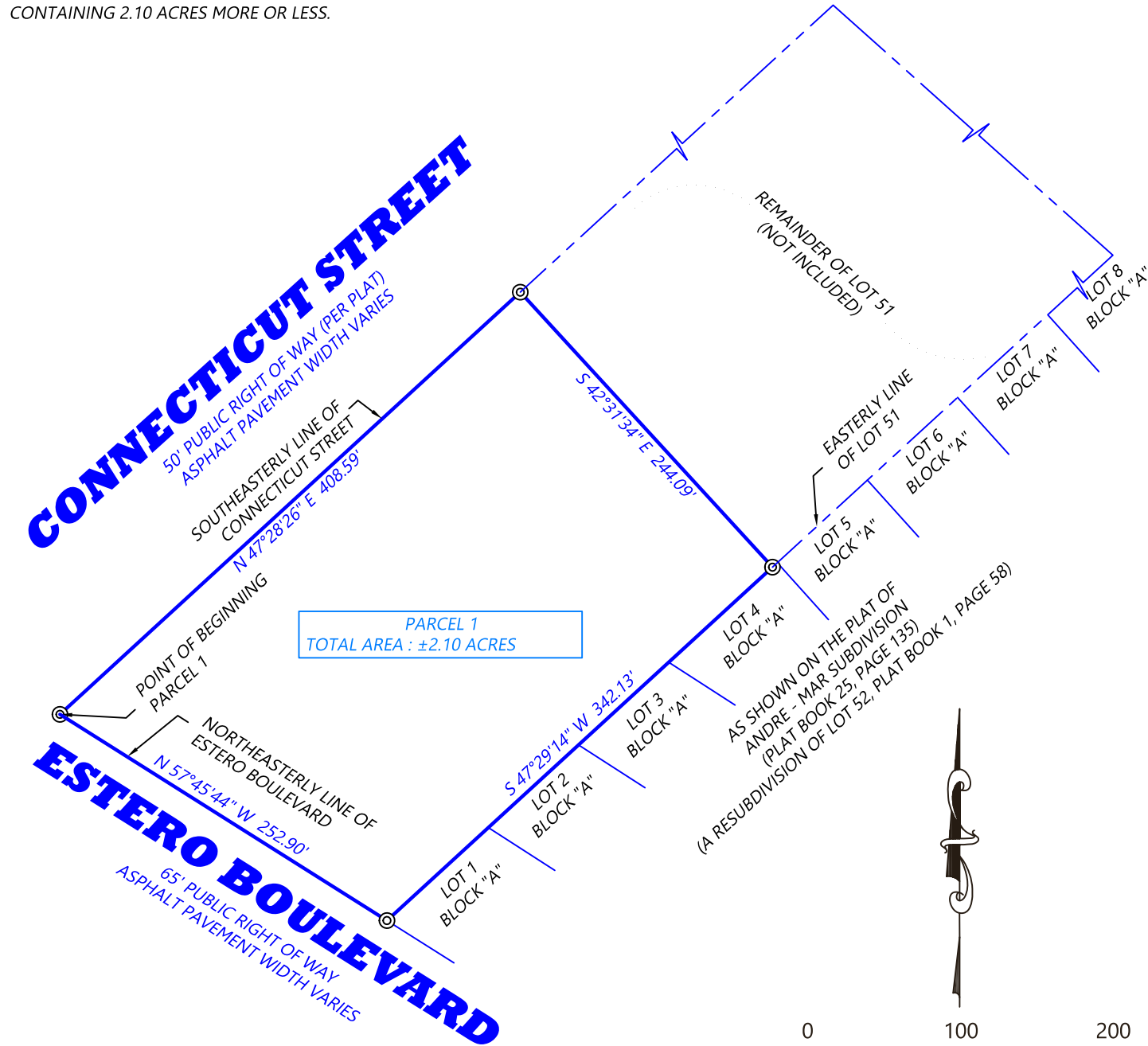
LEGAL DESCRIPTION

PARCEL 1:

A LOT OR PARCEL OF LAND LYING IN LOT 51 OF THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 1 AT PAGE 58 WHICH IS DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET RUN S 42°31'34" E, A DISTANCE OF 244.09 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 342.13 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE RUN N 57°45'44" W, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD, A DISTANCE OF 252.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 1.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

- L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

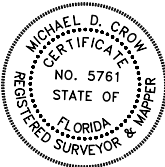
DWG:

240313-P1-SD



Michael D. CROW & ASSOCIATES INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 1



MICHAEL D
CROW
2024.10.15
15:47:39
-04'00'

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

SKETCH AND DESCRIPTION
EXHIBIT "A"

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

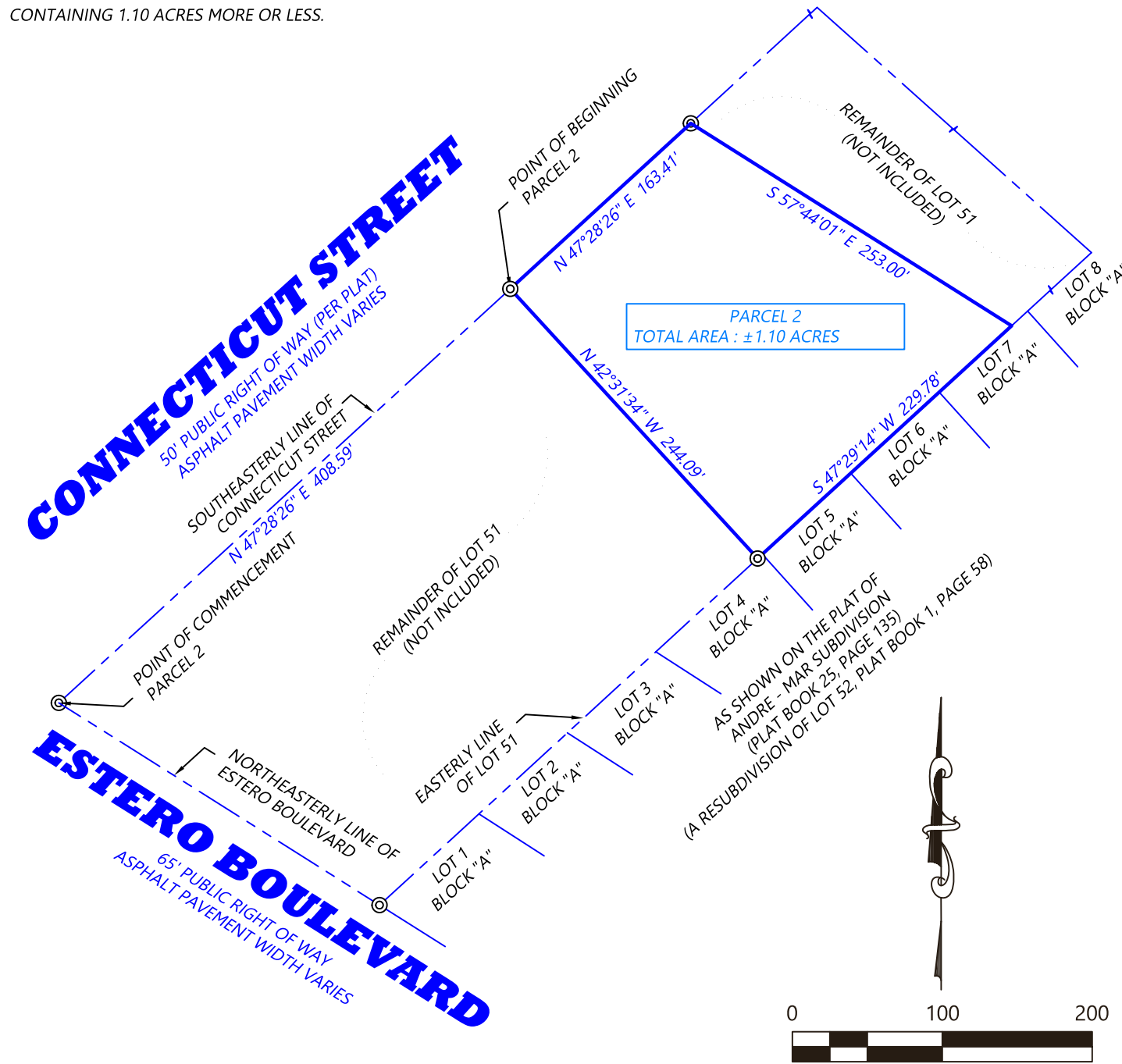
LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF LOT 51 IN THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, N 47°28'26" E, A DISTANCE OF 163.41 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, RUN S 57°44'01" E, A DISTANCE OF 253.00 FEET TO A THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 229.78 FEET; THENCE DEPARTING SAID EASTERLY LINE OF LOT 51, RUN N 42°31'34" W, A DISTANCE OF 244.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 2.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

- L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:

240313-P2-SD



Michael D. CROW & ASSOCIATES INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 2



MICHAEL D
CROW
2024.10.15
15:48:14
-04'00'

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

LOCATED IN SECTION 29, TOWNSHIP 46-S, RANGE 24-E, LEE COUNTY, FLORIDA

[illegible]

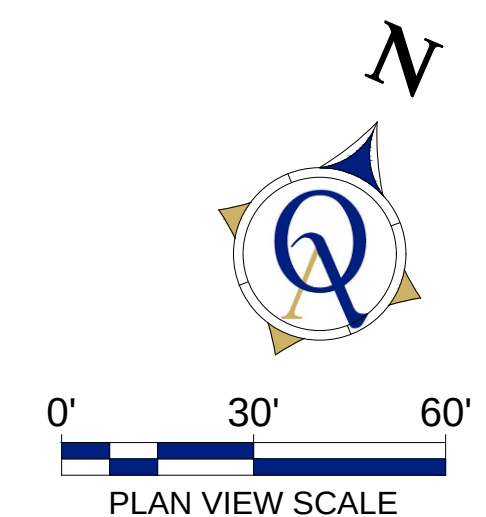
PROJECT SUMMARY:

IN- Institutional

PROJECT ACREAGE
LOT 1= 2.10 ACRES
LOT 2= 1.10 ACRES

LOT 2
PROVIDED: 63 SPACES (INCLUDING 3 H.C. SPACES)
PER PARKING CAN ACCOMMODATE 189 SEATS

LDC REQUIRED = 0.8
PROVIDED = $(15,520 / 47,916) = 0.32$



Quattrone & Associates, Inc.
Engineers, Planners & Development Consultants



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA 20250176

CASE NAME: 110-130 and 134-138 Connecticut Street; Development Agreement to regulate the development of 12 single-family homes and a religious institution.

LPA

HEARING DATE: September 9th, 2025 at 9 AM

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Al Quattrone of Quattrone and Associates (Applicant)/First Baptist Church of Fort Myers (Owner)

Request: Development Agreement for a residential development of 12 single-family dwelling units and a Church

Subject property: See attached Site Plan

Physical Address: 110-130 and 134-138 Connecticut Street

STRAP #: 29-46-24-W1-00151.0010 and 29-46-24-W1-00151.001A

FLU: Mixed Residential

Zoning: Institution (IN)

Adjacent Zoning, Future Land Use, and Current Uses:

North: Residential Conservation, Mixed Residential

South: Residential Conservation, Mixed Residential

East: Residential Conservation and Residential Single-Family, Mixed Residential

West: Residential Conservation, Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has split the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). Under a separate application, the applicant is requesting to rezone parcel 1 from Institutional to Residential Conservation.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement.

Analysis:

Parcel 1 - Residential:

The 12 dwelling units proposed for Parcel 1 is consistent with FLU1-A-1 in seeking to develop twelve homesites at a maximum floor area ratio of 40%. The homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood. The Development Agreement allows for reduced setbacks for these homes in order to provide access alleyways. The alleyways ensure that there are no driveways along Estero Boulevard. The access alleys add two curb cuts on Connecticut Street, which will minimally impact the neighborhood. The design also allows for common green space and appropriate stormwater collection areas.

List of Uses

(1) Primary Use. The primary use of Parcel 1 will be to construct 12 single family homes.

(2) Other Permitted Uses. Other permitted uses of Parcel 1 will be limited to the uses permitted in the Residential Conservation (RC) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing.

The Comprehensive Plan Review

Policy FLU-1-A-1 *Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights. The Land*

Development Regulations shall ensure that improvements which potentially impact the appearance of Estero Boulevard, as well as major activity centers such as Times Square and Villa Santini, the mixed-use districts, the town's shoreline, scenic views of the waterfront and tidal waters, public parks and other public grounds and institutions are managed and enhanced through application of the site plan review process. Community character is reflected in Floor to Area Ratios (FAR), lot sizes, house sizes, site placement, height, architectural features and existing vegetation. The Town shall strive to stabilize and preserve neighborhoods and establish urban design standards which protect and promote quality of life, in order to prevent tear downs, encourage re-use, infill and new development.

Response: The RC zoning is consistent with FLU1-A-1 in seeking to develop approximately twelve min. 4,000 sf homesites at a maximum floor area ratio of 40%. The small homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood.

Policy FLU-1-A-4. *Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable. The Town shall not vacate, diminish, or otherwise impair publicly owned pathways, sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan unless there is documented evidence that physical public access is destabilizing unaltered shorelines.*

Response: The RC zoned parcel will require sidewalk construction and Type D 15-ft wide landscaping along its Estero Blvd and Connecticut Street frontage. The new sidewalk construction will facilitate public beach access. The zoning is consistent with FLU 1-A-4.

Policy FLU-4-B-4 MIXED RESIDENTIAL *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. **This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre** (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Response: The zoning request is consistent with FLU 1-B-4 Medium Density Residential (formally Mixed Residential) and its maximum density limit of 6 units per acre. The resulting small homes on small lots maintain the town's neighborhood and housing type variety.

Policy FLU1-C-4 BUILDING HEIGHTS *The Land Development Code shall limit the height of new buildings under most conditions to three stories or 30 feet above flood elevation except where otherwise noted in this Comprehensive Plan Land Use categories and to provide for workforce housing units protected by a minimum 30-year covenant.*

Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height Town of Fort Myers Beach rules. The rezoning is consistent with FLU 1-C-4.

Goal HOU-1 *Ensure adequate levels of attainable housing within FMB for residents of all ages.*

Objective HOU-1-A *Maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working in town.*

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out.*

Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 45-ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes. The rezoning is consistent with Objective HOU 1-A and Policy HOU 1-A-2.

Deviation Requests for Parcel 1

1. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of 15 feet from the public street right of way.
2. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for Building setbacks from Easement ROW line shall be a minimum of 10 feet from the alley easement/right-of-way line.
3. Relief from Sec 34-638 Minimum Setbacks which requires a Rear Setback of 20 ft to allow building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
4. Relief from Sec 34-638 Minimum Setbacks which requires a Side-Non Waterfront Setback of minimum 6.5 ft for lots less than 50 ft wide, 7.5 ft for lots 50 ft up to 75 ft and 10 ft for lots wider than 75 ft to allow for Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.
5. Relief from Sec 34-285 which requires a minimum setback for Local Street of 125 ft to allow a Minimum alley separation from Parcel 2 driveway shall be 25 feet.

Parcel 2- Place of Worship

The proposed re-zoning and redevelopment will ensconce the remaining Institutional zone within a residential area. While Institutional is not the same as a commercial use many of the potential nuisances (traffic, noise, parking) are similar and staff find that this would constitute “commercial intrusions into residential areas” which limited by the Comprehensive Plan. Policy 4-B-4 states, “Commercial activities are limited to lower

impact uses such as offices, motels, churches and public uses and must be sensitive to nearby residential uses..." The history of the Church use of the property has included conflict with the abutting residential neighborhood. Therefore, without limitations on the development of the Institutional use, the proposed rezoning would not be compliant with the Town of Fort Myers Beach Comprehensive Plan. However, through the restriction of this Development Agreement the applicant is seeking to address potential nuisances and develop a facility in compliance with the Comprehensive Plan.

List of Uses

(1) Primary Use. The primary use of Parcel 2 will be a place of worship facility. The primary function of this facility is for religious worship and fellowship and traditional church activities, including but not limited to worship services, Sunday school, youth meetings, and other related religious gatherings.

(2) Other Permitted Uses. Other permitted uses of Parcel 2 will be limited to the uses permitted in the Institutional (IN) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing. No housing, social services, or rehabilitation programs will be conducted on-site.

(3) Prohibited Uses: No temporary or permanent living quarters or dwelling unit(s) will be provided on-site. No overnight parking for Recreational Vehicles.

Comprehensive Plan Review

Policy FLU-4-B-4 MIXED RESIDENTIAL *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). **Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.** These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Response: This Future Land Use category calls for commercial activities, which church are included, to be sensitive to the surrounding residential neighborhood. At the time the Comprehensive Plan was approved the Town did not have a Development Agreement process.

Deviation Requests for Parcel 2: None

Applicant Proposed Public Benefits

1. Vehicular access to and from Parcel 2 from Connecticut Street will be limited to single access for the north side;
2. On-site traffic management will be provided by the First Baptist Church of Fort

- Myers Beach during peak hours of use;
3. Applicant will provide maintenance of the sidewalks along Connecticut Street on Parcel 2;
 4. Redevelop the Connecticut Street frontages on Parcel 2 consistent with landscape requirements set forth in the IN zoning district as set forth in the LDC;
 5. Provide a buffer zone in accordance with the standards set forth in Section
 6. 10- 416, LDC between the place of worship and the existing adjacent single-family residences to the northwest and southwest of Parcel 2.

Additionally, the applicant has offered to allow the Town or County to utilize the parking lot of the church for staging during a state of emergency. Staff recommend the drafting of an agreement regarding the terms of this arrangement.

Neighborhood Compatibility:

The subject parcel is located 1.7 miles south of Time Square and along Estero Blvd. The future land use map classification is Mixed Residential and is within the designated Quiet Center portion of Fort Myers Beach. The subject parcel features 250-ft +/- LF of frontage along Estero Blvd and 409-ft +/- frontage along Connecticut Street. It is noted that Connecticut Street is the primary access for the FMB Mound House recreational complex. The property adjoins and is adjacent to 7,000 sf to 8,000 sf + RC zoned homesites. These homesites support single-family and two-family homes. The subject site was cleared and developed for the Baptist Church. It has no natural site features. The church was destroyed by Hurricane Ian in 2022.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code.

III. RECOMMENDATION

The development agreement in your agenda packet is the product of preliminary negotiations between the applicant and Town staff, in compliance with the processes and procedures of the administrative code section (Ordinance 24-247). The proposed uses and the proposed public benefits are encouraged through the comprehensive plan policies. The history of the Church use of parcel has included conflict with the neighboring residential neighborhood. Therefore, without limitations on the development of the Institutional use, the proposed rezoning would not be compliant with the Town of Fort Myers Beach Comprehensive Plan. However, through the restriction of this development agreement the applicant is seeking to address potential nuisances and develop a facility in compliance with the Comprehensive Plan.

In making a recommendation the LPA should consider if the restrictions and public benefits of the Development Agreement and Site Plan are sufficient to reduce the impact of commercial-like use of a place of worship on a residential neighborhood.

IV. CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 110-130 CONNECTICUT STREET (PARCEL 1) AND 134/138 CONNECTICUT STREET (PARCEL 2) FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00151.0010 AND 29-46-24-W1-00151.001A AND OWNED BY FIRST BAPTIST CHURCH OF FORT MYERS, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-247 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTIES TO ALLOW A CHURCH FACILITY AND 12 SINGLE-FAMILY HOMES; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the zoning district map for the Town of Fort Myers Beach. This serves the public health, safety and orderly development of the Town. The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has split the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). Under a separate application, the applicant is requesting to rezone parcel 1 from Institutional to Residential Conservation.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx.

Ordinance 25-2xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

This Development Agreement does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.



August 21, 2025

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

RE: **First Baptist Church of Fort Myers**
130 Connecticut St
Fort Myers Beach, FL 33931

Please find attached revisions for the above-mentioned project per your comments dated August 7, 2025. Below are written responses to the comments.

1. Building intensity/ FAR calculations: Provide detailed FAR calculations. The site plan indicates a footprint of 6000 square feet for the place of worship where the FAR calculations indicate 15,520 square feet of gross floor area. Revise the calculations for consistency.

Note: As per LDC Section 34-633, Gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid.

Response: Please see the attached revised Site Plan

2. Development Agreement: Please revise the agreement to reference and incorporate the deviations as Attachment D within the body of the agreement.

Response: Please see revised Development Agreement attached.

3. Title of opinion: Provide a title of opinion prepared by a Florida attorney. The title of opinion shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. Please note that as of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

Response: Please see the Title Opinion

If you have any questions regarding the above responses or any of the attachments, please contact our office at (239) 936-5222.

Sincerely,
Quattrone & Associates, Inc.

Sharon Hrabak
Permitting Manager
Email: Sharon@qainc.net
Attachments: Site Plan, Development Agreement, Title of Opinion

NARRATIVE – APPLICATION FOR PUBLIC HEARING FIRST BAPTIST CHURCH OF FT. MYERS BEACH

The subject property has Institutional (IN) zoning. The property was developed with a place of worship. The structures on the site were damaged during Hurricane Ian. Pursuant to Objective 4.D. the structures on the site could be replaced with the same uses, intensity, and size. The applicant plans to purchase a portion of the property and has filed an application to rezone a portion of the property to Residential Single Family (RS) to permit 12 single-family homes. While the IN district permits two family dwelling units and live/work units, the applicant submits that the 12 single-family homes are a better form of development for the area.

The applicant is aware of concerns about the reconstruction of the place of worship. Since the applicant is not acquiring all of the property including the place of worship, concerns about reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement and to coordinate with the place of worship to ensure a place of worship that is a benefit to the community. The property is currently vacant. Prior to Hurricane Ian, the site did not have modern water management and did not meet SFWMD current water quality, attenuation, or other district standards. Under the development agreement, the applicant will coordinate with the sellers and provide a unified water management system for the place of worship and the dwelling units that will be required to meet state water quality standards. A modern and unified water management system will eliminate the direct run off from the site into the main thoroughfare.

The area in question has numerous vacant lots. There are three vacant lots immediately abutting the property to the south. There are another four vacant lots on the other side of Andre Mar Drive. There are three vacant parcels north of the property on Connecticut and three empty parcels to the west of the property across Estero Boulevard. Twelve of the vacant parcels in the area are owned by corporations, predominantly Limited Liability Corporations. Most of the parcels have been acquired since Hurricane Ian. However, the Town has held several acrimonious zoning hearings as new owners seek a more dense or intense form of development to defray the cost of meeting current elevation and construction standards. The establishment of this area for single-family residences will provide a benefit in re-establishing the residential community and a desired form of development for the vacant parcels.

The town has experienced a loss of the FEMA discount. The FEMA discount is important for the redevelopment of the island. The rise in insurance rates in the State of

Florida has been a problem and definitely the cost of flood insurance is an issue for prospective home buyers and developers. The development on the subject property will meet FEMA elevations and resiliency requirements. Development that has occurred since the November 2022 adoption of the FEMA maps in accordance with the new elevations did not experience the destructive impacts of storm surge from Helene and Milton. The proposed development on the property pursuant to the development agreement in conformance with current FEMA elevations and resiliency requirements should contribute to the longevity of the proposed uses and stability of the neighborhood and tax base.

A review of the property appraiser's website indicates that there has been a loss of taxable value for many of the properties in the area. The redevelopment of the site will assist the neighborhood by helping to solidify property values, and it will provide a benefit to the Town by helping to restore ad valorem revenues.

The place of worship has a right to redevelop. There are concerns about permitting the place of worship to redevelop due to previous operational issues, including use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. The applicant will further coordinate with the place of worship as set forth in the development agreement to ensure the operation of the place of worship provides a benefit to the neighborhood and not a detriment. The sale and development of the residential parcel is an essential component of the proper redevelopment of the place of worship. The applicant will communicate with Ben Abes, Director of the Lee County Department of Public Safety, to determine if the county needs to use a portion of the place of worship parking lot post natural disaster.

TITLE CERTIFICATION

FIRST BAPTIST CHURCH OF FT MYERS BEACH, INC.
130 Connecticut Street
Fort Myers Beach, FL 33931
(239) 463-6452

Pavese Law Firm (as Agent/Title Company)

Plat Number: TBD

Development Order Number: TBD

Effective Date of Title Certification: August 11, 2025

Certified To: Town of Fort Myers Beach and Lee County Board of County Commissioners

I have searched the Public Records of Lee County, Florida and have examined the title to the real property more particularly described in the metes and bounds description attached hereto as Exhibit "A." I have made a careful examination of the Public Records of Lee County, Florida, with respect to the real property described in attached Exhibit "A." Based on the foregoing, we hereby certify Record Title to the above described real property, as of the Effective Date of the Title Certification set forth above, is vested in:

Title to the property is vested in:

First Baptist Church of Ft. Myers Beach, Inc., a Florida corporation not-for-profit, the successor by merger to First Baptist Church of Fort Myers Beach Inc. by virtue of that certain Deed recorded in Official Records Book 445, Page 536 and Warranty Deed recorded in Official Records Book 519, Page 363, all of the Public Records of Lee County, Florida.

The following persons or entities hold a mortgage secured by the property:

Mortgage in favor of S.J. Collins Enterprises, LLC, a Georgia limited liability company recorded in Official Records Instrument No. 2023000248528, Public Records of Lee County, Florida.

Property Taxes due and owing have been paid in full as of the effective date of this certification.

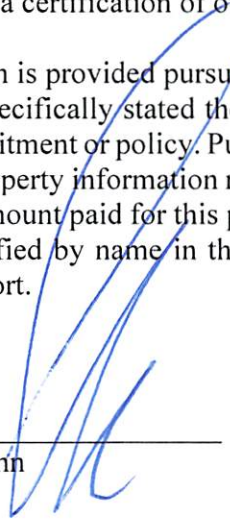
The following are all easements and rights of way affecting the property to be platted, whether recorded or unrecorded:

1. Matters contained on the Plat of Case Subdivision recorded in Plat Book 1, Page 58, as affected by instrument recorded in Deed Book 131, Pages 300 through 304, Public Records of Lee County, Florida.
2. Grant of Easement to South Florida Cable Television recorded in Official Records Book 1679, Page 613, Public Records of Lee County, Florida (note: this easement is blanket in nature and is not plottable).

All Recording references are to the public records of Lee County, Florida.

Note, this is not a certification of ownership of any oil, gas, and mineral rights or interests.

This certification is provided pursuant to the requirements of § 177.041, Florida Statute, for the uses and purposes specifically stated therein and is not to be used as the basis for the issuance of a title insurance commitment or policy. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report.

By: 
Charles Mann
Partner

SKETCH AND DESCRIPTION
EXHIBIT "A"
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

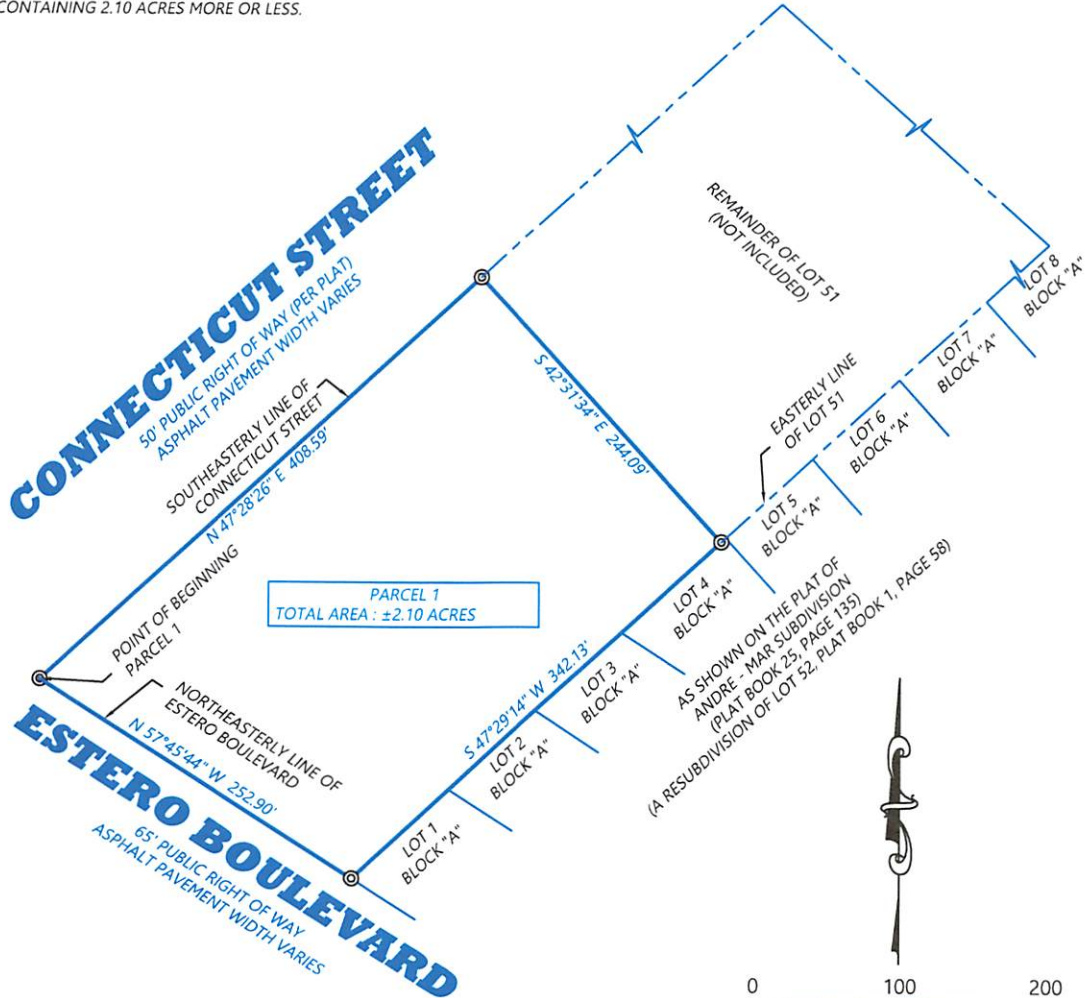
LEGAL DESCRIPTION

PARCEL 1:

A LOT OR PARCEL OF LAND LYING IN LOT 51 OF THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 1 AT PAGE 58 WHICH IS DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET RUN S 42°31'34" E, A DISTANCE OF 244.09 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 342.13 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE RUN N 57°45'44" W, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD, A DISTANCE OF 252.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 1.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR
AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:

240313-P1-SD



Michael D. CROW & ASSOCIATES, INC.

CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 1



MICHAEL D
CROW
2024.10.15
15:47:39
-04'00'

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

SKETCH AND DESCRIPTION

EXHIBIT "A"

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

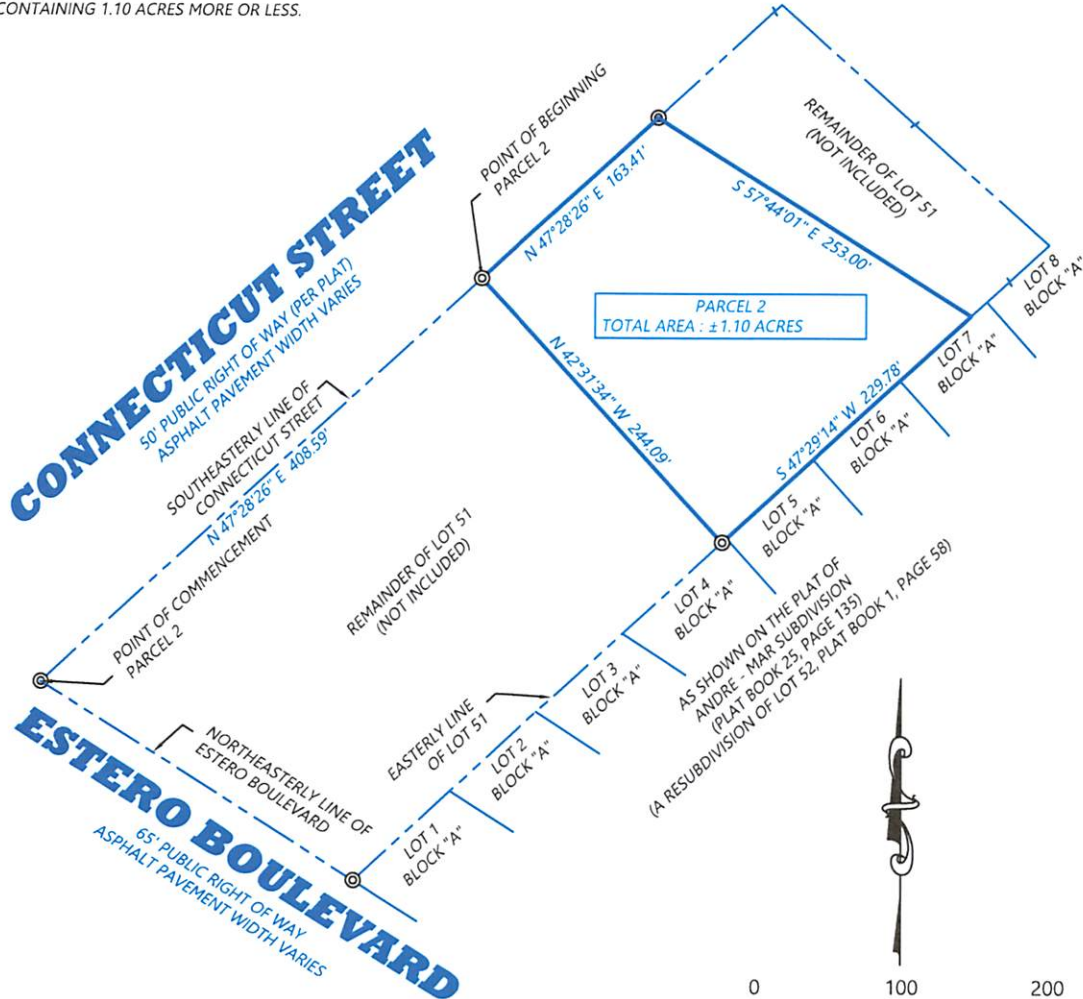
LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF LOT 51 IN THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, N 47°28'26" E, A DISTANCE OF 163.41 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, RUN S 57°44'01" E, A DISTANCE OF 253.00 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 229.78 FEET; THENCE DEPARTING SAID EASTERLY LINE OF LOT 51, RUN N 42°31'34" W, A DISTANCE OF 244.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 2.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR
AND MAPPER
— LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:
240313-P2-SD



MICHAEL D. CROW & ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 2



MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

MICHAEL D
CROW
2024.10.15
15:48:14
-04'00'

AFFIDAVIT OF AUTHORIZATION

We/I, First Baptist Church of Ft. Myers Beach being first duly sworn, depose and say that we/I am/are the property owners of the property described herein and which is the subject matter of the proposed hearing; that all the answers in this application, including the disclosure of interest information, all sketches, data, and other supplementary matter attached to and made part of this application, are honest and true to the best of our knowledge and belief. We/I understand that the information requested on this application is complete and accurate.

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

***Notes:**

- If the applicant is a corporation, then it is usually executed by the corp. pres. Or v. pres.
- If the applicant is a Limited Liability Company (L.L.C) or Limited Company (L.C), then the documents should typically be signed by the company's "Managing Member."
- If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.
- If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.
- If the applicant is a trustee, then they must include their title of "trustee."
- In each instance, first determine the applicant's status, e.g., individual, corporate, trust partnership, estate, etc, and then use the appropriate format for that ownership.

As property owner, we/I further authorize Neale Montgomery, Pavese Law Firm to act as our/my representative in any matters regarding this application.

FIRST BAPTIST CHURCH OF
FT. MYERS BEACH

By: K. Shawn Critser
Print Name: K. Shawn Critser
Its: Director

The foregoing instrument was certified and subscribed before me by means of _____ physical presence OR online notarization, this 17 day of July, 2025, by K. Shawn Critser as Director of First Baptist Church of Ft. Myers Beach, who _____ is personally known to me OR ✓ who has produced DRIVERS LICENSE (type of identification) as identification and that he is authorized to execute this Affidavit on behalf of the said corporation.

(SEAL)



[Signature]
Notary Public Signature

FORT MYERS BEACH ESTERO ISLAND



Engineers, Planners & Development Consultants

First Baptist Church

Approval of Development Agreement and Rezoning to Residential Conservation (RC)

**Town of Fort Myers Beach
Local Planning Agency**

September 9, 2025

THE PROJECT TEAM

APPLICANT/DEVELOPER

S.J. Collins Enterprises, LLC
Jonathon Thomas, Developer

NEALE MONTGOMERY as LAND USE ATTORNEY

Partner-Pavese Law Firm

AL QUATTRONE, P.E.

Engineer/Land Use Consultant - Quattrone & Associates, Inc.

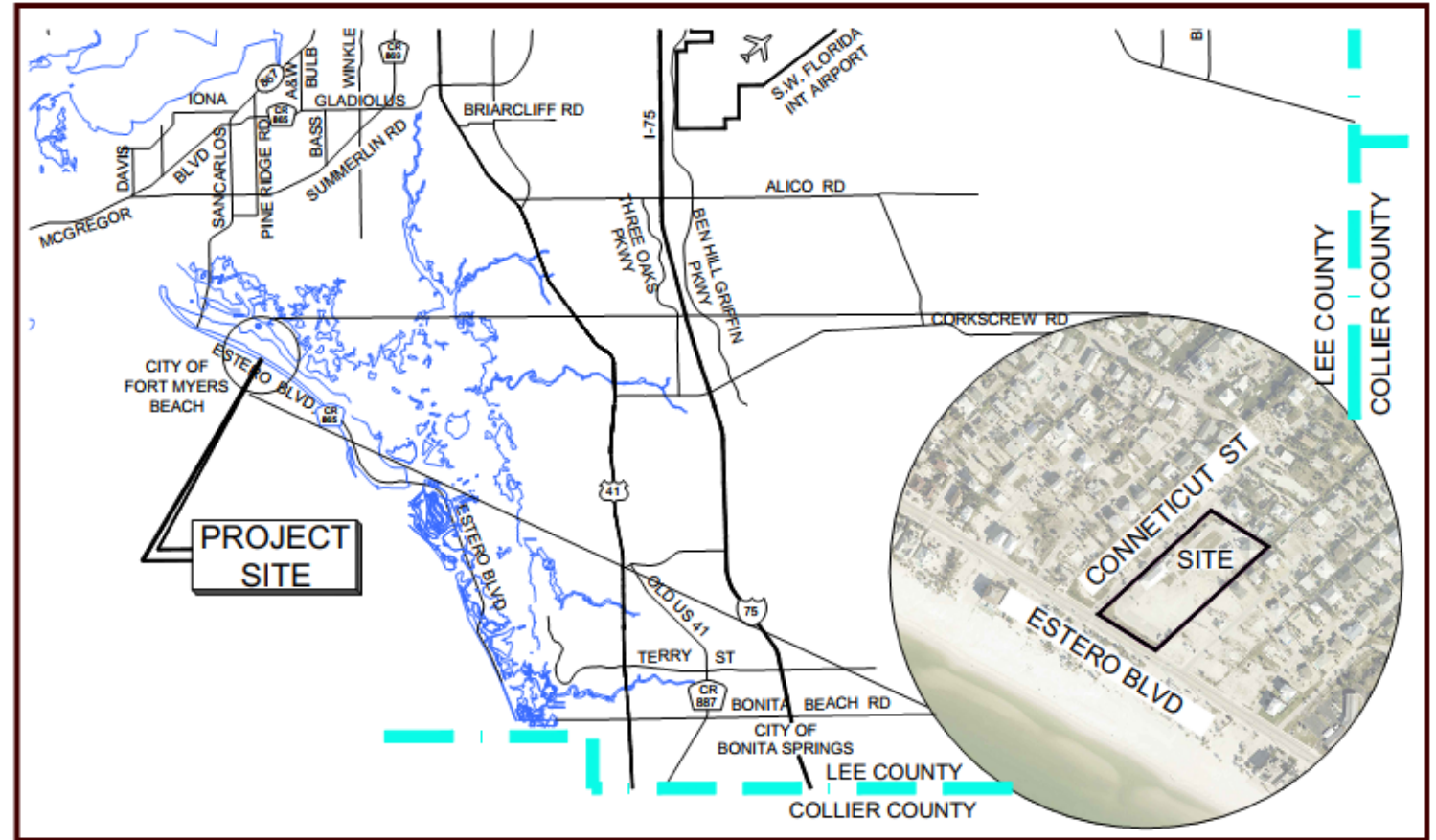
PROJECT REQUEST

REQUESTS:

- Approval of a Development Agreement to Regulate the Development of 12 Single-Family Homes and a Religious Institution on an Overall 3.20 Acre Parcel.
- Rezoning Approval of 2.1 Acres of the Overall Parcel from Institutional (IN) Zoning to Residential Conservation (RC) to Allow Residential Uses by Right.

LOCATION:

- Approximately 1.7 miles South of Time Square.
- Parcel 1: Single Family RC Subdivision Located at 110/138 Connecticut Street.
- Parcel 2: Church Located at 134–138 Connecticut Street.



DEVELOPMENT AGREEMENT

OBJECTIVE:

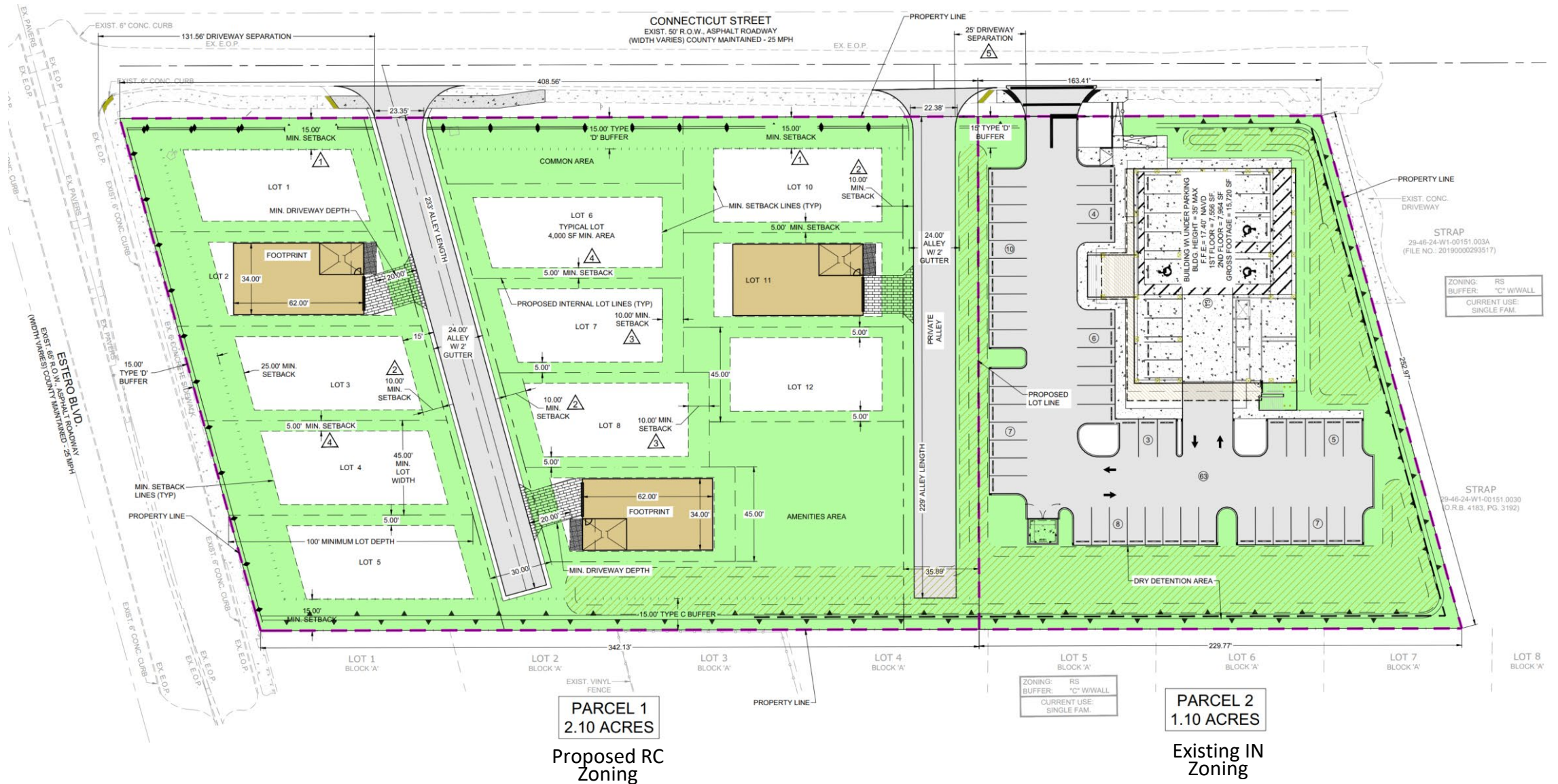
Given the Constraints of Conventional Zoning Districts, The Development Agreement Provides the Single-Family Development (Parcel 1) with Flexibility on the Layout and Provides Additional Conditions on the Church (Parcel 2) to Ensure Adjoining Neighborhood Compatibility and Livability and Provide Public Benefits.

PUBLIC BENEFITS:

- Vehicular Access for Church Limited to Single Driveway on Connecticut Street.
- On-Site Traffic Management by First Baptist Church.
- Maintenance of sidewalks along Connecticut Street on Parcel 2.
- Redevelop the Connecticut St Frontages Consistent with Current Landscape Requirements.
- Provide Buffers in Accordance with Section 10-416 between Church and Existing Adjacent Residential
- Allow Town or County to Utilize Parking Lot of Church for Staging during State of Emergency.



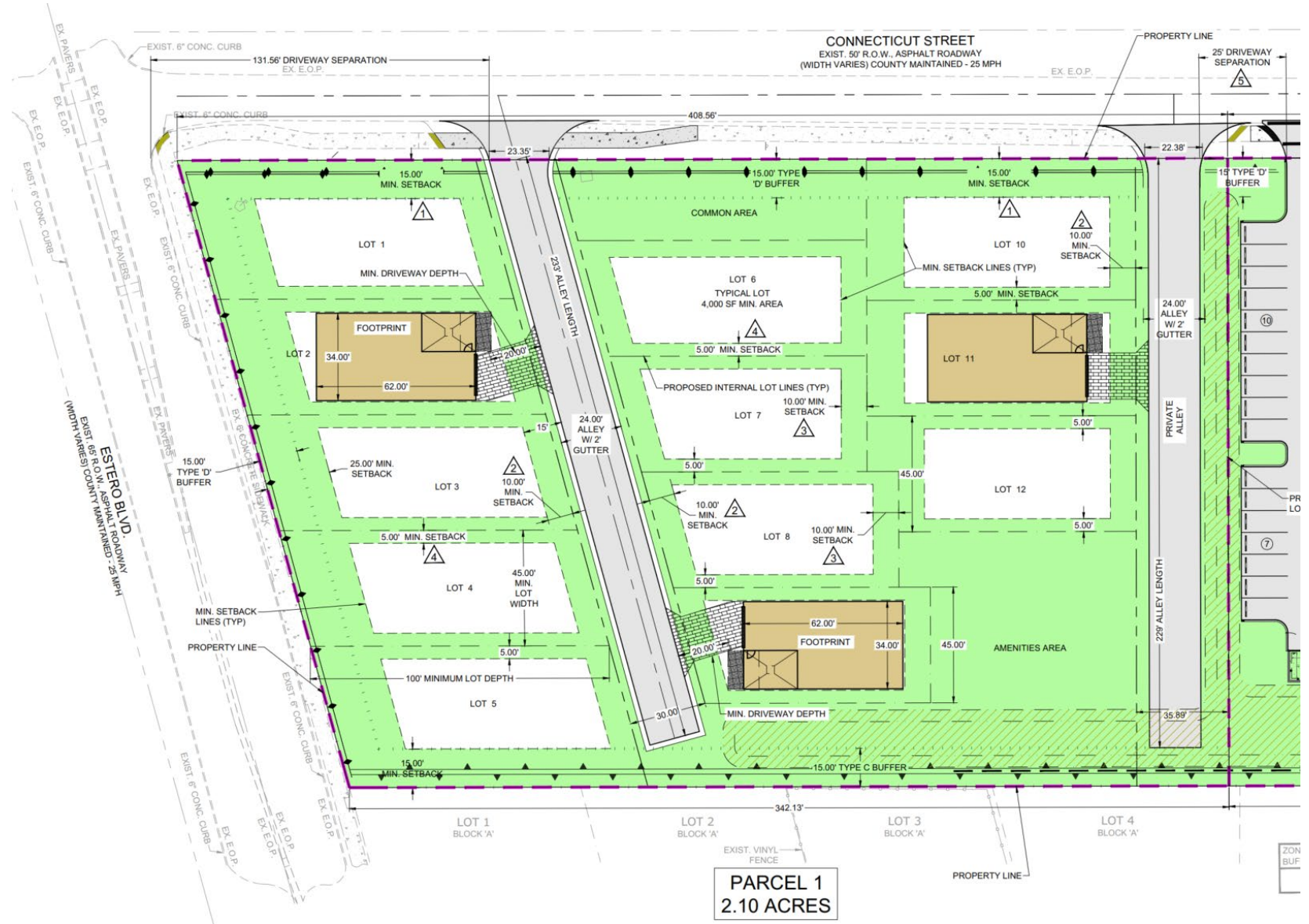
OVERALL SITE PLAN



SITE PLAN – PARCEL 1 - SINGLE-FAMILY

FEATURES:

- Proposed Rezoning to RC
- Two Internal Access Alley-Ways With No Direct Estero Blvd. Access
- Common Code Compliant Open Space
- Contemporary Stormwater Management System For Water Quality & Drainage
- Limited to SF and Residential Accessory Uses
- Creates Family-friendly, Pedestrian Oriented Community
- Lot Split & Rezoning Funds Church Reconstruction

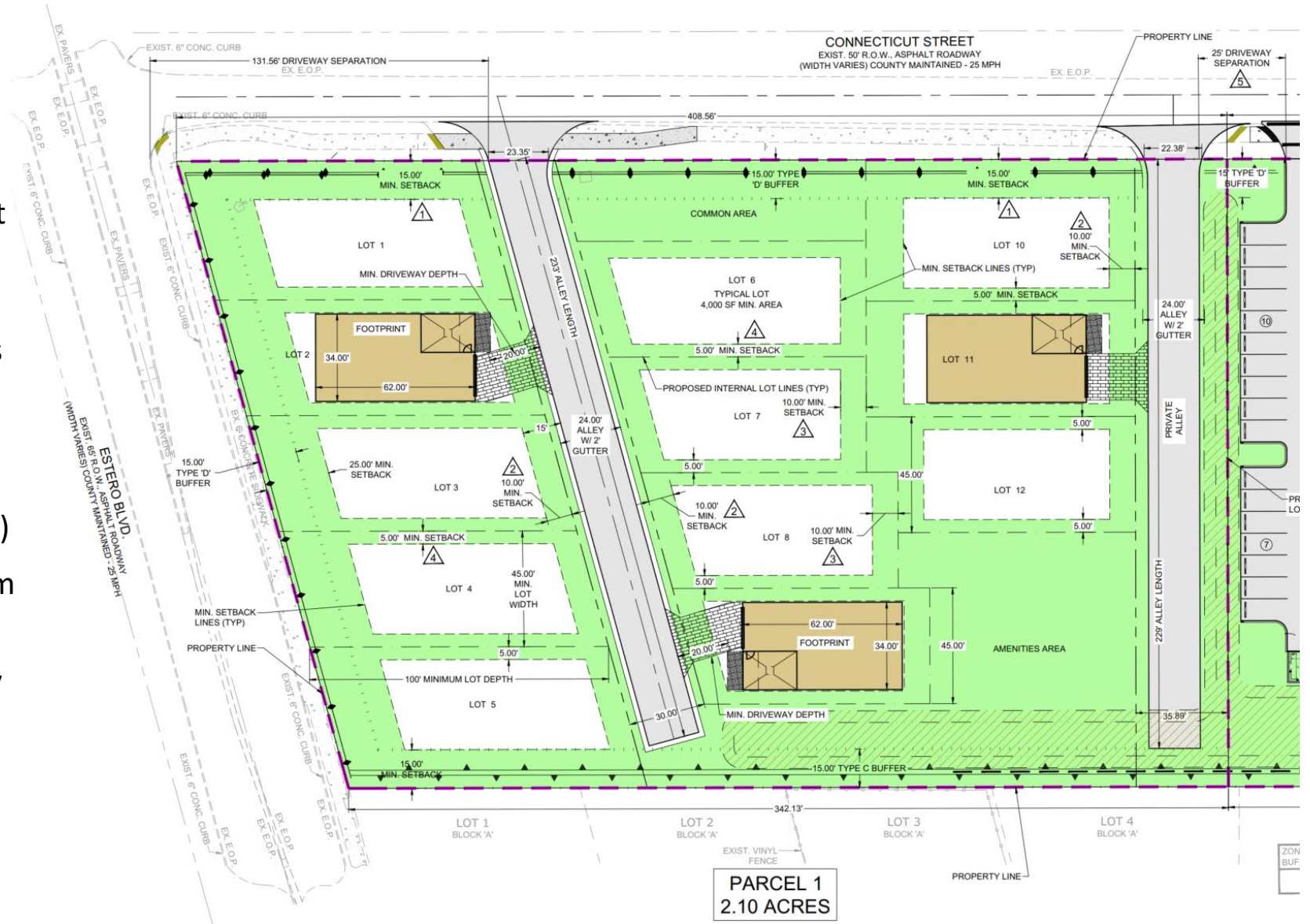


DEVIATIONS – SINGLE-FAMILY

DEVELOPMENT AGREEMENT DEVIATIONS:

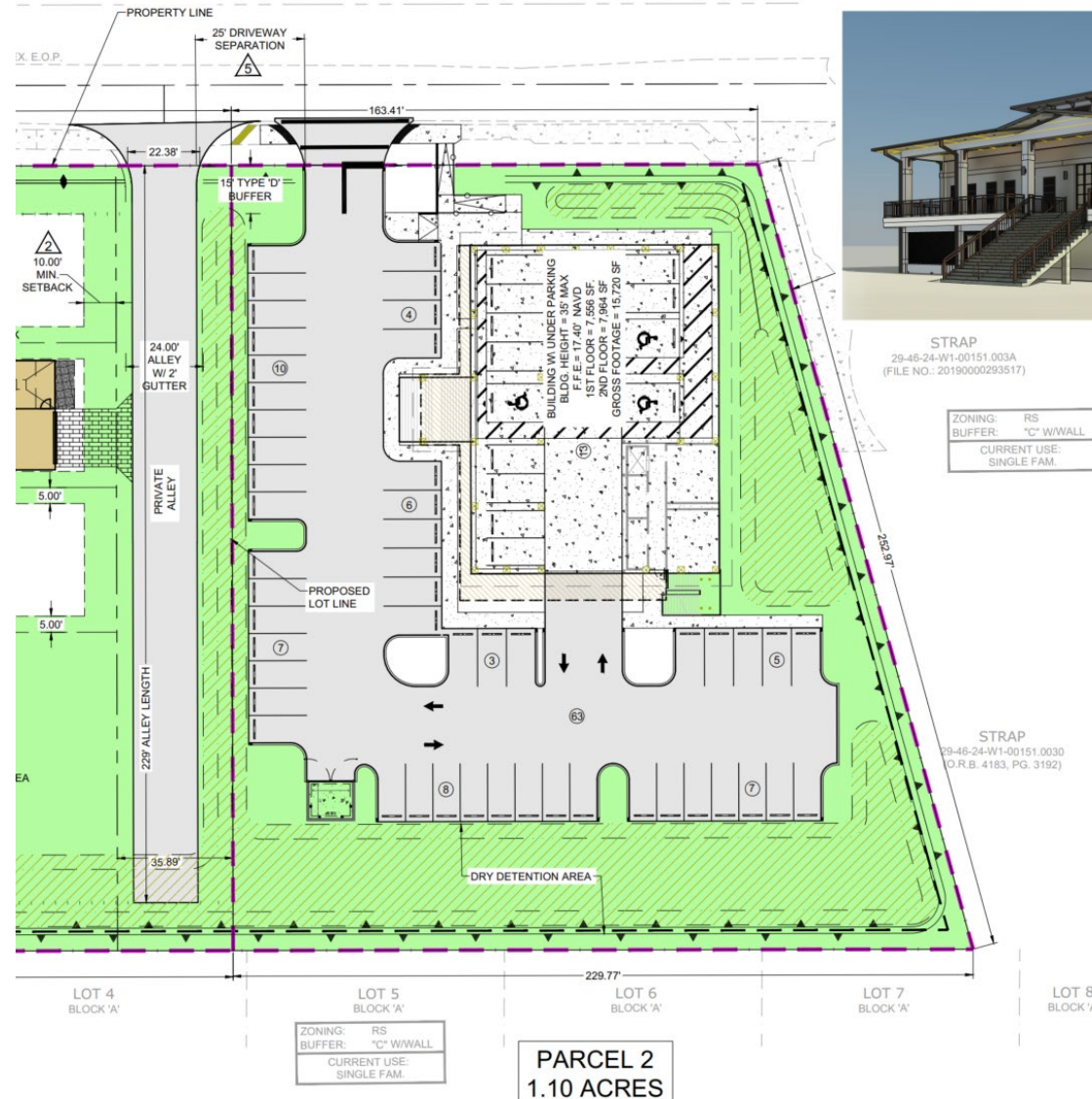
PARCEL 1:

1. Street Setbacks from Connecticut St Reduced from 25' to 15' (§34-638 Table 34-3)
2. Street Setbacks from Internal Alleys Reduced from 25' to 10' (§34-638 Table 34-3)
3. Internal Rear Setbacks Reduced from 20' to 10' (§34-638 Table 34-3)
4. Internal Side Setbacks Reduced from 6.5' to 5.0' (§34-638 Table 34-3)
5. Driveway Separation Between Alley and Church Entrance Reduced from 125' to 25' (§10-285)



FEATURES:

- Maintain Existing IN Zoning
- Post Hurricane Ian Redevelopment
- New Place of Worship Facility for First Baptist Church.
- Single Access on Connecticut Street
- Code Compliant Open Space
- Code Compliant Commercial to Residential Type C Buffers 18 feet to 40 feet wide with a Wall.
- Code Compliant R/W Buffer
- Contemporary Stormwater Management System For Water Quality & Drainage
- Floor Area Ratio of 0.32 is Below Max Allowed of 0.80 FAR
- No Temporary or Permanent Housing
- No RV Overnight Parking
- No Residential, Social Services or Rehabilitation Programs



STRAP
29-46-24-W1-00151.003A
(FILE NO.: 20190000293517)

ZONING:	RS
BUFFER:	"C" W/WALL
CURRENT USE:	SINGLE FAM.

STRAP
29-46-24-W1-00151.0030
(O.R.B. 4183, PG. 3192)

DEVELOPMENT AGREEMENT COMPREHENSIVE PLAN CONSISTENCY

Policy FLU-1-A-1:

- The RC Rezoning Request in Conjunction with this Development Agreement to allow 12 Single-Family, Min. 4,000 SF Homesites with Maximum FAR's of 40% makes the Project Consistent with FLU-1-A-1 which emphasizes preserving Fort Myers Beach's "human scale" by requiring new development to fit neighborhood character, support walkability, protect scenic and community features, and encourage reuse, infill, and quality urban design rather than oversized or isolating projects.

Policy FLU-1-A-4:

- The proposed Single-Family Community and the Redeveloped Church when built in accordance with the Development Agreement will Provide Sidewalks and R/W Buffers Along Connecticut Street making the Project Consistent with FLU-1-A-4 which requires that easy walking access to the beach must always be protected, with public pathways, sidewalks, roads, and shoreline access points preserved and not diminished by development.

Policy FLU-1-B-4 (FLU-4-B-4) Mixed Residential:

- The proposed Single-Family Community when built in accordance with the Development Agreement will be consistent with FLU-1-B-4 in that the Single-Family Development does not exceed the Maximum Density of 6 units per acre and the resulting small homes on small lots provides the towns housing type variety.

Policy FLU-1-C-4 Building Heights:

- The RC Request and Existing Redevelopment of the Church when built in accordance with the Development Agreement will be consistent with FLU-1-C-4 in that both projects will comply with Maximum Height requirements of 30' above flood elevation.

DEVELOPMENT AGREEMENT COMPREHENSIVE PLAN CONSISTENCY (Cont.)

Goal HOU-1 - Policy HOU-1-A-2:

- The RC Rezoning Request in Conjunction with this Development Agreement supports the development of smaller, more affordable homes making the project consistent with Policy HOU-1-A-2.

Policy FLU-1-B-4 (FLU-4-B-4) Mixed Residential:

- The proposed Church when built in accordance with the Development Agreement will be consistent with FLU-1-B-4 in that the Development Agreement allows for conditions and restrictions that would otherwise not be required for IN zoned parcels.

DEVELOPMENT AGREEMENT CONCLUSION

Conclusion:

- The Development Agreement has been prepared pursuant to Section 2-96 and 2-100, and Resolution 24-73.
- The Development Agreement, when approved in conjunction with the RC Zoning, will give the Town the ability regulate the redevelopment of the Church and to give the Residential portion greater flexibility to meet the intent of the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code.
- The Development Agreement provides for a Public Benefit by allowing the Town or County to utilize the parking lot of the church for staging during a state of emergency.
- Staff is Recommending Approval of the Development Agreement.

We ask for a Motion to Recommend Approval of the Proposed Development Agreement to Town Council.



Engineers, Planners & Development Consultants

First Baptist Church

Parcel 1

Rezoning to Residential Conservation (RC)

Town of Fort Myers Beach
Local Planning Agency

September 9, 2025

REQUEST

- The application requests to rezone the subject 2.1-acre parcel from Institution (IN) to Residential Conservation (RC).
- The requested RC district will permit by right the following uses:
 - Community Residential Homes
 - Dwelling unit, Single-Family & 2-Family
 - Accessory apartments
 - Residential accessory uses
 - Home Care Facility
 - Residential Accessory Uses

BACKGROUND

- The subject parcel is located approximately 1.7 miles South of Times Square.
- Future Land Use Classification FLUM Designation: Mixed Residential
- Primary Frontage: ±250 feet along Estero Boulevard, a key arterial road.
- Secondary Frontage: ±409 feet along Connecticut Street
- Adjacent Zoning: Surrounding properties are zoned RC (Residential Conservation).
- Lot Characteristics: Most surrounding lots are between 7,000 – 8,000+ sq ft, supporting single-family and two-family homes.
- The subject property itself is within the Case Subdivision (Plat Book 1, Page 58)
- The Subject Parcel was the Home of the First Baptist Church of Fort Myers Beach until it was destroyed by Hurricane Ian in September 2022.

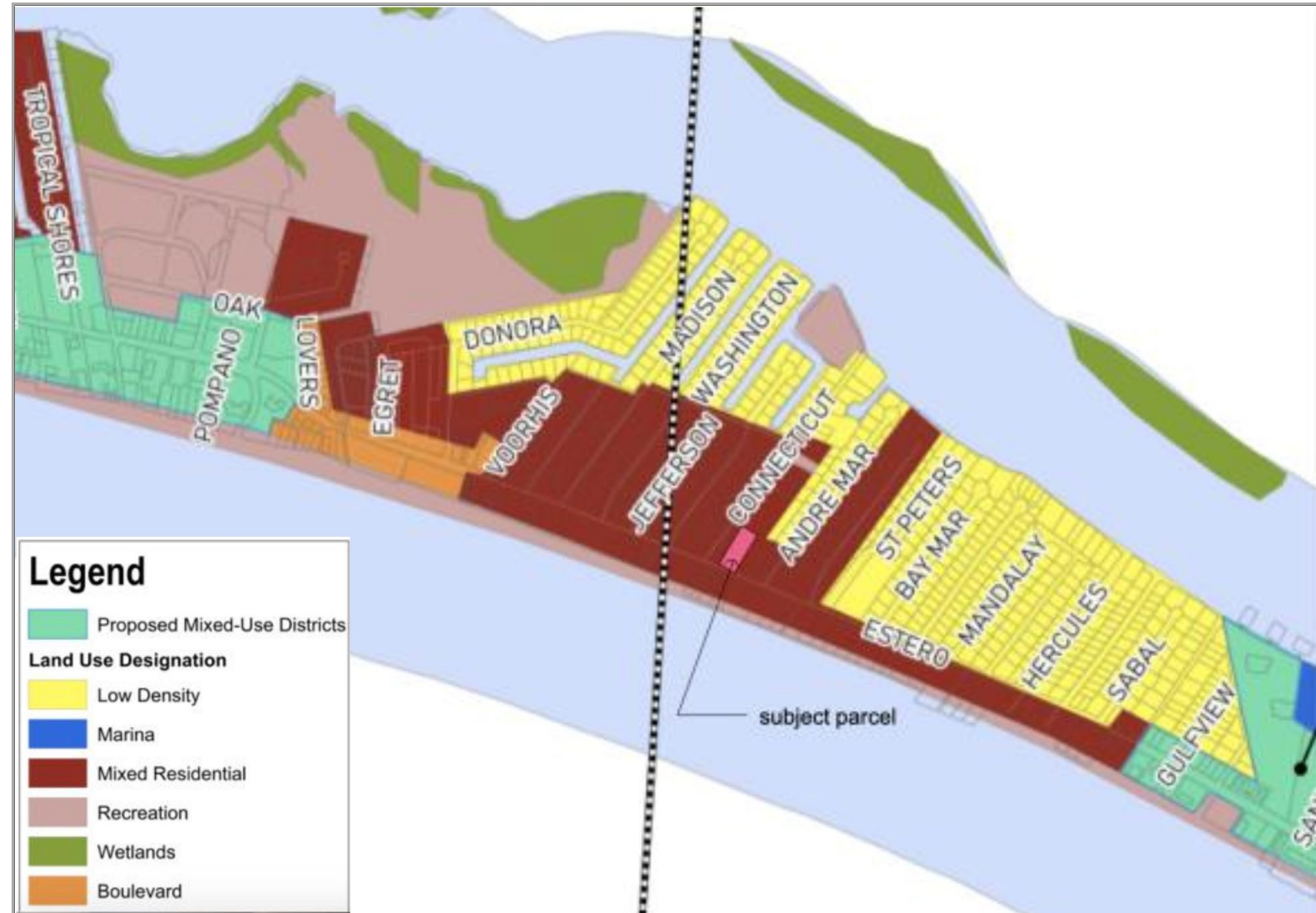
AERIAL PRIOR TO HURRICANE IAN



FUTURE LAND USE

FUTURE LAND USE:

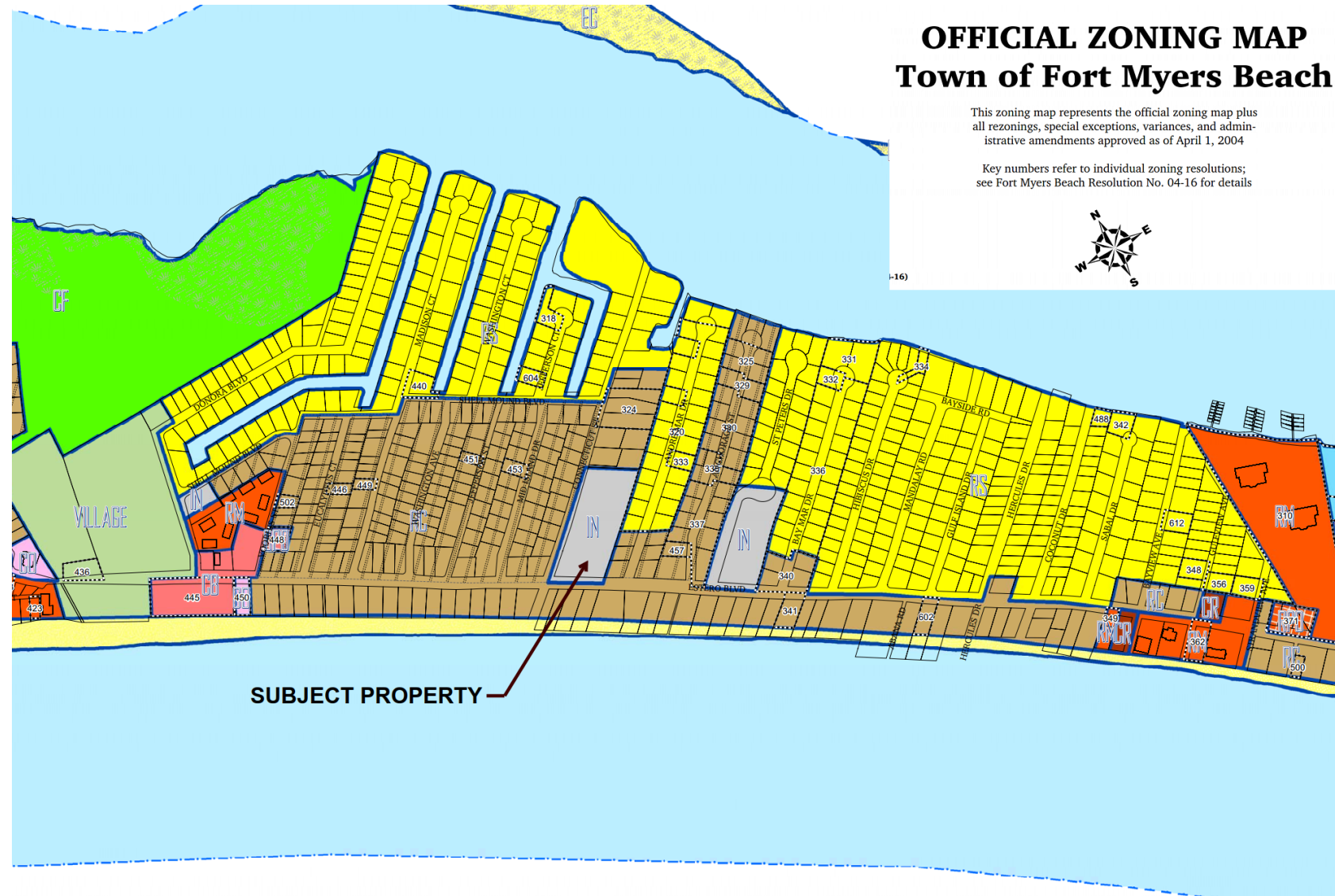
- MIXED RESIDENTIAL
(6 Dwelling Units / Acres)



ZONING MAP

ZONING MAP:

- **EXISTING ZONING**
Institutional (IN)
- **PROPOSED ZONING**
Residential Conservation (RC)



LDC 34-85 RC REZONING CRITERIA

1. Whether there exists an error or ambiguity that must be corrected;
There is no error or ambiguity in the record that must be corrected.
2. Whether there exist changed or changing conditions that make approval of the request appropriate.
The site was a fully developed site that was destroyed in 2022 by Hurricane Ian. The rezoning, parcel split and selling of the new RC Zoned Parcel 1 to support the reconstruction of the First Baptist Church is an appropriate change in condition that makes the request appropriate.
3. The impact of the proposed change on the intent of LDC Chapter 34;
Based on compliance with the Mixed Residential Future Land Use designation and adjoining RC zoned properties, there is no adverse impact on the intent of LDC Chapter 34.
4. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan;
The RC zoning request is consistent with Town of Fort Myers Beach Comprehensive Land Use Plan's objectives, policies, intensities and uses.

LDC 34-85 RC REZONING CRITERIA (cont.)

Policy FLU-1-A-1 Maintaining the town's current "human scale" and "stabilize and preserve neighborhoods".

- **Response: The RC zoning is consistent in that a maximum of 12 Single-Family Lots will be allowed with a minimum of 4,000 sf homesites at a maximum floor area ratio of 40%; contextually fit into the surrounding Connecticut Street and Andre Mar Drive neighborhood.**

Policy FLU-1-A-4. "Easy walking access to the beach".

- **Response: The RC zoned parcel will provide sidewalk construction and Type D 15-ft wide landscaping along its Estero Blvd and Connecticut Street frontage to facilitate public beach access.**

Policy FLU-1-B-4 MEDIUM RESIDENTIAL *"Ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre".*

- **Response: The zoning in conjunction with the Development Agreement for 12 Single-Family Homesite results in a density of 5.7 Units/Ac which is consistent with FLU 1-B-4.**

LDC 34-85 RC REZONING CRITERIA (cont.)

Policy FLU-1-C-4 BUILDING HEIGHTS *Three stories or 30 feet above flood elevation”.*

- **Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height.**

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out*

- ***Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 45-ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes.***

LDC 34-85 RC REZONING CRITERIA (cont.)

5. Whether the request meets all performance and locational standards for the proposed use.

Response: Agree with Staff - The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The request will meet all performance and locational standards identified within the LDC. The subject parcel is of the size and configuration that allows for a small 12-unit subdivision that conforms to RC zoning performance standard identified within the LDC.

6. Whether Urban Services are, or will be, available to serve a proposed land use change.

Response: All required urban services are available to adequately serve residential subdivision

7. Whether the request will protect, conserve or preserve environmentally critical area and natural resources.

Response: The request does not include any impacts to the environmentally critical areas. The site was comprehensively developed to support a Religious Facility. The site is currently characterized by almost 100% impervious with no onsite natural systems.

LDC 34-85 RC REZONING CRITERIA (cont.)

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

Response: Agree with Staff that the RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The new RC 12-unit subdivision will be compatible with the adjacent and adjoining RC Connecticut Street and Andre Mar Dr neighborhoods. The requested 12-unit subdivision will meet all new buildings and FEMA rules. As such the RC subdivision will not cause any damage, hazards or nuisances to surrounding land uses.

9. 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 capacity to carry traffic generated by the development.

Response: The former Church generated a weekend AM Peak entry 89 trips/exit 93 trips. The proposed redevelopment of the Church generated a weekend peak AM entry 38 trips/exit 39 trips. Trip Comparison for the Church has a net peak hour decrease of 105 trips. The proposed 12-unit subdivision will generate a weekday PM Peak 11.25 trips. There is no anticipated negative impact in the Level of Service for Estero Blvd, based on the estimated trip reduction. Therefore, the roadway is adequate to accommodate the volume from the proposed project.

FINDINGS AND CONCLUSION

Applicant Agrees with the Town of Fort Myers Beach's Staff Reports for the Development Agreement (DA2025-0176) and the Rezoning (REZ20240264).

When both the RC zoned Single-Family Parcel and existing IN zoned Church Parcel are developed in accordance with the Deviations and Conditions of the Development Agreement the project will be developed in accordance with the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code. It is consistent with the intensity set forth in the Town Plan and LDC, is compatible with existing and planned uses, has adequate services and infrastructure required to service the project.

The planning and zoning land use findings presented demonstrate entitlement to the requested Baptist Church Residential Conservation (RC) zoning request.

1. **Request:**

Meeting Date: October 6, 2025

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 25-19. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 3, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR SPECIAL EXCEPTIONS THAT ONLY REPLACE "LIKE FOR LIKE" STRUCTURES THAT WERE EXISTING PRIOR TO A NATURAL DISASTER EVENT, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

Town Council takes into consideration LPA's recommendations.

What the action accomplishes:

If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 3, 2025 at 9:00 AM or at another time identified by Town Council.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

At the February 18, 2025 Town Council meeting, the Council discussed allowing the LPA to be the final decision-making body for Special Exceptions that were for "like-for-like" replacements of structures or accessory structures destroyed during natural disasters in the EC zone. Following Hurricane Ian, a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners. Many of the condominiums that have applied for Special Exceptions over the last four years were built before the Town's creation, so no previous Special Exception was issued. Many structures were built prior to the establishment of the 1978 CCCL which demarcates the EC zone. The time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town's efforts to rebuild the community. The intent of this ordinance is to reduce the approval time for previously existing structures that, when rebuilt, are unlikely to cause a nuisance. Special Exceptions for new structures in the EC zone will continue to require the oversight of Town Council.

Attachments:

1. Expedited Special Exception Ordinance (1)

2. 25-xx, Business Impact Estimate - Expedited Special Exception

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

Amy Baker, Town Clerk
Georgina Cid, Community Development Manager
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/24/2025
Final Approval - 9/29/2025

ORDINANCE NO. 25-_____

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 “REQUIRED HEARINGS” OF DIVISION 5 “PUBLIC HEARINGS AND REVIEW” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY (“LPA”) FOR SPECIAL EXCEPTIONS THAT ONLY REPLACE “LIKE FOR LIKE” STRUCTURES THAT WERE EXISTING PRIOR TO A NATURAL DISASTER EVENT, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW 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, Section 34-232 of the Town’s Land Development Code currently requires 2 public hearings for special exception applications, one before the local planning agency (“LPA”) and one before the town council; and

WHEREAS, in the recent past a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners; and

WHEREAS, the time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town’s efforts to rebuild the community; and

WHEREAS, notwithstanding the need to expedite the rebuilding of the Town, there may be situations where issues arise during the LPA meeting, which may require further evaluation by the Town Council; and

WHEREAS, a public hearing of this Ordinance was held before the LPA on the ____ day of _____, 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 made a finding of consistency with the Fort Myers Beach Comprehensive Plan and Land Development Code and thereafter voted __ to __, to recommend approval of this Ordinance amending the referenced section of the Land Development Code to the town council; and

WHEREAS, on the ____ day of _____, 2025, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Section 34-232 of the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website on the ____ day of _____, 2025, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, which is no less than 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the ____ day of _____, 2025, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined by a vote of __ to __ that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the town council.

Section 2. That Section 34-232 “Required Hearings” of Division 5 “Public Hearings and Review” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities is hereby amended as follows:

Section 34-232 – Required hearings.

(a) Amendment or adoption of land use ordinances.

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) *Owner-initiated requests.* Owner-initiated requests for rezonings, certain special exceptions and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances and special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster, which is ~~that are~~ unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action. ~~Other owner-initiated requests for variances require public hearings first by the local planning agency and then by the town council.~~

(c) *Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than ten abutting acres of land will require a single public hearing before the town council.

(2) Applications covering more than ten abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the town council.

The forgoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

Dan Allers, Mayor _____
Jim Atterholt, Vice Mayor _____

John R. King, Council Member _____
Karen Woodson, Council Member _____
Scott Stafford, Council Member _____

ADOPTED this ____ day of _____, 2025 by the town council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR SPECIAL EXCEPTIONS THAT ONLY REPLACE "LIKE FOR LIKE" STRUCTURES THAT WERE EXISTING PRIOR TO A NATURAL DISASTER EVENT, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

¹ See Section 166.041(4)(c), Florida Statutes.

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

Following Hurricane Ian, a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners. Many of the condominiums that have applied for Special Exceptions over the last four years were built before the Town's creation, so no previous Special Exception was issued. Many structures were built prior to the establishment of the 1978 CCCL which demarcates the EC zone. The time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town's efforts to rebuild the community. The intent of this ordinance is to reduce the approval time for previously existing structures that, when rebuilt, are unlikely to cause a nuisance. Special Exceptions for new structures in the EC zone will continue to require the oversight of Town Council.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx. Costs may be reduced for certain applications due to the potential for reduced hearings.

Ordinance 25-2xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

This rezoning does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING 16 INDIVIDUAL PROFESSIONAL SERVICE AGREEMENT WITH THE FOLLOWING FIRMS, WHICH WERE NEGOTIATED BY TOWN STAFF AS DIRECTED BY THE TOWN COUNCIL ON AUGUST 18, 2025 IN RESPONSE TO RFQ-24-06-AD ENTITLED "ONGOING MISCELLANEOUS PROFESSIONAL SERVICES": 1) AIM ENGINEERING & SURVEYING, 2) AXIS INFRASTRUCTURE LLC, 3) BURT HILL-POLLOCK KRIEG, 4) CAP GOVERNMENT, 5) COASTAL ENGINEERING, 6) EMSITE INC., 7) GMA ARCHITECTS AND PLANNERS, 8) GRAEF USA, 9) HALEY WARD, 10) HANS WILSON, 11) HYATT SURVEY SERVICES, 12) JEZERINAC GROUP, 13) JOHNSON ENGINEERING, 14) JR EVANS ENGINEERING, 15) K2M DESIGN, AND 16) RADISE INTERNATIONAL; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH EACH OF THE TOP RANKED FIRMS FOR EACH CATEGORY OF WORK WITHIN THE REQUEST FOR QUALIFICATIONS AND WHICH WERE SUCCESSFULLY NEGOTIATED; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

Obtain fully executed contracts for Ongoing Miscellaneous Professional Services in the Town

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Joe Onzick, Finance Director,
Amy Baker, Town Clerk

5. **Background:**

In Resolution 25-244, the Town Council accepted the recommendation of the Selection Advisory Committee and directed the Town Manager or his designee to initiate negotiating with the top-five ranked firms for 19 professional service categories requested in RFQ-24-06-AD. In accordance with the Town of Fort Myers Beach Purchasing Ordinance 24-11, Sec. 2-480 (16), the Town Manager negotiated contracts with the recommended firms for terms the Town Manager determined were fair, competitive, and for which funds are available. To date, contracts for 16 of the 32 professional service firms have been completed and are presented to the Town Council for approval. Copies of each of the professional service agreements are included in the agenda materials.

Attachments:

1. Resolution 25-277, RFQ-24-06-AD Final NS
2. List of 32 Companies Recommended for PSC - RFQ-24-06-AD
3. List of the Top Ranked Firms by Categories
4. 25-244, Resolution to RFQ-24-06-AD
5. Selection Advisory Committee Detailed Ranking
6. RFQ-24-06-AD Ongoing Misc Professional Services
7. PSA - AIM Engineering & Surveying, Inc.
8. PSA - Axis Infrastructure, LLC
9. PSA - Burt Hill - Pollock Krieg
10. PSA - CAP Government
11. PSA - Coastal Engineering
12. PSA - Ensite Inc
13. PSA - GMA Architects and Planners

14. PSA - Graef USA
15. PSA - Haley Ward
16. PSA - Hans Wilson
17. PSA - Hyatt Survey Services
18. PSA - Jezerinac Group
19. PSA - Johnson Engineering
20. PSA - JR Evans Engineering
21. PSA - K2M Design
22. PSA - Radise International

Financial Impact:

Direct impact to have fully executed contracts in place in case of an emergency

6. Alternative Action

Do not accept the recommendations and potentially not have contracts in place for an emergency

7. Management Recommendations:

Approve the Agreements between the Town and the 33 pre-qualified Firms

8. Recommended Approval:

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

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

RESOLUTION NUMBER 25-277

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AWARDING PROFESSIONAL SERVICES AGREEMENTS TO THE TOP RANKED FIRMS WITHIN EACH OF THE CATEGORIES OF WORK INCLUDED WITHIN RFQ-24-06-AD ENTITLED “ONGOING MISCELLANEOUS PROFESSIONAL SERVICES”; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH EACH OF THE TOP RANKED FIRMS FOR EACH CATEGORY OF WORK WITHIN THE REQUEST FOR QUALIFICATIONS AND WHICH WERE SUCCESSFULLY NEGOTIATED; 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, pursuant of the Town’s Purchasing Ordinance 24-11, Sec 2-480 (a) (1) (12) (14), the Town completed the competitive procurement process in compliance with state law and Town Code through the solicitation RFQ-24-06-AD “Ongoing Miscellaneous Professional Services” in July of 2024; and

WHEREAS, on August 18, 2025, the Town Council unanimously approved Resolution 25-244, which accepted the rankings of the professional services firms and recommendations of the Town Manager and the Selection Advisory Committee and authorized the Town Manager or designee to enter into negotiations with the top ranked firms; and

WHEREAS, negotiations with each of the top ranked firms (“Firms”) has been completed and draft agreements are prepared for award and approval by the Town Council; and

WHEREAS, awarding and authorizing execution of these professional service agreements allows the Town to utilize qualified professional firms for miscellaneous professional services that the Town may need throughout the agreement period within the categories of work included within the Request for Qualifications; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the Town and its citizens to authorize the execution of professional services agreements with each of the top ranked firms.

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. That the Town Council hereby authorizes and instructs the Town Manager to execute the negotiated professional services agreements with each of the top ranked firms as determined in the previous Resolution 25-244 and a list of which is attached hereto 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 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 6th day of October 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:

Town Attorney

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

ADG ARCHITECTUAL	102 ARCHITECTURAL DESIGN
AIM ENGINEERING	111 CIVIL ENGINEERING
	113 PLANNING AND TRAFFIC
	115 FLOODPLAIN MANAGEMENT
	117 ENVIRONMENTAL ASSESSMENT
	119 GIS
AXIS INFRASTRUCTURE	107 COMMUNITY & NEIGHBORHOOD
	108 ELECTRICAL SYSTEMS
	109 STRUCTURAL SYSTEMS
	114 PLANNING AND ZONING
	115 FLOODPLAIN MANAGEMENT
	119 GIS
BLOT ENGINEERING	108 MARINE ENGINEERING
	109 STRUCTURAL SYSTEMS
BOWMAN CONSULTING	101 WATER RESOURCES
	103 STORMWATER
	104 WATER DISTRIBUTION
	106 LANDSCAPE ARCHITECT
	111 CIVIL ENGINEERING
	113 PLANNING AND TRAFFIC
	114 PLANNING AND ZONING
	119 GIS
BURT HILL/POLLOCK KRIEG	102 ARCHITECTURAL
CAP ENGINEERING	112 BUILDING SERVICES
	115 FLOODPLAIN MANAGEMENT
CASTELLANOS	112 BUILDING SERVICES
	120 HISTORICAL RESTORATION
COASTAL ENGINEERING	105 SURVEYING SERVICES
	118 MARINE ENGINEERING
CORRADINO GROUP	113 PLANNING AND TRAFFIC
	114 PLANNING AND ZONING
CW3 ENGINEERING	103 STORMWATER
DREDGING AND MARINE	118 MARINE ENGINEERING
FOREFRONT ARCHITECTURE	109 STRUCTURAL SYSTEMS
ENSITE INC	103 STORMWATER
	106 LANDSCAPE ARCHITECT
	107 COMMUNITY & NEIGHBORHOOD
	111 CIVIL ENGINEERING
GMA ARCHITECTS	102 ARCHITECTURAL
	107 COMMUNITY & NEIGHBORHOOD
GRAEF	108 ELECTRICAL SYSTEMS
	118 MARINE ENGINEERING
HALEY WARD	105 SURVEYING SERVICES
	117 ENVIRONMENTAL ASSESSMENT
HANS WILSON	117 ENVIRONMENTAL ASSESSMENT
	118 MARINE ENGINEERING

HYATT SURVEY	105 SURVEYING SERVICES
JEZERINAC	109 STRUCTURAL SYSTEMS
JOHNSON ENGINEERING	101 WATER RESOURCES
	103 STORM WATER
	105 SURVEYING SERVICES
	106 LANDSCAPING ARCHITECT
	108 ELECTRICAL SYSTEMS
	113 PLANNING AND TRAFFIC
	115 FLOODPLAIN MANAGEMENT
JR EVANS	117 ENVIRONMENTAL ASSESSMENTS
	101 WATER RESOURCES
	112 BUILDING SERVICES
	115 FLOODPLAIN MANAGEMENT
K2M DESIGN	118 MARINE ENGINEERING
	102 ARCHITECTURAL DESIGN
	107 COMMUNITY & NEIGHBORHOOD
	108 ELECTRICAL SYSTEMS
LJA ENGINEERING	120 HISTORICAL RESTORATION
	106 LANDSCAPE ARCHITECT
PROFESSIONAL SERVICES	119 GIS
	110 GEO
	117 ENVIRONMENTAL ASSESSMENT
RADISE	110 GEO
RG ARCHITECT	102 ARCHITECTUAL
RWA	101 WATER RESOURCES
	104 WATER DISTRIBUTION
	106 LANDSCAPE ARCHITECT
	107 COMMUNITY & NEIGHBORHOOD
	111 CIVIL ENGINEERING
SCHENKEL & SHULTZ	102 ARCHITECTUAL
TETRA TECH	101 WATER RESOURCES
	103 STORM WATER
	104 WATER DISTRIBUTION
	105 SURVEYING SERVICES
	108 ELECTRICAL SYSTEMS
	111 CIVIL ENGINEERING
	112 BUILDING SERVICES
	114 PLANNING AND ZONING
TRAFFIC & MOBILITY	119 GIS
WESTON & SAMPSON	113 PLANNING AND ZONING
	104 WATER DISTRIBUTION
	109 STRUCTURAL SYSTEMS

LIST OF TOP RANKED RECOMMENDED FIRMS BY CATEGORY

101 WATER RESOURCES

- TETRA TECH INC
- JOHNSON ENGINEERING INC
- RWA INC
- JR EVANS ENGINEERING PA
- BOWMAN CONSULTING GROUP LTD

102 ARCHITECTURAL DESIGNS

- ADG ARCHITECTUAL LLC
- K2M DESIGN INC
- GMA ARCHITECTS AND PLANNERS
- BURT HILL/POLLOCK KRIEG ARCHITECT INC
- RG ARCHITECT

103 STORM WATER

- TETRA TECH INC
- JOHNSON ENGINEERING INC
- CW3 ENGINEERING INC
- ENSITE INC
- BOWMAN CONSULTING GROUP

104 WATER DISTRIBUTION INCLUDING LIFT AND PUMP STATION DESIGN

- TETRA TECH INC
- CW3 ENGINEERING INC
- RWA INC
- BOWMAN CONSULTING GROUP LRD
- WESTON & SAMPSON ENGINEERING INC

105 SURVEYING SERVICES

- COASTAL ENGINEERING CONSULTANTS
- JOHNSON ENGINEERING
- TETRA TECH INC
- HYATT SURVEY SERVICES INC
- HALEY WARD INC

106 LANDSCAPE ARCHITECT

- JOHNSON ENGINEERING INC
- ENSITE INC
- RWA INC
- LJA ENGINEERING INC
- BOWMAN CONSULTING GROUP LTD

107 COMMUNITY AND NEIGHBORHOOD IMPROVEMENTS

- ENSITE INC, K2M DESIGN INC
- GMA ARCHITECTS & PLANNING
- RWA INC, AXIS INFRASTRUCTURE

108 ELECTRICAL SYSTEMS

- JOHNSON ENGINEERING INC
- TETRA TECH INC
- GRAEF-USA
- K2M DESIGN INC
- AXIS INFRASTRUCTURE

109 STRUCTURAL SYSTEMS

- JEZERINAC GROUP
- BOLT ENGINEERING INC
- WESTON & SAMPSON ENGINEERING INC
- AXIS INFRASTRUCTURE LLC
- FOREFRONT ARCHITECTURE AND ENGINEERING

110 GEO-TECHNICAL ANALYSIS

- RADISE INTERNAIONAL LLC
- PROFESSIONAL SERVICES INDUSTRIES INC

111 CIVIL ENGINEERING

- TETRA TECH INC
- ENSITE INC
- RWA INC
- BOWMAN CONSULTING GROUP LTD
- AIM ENGINEERING & SURVEY INC

112 DEVELOPMENT AND BUILDING SERVICES

- TETRA TECH INC
- CAP ENGINEERING INC
- JR EVANS ENGINEERING PA AND CASTELLANOS & TRAMONTE ARCHITECTS

113 TRANSPORTATION PLANNING & TRAFFIC ENGINEERING SERVICES

- JOHNSON ENGINEERING INC
- AIM ENGINEERING & SURVEYING INC
- CORRADINO GROUP LLC
- TRAFFIC & MOBILITY CONSULTANTS LLC
- BOWMAN CONSULTING GROUP

114 PLANNING & ZONING

- AXIS INFRASTRUCTURE LLC
- TETRA TECH INC
- CORRADINO GROUP INC
- JOHNSON ENGINEERING INC
- BOWMAN CONSULTING GROUP

115 FLOODPLAIN MANAGEMENT

- AXIS INFRASTRUCTURE LLC
- JOHNSON ENGINEERING INC
- CAP GOVERNMENT INC
- JR EVANS ENGINEERING PA

- AIM ENGINEERING & SURVEYING INC

117 ENVIRONMENTAL ASSESSMENTS

- JOHNSON ENGINEERING INC
- HANS WILSON & ASSOCIATES
- AIM ENGINEERING & SURVEYING INC
- HALEY WARD INC
- PROFESSIONAL SERVICES INDUSTRIES INC

118 MARINE ENGINEERING

- COASTAL ENGINEERING CONSULTANTS' INC
- HANS WILSON & ASSOCIATES INC
- DREDGING & MARINE CONSULTANTS LLC
- BOLT ENGINEERING INC
- GRAEF-USA INC, JR EVANS
- JR EVANS ENGINEERING

119 GIS

- TETRA TECH INC
- AIM ENGINEERING & SURVEYING INC
- AXIS INFRASTRUCTURE LLC
- BOWMAN CONSULTING GROUP INC
- LJA ENGINEERING INC

120 HISTORICAL RESTORATIONS

- K2M DESIGN INC
- CASTELLAMOS & TRAMONTE ARCHITECTS

RESOLUTION NUMBER 25-244

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.

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 - RFQ-24-06-AD “Ongoing Miscellaneous Professional Services” - in July of 2024 the Town Selection Advisory Committee recommends authorizing the Town Manager or designee to negotiate with the top ranked firms (“Firms”).

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 top ranked Firms bid packages are linked to the CivicPlus for the review of Town Council and to approve the Town Manager to move forward in negotiations.

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 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 August 18, 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:**

Town Attorney

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

CATEGORY	MAXIMUM POINTS PER SELECTION COMMITTEE MEMBER				
101 WATER RESOURCE					
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd
Tetra Tech, Inc.	100	100	92	90	83
Johnson Engineering, Inc.	99	100	79	71	72
RWA, Inc.	98	85	88	70	62
JR Evans Engineering, PA	95	95	78	61	74
Bowman Consulting Group, Ltd.	80	90	87	67	74
102 ARCHITECTURAL DESIGN					
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd
ADG Architecture, LLC	99	100	94	80	84
K2M Design, Inc.	100	95	85	67	86
GMA Architects & Planners, LLC	99	100	84	72	71
Burt Hill/Pollock Krieg Architectects, Inc.	100	100	84	72	66
RG Architects, PA	98	100	81	69	74
Schenkel & Shultz	98	100	81	63	66
103 STORMWATER					
Proposing Firms	Joe	Frankie	Mark	Jeff	Chadd
Tetra Tech	100	100	87	90	86
Johnson Engineering, Inc.	99	100	70	90	81
CW3 Engineering, Inc.	98	100	65	83	71
Ensite, Inc.	97	100	61	81	76
Bowman Consulting Group	95	100	65	87	63
104 WATER DISTRIBUTION, INCLUDING LIFT AND PUMP STATION DESIGN					
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd
Tetra Tech, Inc.	100	100	92	87	82
CW3 Engineering, Inc.	99	100	84	71	72
RWA, Inc.	98	85	88	70	81
Bowman Consulting Group, Ltd.	96	90	87	65	66
Weston & Sampson Engineers, Inc.	95	85	83	72	69
JR Evans Engineering, PA	65	100	87	61	74
105 SURVEYING SERVICES					
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd
Coastal Engineering Consultants, Inc.	100	90	89	71	91
Johnson Engineering, Inc.	99	100	84	70	73
Tetra Tech, Inc.	100	90	89	87	60
Hyatt Survey Services, Inc.	95	100	84	59	84
Haley Ward, Inc.	80	100	94	80	67
Bowman Consulting Group, Ltd.	95	100	87	75	63
106 LANDSCAPE ARCHITECT					
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd
Johnson Engineering, Inc.	99	100	91	70	73
Ensite, Inc.	100	100	85	71	75
RWA, Inc.	95	85	82	71	74
LJA Engineering, Inc.	80	100	83	48	74
Bowman Consulting Group, Ltd.	65	90	87	65	55

NUMBER 100		RANKING	CATEGORY		MAXIMUM POINTS	
			107 COMMUNITY & NEIGHBORHOODS			
Committee Total	Ranking		Proposing Firms	Joe	Frankie	
465	1		Ensite, Inc.	100	98	
421	2		K2M Design, Inc.	100	95	
403	3		GMA Architects & Planners, LLC	99	100	
403	4		RWA, Inc.	99	80	
398	5		Axis Infrastructure, LLC	90	100	
			108 ELECTRICAL SYSTEMS			
Committee Total	Ranking		Proposing Firms	Joe	Frankie	
457	1		Johnson Engineering, Inc.	98	100	
433	2		Tetra Tech Inc.	99	100	
426	3		Graef-USA, Inc.	95	93	
422	4		K2M Design, Inc.	63	100	
422	4		Axis Infrastruture	63	100	
408	5		109 STRUCTURAL SERVICES			
Committee Total	Ranking		Proposing Firms	Joe	Frankie	
463	1		Jezerinac Group	100	100	
440	2		Bolt Engineering, Inc.	99	100	
417	3		Weston & Sampson Engineers, Inc.	95	75	
415	4		Axis Infrastructure, LLC	63	100	
410	5		Forefront Architecture and Engineering	80	95	
			110 GEO TECHNICAL			
Committee Total	Ranking		Proposing Firm	Joe	Frankie	
461	1		Radise International, LC	100	85	
426	2		Professional Services Industries, Inc (PSI)	99	85	
422	3		111 CIVIL ENGINEERING			
404	4		Proposing Firm	Joe	Frankie	
404	4		Tetra Tech, Inc.	99	95	
387	5		Ensite, Inc.	98	98	
			RWA, Inc.	100	80	
Committee Total	Ranking		Bowman Consulting Group, Ltd.	89	95	
441	1		AIM Engineering & Surveying, Inc.	75	100	
426	2		112 Development and Building			
426	2		Proposing Firm	Joe	Frankie	
422	3		Tetra Tech, Inc.	99	98	
421	4		CAP Government, Inc.	95	80	
420	5		JR Evans Engineering PA	65	100	
			Castellanos + Tramonte Architects	10	100	
Committee Total	Ranking		113 TRANSPORTATION PLANNING & TRAFFIC			
433	1		Proposing Firm	Joe	Frankie	
431	2		Johnson Engineering, Inc.	100	98	
407	3		AIM Engineering & Surveying, Inc.	100	98	
385	4		Corradino Group, Inc.	95	95	
362	5		Traffic & Mobility Consultants, LLC	75	96	
			Bowman Consulting Group, Ltd.	80	100	

S PER SELECTION COMMITTEE MEMBER 100				RANKING	CATEGORY
OOD IMPROVEMENTS					
Jeff	Mark	Chadd	mmittee To	Ranking	Proposing Firm
80	71	80	429	1	Axis Infrastructure, LLC
83	67	80	425	2	Tetra Tech, Inc.
84	72	65	420	3	Corradino Group, Inc.
90	70	75	414	4	Johnson Engineering, Inc.
82	62	77	411	5	Bowman Consulting Group, Ltd.
STEMS					
Jeff	Mark	Chadd	Committee	Ranking	Proposing Firm
85	70	79	432	1	Axis Infrastructure, LLC
85	87	52	423	2	Johnson Engineering, Inc.
86	72	74	420	3	CAP Government, Inc.
78	67	75	383	4	JR Evans Engineering, PA
95	62	59	379	5	AIM Engineering & Surveying, Inc.
SYSTEMS					
Jeff	Mark	Chadd	mmittee To	Ranking	No Proposing Firms
84	60	74	418	1	117 ENVIRONMENTAL SERVICES
82	71	45	397	2	Proposing Firm
89	72	51	382	3	Johnson Engineering, Inc.
95	62	56	376	4	Hans Wilson & Associates, Inc.
87	72	40	374	5	AIM Engineering & Surveying, Inc.
ANALYSIS					Haley Ward Inc.
Jeff	Mark	Chadd	Committee	Ranking	Professional Services Industries, Inc (PSI)
98	59	60	402	1	
93	53	45	375	2	Proposing Firm
ERING					Coastal Engineering Consultants, Inc.
Jeff	Mark	Chadd	Committee	Ranking	Hans Wilson & Associates, Inc.
87	87	54	422	1	Dredging & Marine Consultants, LLC
83	71	63	413	2	Bolt Engineering, Inc.
83	70	74	407	3	Graef-USA, Inc.
88	70	63	405	4	JR Evans Engineering, PA
85	75	69	404	5	
ilding Services					Proposing Firms
Jeff	Mark	Chadd	Committee	Ranking	Tetra Tech, Inc.
88	87	50	422	1	AIM Engineering & Surveying, Inc.
84	63	74	396	2	Axis Infrastructure, LLC
78	66	73	382	3	Bowman Consulting Group, Ltd.
86	61	15	272	4	LJA Engineering, Inc.
FFIC ENGINEERING SERVICES					
Jeff	Mark	Chadd	mmittee To	Ranking	Proposing Firm
76	70	81	425	1	K2M Design, Inc.
82	75	40	395	2	Castellanos + Tramonte Architects
80	74	50	394	3	
79	57	74	381	4	
81	70	49	380	5	

MAXIMUM POINTS PER SELECTION COMMITTEE MEMBER 100						RANKING
114 PLANNING / ZONING						
Joe	Frankie	Jeff	Mark	Chadd	Committee	Ranking
100	100	98	62	92	452	1
99	100	91	87	69	446	2
95	98	84	74	84	435	3
100	98	85	70	66	419	4
45	100	86	70	46	347	5
115 Flood Plain Management						
Joe	Frankie	Jeff	Mark	Chadd	Committee	Ranking
99	100	98	62	83	442	1
100	98	86	71	57	412	2
80	86	90	63	85	404	3
65	100	83	61	78	387	4
83	100	82	75	26	366	5
116 ARCHAEOLOGICAL SERVICES						
Joe	Frankie	Jeff	Mark	Chadd	Committee	Ranking
Joe	Frankie	Jeff	Mark	Chadd	Committee	Ranking
100	98	83	70	86	437	1
90	100	83	65	90	428	2
100	100	82	75	50	407	3
55	100	95	80	65	395	4
100	89	82	53	45	369	5
118 MARINE ENGINEERING						
Joe	Frankie	Jeff	Mark	Chadd	Committee Tot	Ranking
100	100	87	73	96	456	1
95	100	86	65	89	435	2
97	98	89	76	50	410	3
98	100	87	71	40	396	4
94	98	82	72	50	396	4
55	100	83	61	66	365	5
119 GEOGRAPHIC INFORMATION SYSTEM						
Joe	Frankie	Jeff	Mark	Chadd	Committee Tot	Ranking
70	88	83	78	56	375	1
60	90	76	63	53	342	2
58	90	83	54	43	328	3
35	90	73	60	63	321	4
70	90	70	44	45	319	5
120 HISTORICAL RESTORATION						
Joe	Frankie	Jeff	Mark	Chadd	Committee Tot	Ranking
90	88	88	71	43	380	1
35	90	84	59	41	309	2

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

101 WATER RESOURCE	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Tetra Tech, Inc.	100	100	92	90	83	465	1	Yes
Johnson Engineering, Inc.	99	100	79	71	72	421	2	Yes
RWA, Inc.	98	85	88	70	62	403	3	Yes
JR Evans Engineering, PA	95	95	78	61	74	403	4	Yes
Bowman Consulting Group, Ltd.	80	90	87	67	74	398	5	Yes
AIM Engineering & Surveying, Inc.	75	100	82	75	63	395	6	No
LJA Engineering, Inc.	80	100	80	48	76	384	7	No
CW3 Engineering, Inc.	99	100	74	60	51	384	7	No
RESPEC Company, LLC.	80	75	84	54	65	358	8	No
Rummel, Klepper & Kahl, LLP	63	75	81	63	57	339	9	No
American Structurepoint, Inc.	43	65	88	50	37	283	10	No
Castellanos & Tramonte	10	100	80	71	17	278	11	No
Total	922	1085	993	780	731	4511		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

102 ARCHITECTURAL DESIGN	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
ADG Architecture, LLC	99	100	94	80	84	457	1	Yes
K2M Design, Inc.	100	95	85	67	86	433	2	Yes
GMA Architects & Planners, LLC	99	100	84	72	71	426	3	Yes
Burt Hill/Pollock Krieg Architects, Inc.	100	100	84	72	66	422	4	Yes
RG Architects, PA	98	100	81	69	74	422	4	Yes
Schenkel & Shultz	98	100	81	63	66	408	5	Yes
WJArchitects, Inc. (Wannemacher Jensen)	73	95	82	72	81	403	6	No
Forefront Architecture and Engineering	80	85	83	72	77	397	7	No
Axis Infrastructure, LLC	63	100	97	62	70	392	8	No
Weston & Sampson Engineers, Inc.	80	88	83	63	71	385	9	No
DLZ Florida, LLC	75	83	84	46	73	361	10	No
Castellanos & Tramonte	45	100	80	66	64	355	11	No
American Structurepoint, Inc.	53	65	88	50	65	321	12	No
Barrientos design & consulting	45	65	83	43	64	300	13	No
Tamara Peacock Co.	45	0	83	69	0	197	14	No
Total	1153	1276	1272	966	1012	5679		

****Ranking missed on Tamara Peacock Co, even if Peacock received 200 extra points, the company would tie for 7th place**

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

103 STORMWATER	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Mark	Jeff	Chadd	Committee Total	Ranking	Yes/No
Tetra Tech	100	100	87	90	86	463	1	Yes
Johnson Engineering, Inc.	99	100	70	90	81	440	2	Yes
CW3 Engineering, Inc.	98	100	65	83	71	417	3	Yes
Ensite, Inc.	97	100	61	81	76	415	4	Yes
Bowman Consulting Group	95	100	65	87	63	410	5	Yes
AIM Engineering & Surveying, Inc.	75	100	75	82	71	403	6	No
RWA, Inc.	98	85	70	88	59	400	7	No
JR Evans Engineering, PA	70	95	61	85	83	394	8	No
Axis Infrastructure, LLC	63	100	66	95	61	385	9	No
LJA Engineering, Inc.	80	100	48	83	72	383	10	No
Weston & Sampson Engineers, Inc.	80	85	72	83	54	374	11	No
American Structurepoint, Inc.	58	65	50	88	49	310	12	No
RESPEC Company, LLC	98	75	54	83	0	310	12	No
Castellanos & Tramonte	10	100	66	81	38	295	13	No
Total	1121	1305	688	1199	864	5177		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

104 WATER DISTRIBUTION, INCLUDING LIFT AND PUMP STATION DESIGN	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Proposing Firms								
Tetra Tech, Inc.	100	100	92	87	82	461	1	Yes
CW3 Engineering, Inc.	99	100	84	71	72	426	2	Yes
RWA, Inc.	98	85	88	70	81	422	3	Yes
Bowman Consulting Group, Ltd.	96	90	87	65	66	404	4	Yes
Weston & Sampson Engineers, Inc.	95	85	83	72	69	404	4	Yes
JR Evans Engineering, PA	65	100	87	61	74	387	5	Yes
AIM Engineering & Surveying, Inc.	70	100	82	75	56	383	6	No
LJA Engineering, Inc.	80	100	84	48	71	383	6	No
RESPEC Company, LLC	89	75	86	54	60	364	7	No
Rummel, Klepper & Kahl, LLP	63	80	83	61	71	358	8	No
American Structurepoint, Inc.	40	75	88	50	37	290	9	No
Castellanos & Tramonte	10	100	84	66	17	277	10	No
Total Points	905	1090	1028	780	756	4559		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

105 SURVEYING SERVICES	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Coastal Engineering Consultants, Inc.	100	90	89	71	91	441	1	Yes
Johnson Engineering, Inc.	99	100	84	70	73	426	2	Yes
Tetra Tech, Inc.	100	90	89	87	60	426	2	Yes
Hyatt Survey Services, Inc.	95	100	84	59	84	422	3	Yes
Haley Ward, Inc.	80	100	94	80	67	421	4	Yes
Bowman Consulting Group, Ltd.	95	100	87	75	63	420	5	Yes
AIM Engineering & Surveying, Inc.	97	100	82	75	56	410	6	No
RWA, Inc.	98	85	87	70	68	408	7	No
LJA Engineering, Inc.	80	100	82	48	78	388	8	No
Castellanos & Tramonte	10	90	85	66	31	282	9	No
Total	854	955	863	701	671	4044		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

106 LANDSCAPE ARCHITECT	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Johnson Engineering, Inc.	99	100	91	70	73	433	1	Yes
Ensite, Inc.	100	100	85	71	75	431	2	Yes
RWA, Inc.	95	85	82	71	74	407	3	Yes
LJA Engineering, Inc.	80	100	83	48	74	385	4	Yes
Bowman Consulting Group, Ltd.	65	90	87	65	55	362	5	Yes
Castellanos & Tramonte	10	100	85	66	31	292	6	No
Weston & Sampson Engineers, Inc.	0	85	82	72	0	239	7	No
Total Points	449	660	595	463	382	2549		

ok

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

107 COMMUNITY & NEIGHBORHOOD IMPROVEMENTS	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Ensite, Inc.	100	98	80	71	80	429	1	Yes
K2M Design, Inc.	100	95	83	67	80	425	2	Yes
GMA Architects & Planners, LLC	99	100	84	72	65	420	3	Yes
RWA, Inc.	99	80	90	70	75	414	4	Yes
Axis Infrastructure, LLC	90	100	82	62	77	411	5	Yes
Bowman Consulting Group, Ltd.	85	95	85	70	63	398	6	No
LJA Engineering, Inc.	80	100	79	48	67	374	7	No
Castellanos & Tramonte	10	95	80	66	50	301	8	No
Total	663	763	663	526	557	3172		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

108 ELECTRICAL SYSTEMS	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Johnson Engineering, Inc.	98	100	85	70	79	432	1	Yes
Tetra Tech Inc.	99	100	85	87	52	423	2	Yes
Graef-USA, Inc.	95	93	86	72	74	420	3	Yes
K2M Design, Inc.	63	100	78	67	75	383	4	Yes
Axis Infrastructure	63	100	95	62	59	379	5	Yes
Castellanos & Tramonte	10	100	81	66	43	300	6	No
Total	428	593	510	424	382	2337		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

109 STRUCTURAL SYSTEMS	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Jezerinac Group	100	100	84	60	74	418	1	Yes
Blot Engineering, Inc.	99	100	82	71	45	397	2	Yes
Weston & Sampson Engineers, Inc.	95	75	89	72	51	382	3	Yes
Axis Infrastructure, LLC	63	100	95	62	56	376	4	Yes
Forefront Architecture and Engineering	80	95	87	72	40	374	5	Yes
K2M Design, Inc.	27	100	97	67	59	350	6	No
Castellanos & Tramonte	45	100	83	66	43	337	7	No
Haley Ward Inc.	0	100	98	80	47	325	8	No
American Structurepoint, Inc.	65	75	88	50	44	322	9	No
Graef-USA, Inc.	98		83	72	47	300	10	No
Total	672	845	886	672	506	3581		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

110 GEO TECHNICAL ANALYSIS	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
	Joe	Frankie	Jeff	Mark	Chadd	Committee Total		
Proposing Firm							Ranking	Yes/No
Radise International, LC	100	85	98	59	60	402	1	Yes
Professional Services Industries, Inc (PSI)	99	85	93	53	45	375	2	Yes
Castellanos & Tramonte	10	90	81	66	4	251	3	No.
Total	209	260	272	178	109	1028		

Double Check

N

Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services

111 CIVIL ENGINEERING	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Tetra Tech, Inc.	99	95	87	87	54	422	1	Yes
Ensite, Inc.	98	98	83	71	63	413	2	Yes
RWA, Inc.	100	80	83	70	74	407	3	Yes
Bowman Consulting Group, Ltd.	89	95	88	70	63	405	4	Yes
AIM Engineering & Surveying, Inc.	75	100	85	75	69	404	5	Yes
Corradino Group, Inc.	85	100	82	74	51	392	6	No
Blot Engineering, Inc.	95	100	82	71	41	389	7	No
CW3 Engineering, Inc.	90	100	81	65	52	388	8	No
Axis Infrastructure, LLC	63	100	96	62	66	387	9	No
Weston & Sampson Engineers, Inc.	95	75	83	72	62	387	9	No
JR Evans Engineering, PA	65	100	84	61	77	387	9	No
Graef-USA, Inc.	80	100	83	72	48	383	10	No
RESPEC Company, LLC	100	75	85	54	64	378	11	No
Haley Ward Inc.	55	100	92	80	45	372	12	No
LJA Engineering, Inc.	80	100	80	48	49	357	13	No
American Structurepoint, Inc.	60	75	88	50	30	303	14	No
Castellanos & Tramonte	10	100	81	66	19	276	15	No
Total	1339	1593	1443	1148	927	6450		

**Debris Monitoring
RFQ-24-06-AD**

112 Development and Building Services	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Tetra Tech, Inc.	99	98	88	87	50	422	1	Yes
CAP Government, Inc.	95	80	84	63	74	396	2	Yes
JR Evans Engineering PA	65	100	78	66	73	382	3	Yes
Castellanos + Tramonte Architects	10	100	86	61	15	272	4	Yes
Total points	269	378	336	277	212	1472		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

113 TRANSPORTATION PLANNING & TRAFFIC ENGINEERING SERVICES	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
20								
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Johnson Engineering, Inc.	100	98	76	70	81	425	1	Yes
AIM Engineering & Surveying, Inc.	100	98	82	75	40	395	2	Yes
Corradino Group, Inc.	95	95	80	74	50	394	3	Yes
Traffic & Mobility Consultants, LLC	75	96	79	57	74	381	4	Yes
Bowman Consulting Group, Ltd.	80	100	81	70	49	380	5	Yes
Axis Infrastructure, LLC	68	100	95	62	49	374	6	No
Rummel, Klepper & Kahl, LLP	58	100	85	63	61	367	7	No
LJA Engineering, Inc.	90	100	85	48	40	363	8	No
American Structurepoint, Inc.	70	75	88	50	40	323	9	No
Total Points	736	862	751	569	484	3402		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

114 PLANNING / ZONING	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Axis Infrastructure, LLC	100	100	98	62	92	452	1	Yes
Tetra Tech, Inc.	99	100	91	87	69	446	2	Yes
Corradino Group, Inc.	95	98	84	74	84	435	3	Yes
Johnson Engineering, Inc.	100	98	85	70	66	419	4	Yes
Bowman Consulting Group, Ltd.	45	100	86	70	46	347	5	Yes
LJA Engineering, Inc.	80	100	81	48	38	347	5	Yes
American Structurepoint, Inc.	53	75	88	50	35	301	6	No
Florida Technical Consultants LLC	0	91	80	65	43	279	7	No
Total	572	762	693	526	473	3026		

ok

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

115 Flood Plain Management	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Axis Infrastructure, LLC	99	100	98	62	83	442	1	
Johnson Engineering, Inc.	100	98	86	71	57	412	2	
CAP Government, Inc.	80	86	90	63	85	404	3	
JR Evans Engineering, PA	65	100	83	61	78	387	4	
AIM Engineering & Surveying, Inc.	83	100	82	75	26	366	5	
American Structurepoint, Inc.	63	75	88	50	26	302	6	
LJA Engineering, Inc.	80		80	48	26	234	7	
Total points	570	559	607	430	381	2547		

****Ranking missed on LJA Engineering, even if LJA received 100 extra points, the company would come in 6th place**

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

116 ARCHAEOLOGICAL SERVICES	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
No Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
No Proposing Firms	0	0	0	0	0	0	0	No

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

117 ENVIRONMENTAL SERVICES	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Johnson Engineering, Inc.	100	98	83	70	86	437	1	Yes
Hans Wilson & Associates, Inc.	90	100	83	65	90	428	2	Yes
AIM Engineering & Surveying, Inc.	100	100	82	75	50	407	3	Yes
Haley Ward Inc.	55	100	95	80	65	395	4	Yes
Professional Services Industries, Inc (PSI)	100	89	82	53	45	369	5	Yes
American Structurepoint, Inc.	58	75	88	50	33	304	6	No
Castellanos & Tramonte	10	100	83	66	6	265	7	No
Total	513	662	596	459	375	2605		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

118 MARINE ENGINEERING	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	Ranking	Yes/No
Coastal Engineering Consultants, Inc.	100	100	87	73	96	456	1	Yes
Hans Wilson & Associates, Inc.	95	100	86	65	89	435	2	Yes
Dredging & Marine Consultants, LLC	97	98	89	76	50	410	3	Yes
Blot Engineering, Inc.	98	100	87	71	40	396	4	Yes
Graef-USA, Inc.	94	98	82	72	50	396	4	Yes
JR Evans Engineering, PA	55	100	83	61	66	365	5	Yes
Total	539	539	514	418	391	2401		

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

119 GEOGRAPHIC INFORMATION SYSTEM	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST
Proposing Firms	Joe	Frankie	Jeff	Mark	Chadd	Committee Totals	Ranking
Tetra Tech, Inc.	70	88	83	78	56	375	1
AIM Engineering & Surveying, Inc.	60	90	76	63	53	342	2
Axis Infrastructure, LLC	58	90	83	54	43	328	3
Bowman Consulting Group, Ltd.	35	90	73	60	63	321	4
LJA Engineering, Inc.	70	90	70	44	45	319	5
JR Evans Engineering, PA	15	90	74	54	75	308	
Florida Technical Consultants LLC	75	0	75	58	67	275	
Graef-USA, Inc.	65	0	70	64	52	251	
WJArchitects, Inc. (Wannemacher Jensen)	53	0	74	64	0	191	
Total	501					501	

**Technical Qualifications Evaluation
Ongoing Miscellaneous Professional Services**

120 Historical Restoration	MAXIMUM POINTS PER PROPOSING FIRM IS 100. TOTAL MAXIMUM POINTS FOR PROPOSING FIRM BY SELECTION COMMITTEE IS 500 POINTS						RANKING - #1 BEST	RECOMMENDATION
Historical Restoration								
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Totals	Ranking	Yes/No
K2M Design, Inc.	90	88	88	71	43	380	1	Yes
Castellanos + Tramonte Architects	35	90	84	59	41	309	2	Yes
Total	125	178	172	130	84	689		

	101 - Water Resource	102 - Architectural Design	103 - Stormwater
Firm Name			
ADG Architecture, LLC		X	
AIM Engineering & Surveying, Inc.	X		X
American Structurepoint, Inc.	X	X	X
Axis Infrastructure, LLC		X	X
Barrientos design & consulting		x	
Blot Engineering, Inc.			
Bowman Consulting Group, Ltd.	X		X
Burt Hill/Pollock Krieg Architectects, Inc.		x	
CAP Government, Inc.			
Castellanos & Tramonte	X	X	X
Coastal Engineering Consultants, Inc.			
CW3 Engineering, Inc.	x		x
DLZ Florida, LLC		x	
Dredging & Marine Consultants, LLC			
Ensite, Inc.			x
Florida Technical Consultants LLC			
Forefront Architecture and Engineering		x	
GMA Architects & Planners, LLC		x	
Graef-USA, Inc.			
Haley Ward Inc.			
Hans Wilson & Associates, Inc.			
Hyatt Survey Services, Inc.			
Jezerinac Group			
Johnson Engineering, Inc.	x		x
JR Evans Engineering, PA	x		x
K2M Design, Inc.		x	
LJA Engineering, Inc.	x		x
Professional Services Industries, Inc (PSI)			
Radise International, LC			
RESPEC Company, LLC	x		x
RG Architects, PA		x	
Rummel, Klepper & Kahl, LLP	x		

RWA, Inc.	x		x
Schenkel & Shultz		x	
Studio AD (INCOMPLETE)			
Tamara Peacock Co. Architects of FL, Inc dba Peacock Architects		x	
Tetra Tech, Inc.	x		x
Corradino Group, Inc.			
Traffic & Mobility Consultants, LLC			
WJArchitects, Inc. (Wannemacher Jensen)		x	
Weston & Sampson Engineers, Inc.		x	x

104 - Water Distribution, Including Lift and Pump Station Design	105 - Surveying Services	106 - Landscape Architect	107 -Community & Neighborhood Improvements	108 - Electrical Systems	109 - Structural Systems	110 - Geo Technical Analysis	111 - Civil Engineering	112 - Development and Building Services
X	X						X	
X					X		X	
			X	X	X		X	
					x		x	
X	X	X	X				X	
X	X	X	X	X	X	X	X	x
	X							X
x							x	
		x	x				x	
					x			
			x					
				x	x		x	
	x				x		x	
	x							
					x			
	x	x		x				
x							x	x
			x	x	x			
x	x	x	x				x	
						x		
						x		
x							x	
x								

x	x	x	x				x	
x	x			x			x	x
							x	
x		x			x		x	

113 - Transportation Planning & Traffic Engineering Services	114 - Planning /Zoning	115 - Floodplain Management	116- Archaeological Services	117- Environmental Services	118- Marine Engineering	119- Geographical Information System	120- Historical Restoration
X		X		X		X	
X	X	X		X			
X	X	X				X	
					x		
X	X					X	
		x					
				X			X
					x		
					x		
	x					x	
					x	x	
				x			
				x	x		
x	x	x		x			
		x			x	x	
							x
x	x	???				x	
				x			
x							

	x					x	
x	x						
x							
						x	

CONTACT INFORMATION

[illegible]

THE TOWN OF FORT MYERS BEACH



REQUEST FOR QUALIFICATIONS TO PROVIDE

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

FOR THE TOWN OF FORT MYERS BEACH RFQ-24-06-AD

Issued: July 19, 2024
Proposals Due: August 19, 2024
2:00 p.m. EST

Prepared by:

Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

TOWN OF FORT MYERS BEACH FLORIDA
REQUEST FOR QUALIFICATIONS
RFQ-24-06-AD
ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

Dated: July 19, 2024

Pursuant to the requirements of Florida Statutes (F.S.), Chapter 287, the Town of Fort Myers Beach anticipates seeking professional consultant services for the purpose of assisting the Town with miscellaneous professional services.

Before submitting Professional Qualifications and Letters of Interest, interested parties must obtain a copy of the complete Request for Qualifications package entitled RFQ-24-06-AD, Town of Fort Myers Beach Ongoing Miscellaneous Professional Services dated July 19, 2024 for this project from www.demandstar.com or by calling (239) 765-0202. If the Official Documents are not obtained as directed above, or are modified in any manner, the Professional Qualifications and Letter of Interest will not be accepted for consideration by the Town.

Submittals are subject to the conditions specified hereon and on the attached sheets, including any addenda. All responses must be submitted electronically through Demandstar.com to be considered, no later than **2:00 PM local time, Monday, August 19, 2024**.

Questions: All questions about the meaning or intent of the RFQ documents must be directed in writing via e-mail to Contracts Manager (bids@fmbgov.com). **No verbal inquiries will be accepted.** Questions received less than seven (7) days prior to the submittal date may not be answered. All properly received questions will be answered by written addenda and will be binding. Oral and other interpretations or clarifications that are not contained in an official addendum will be without legal effect. All addenda shall be signed by the Consultant as acknowledged and incorporated with the submittal.

Respondents may not contact any member of the selection committee, Town employees or Town elected officials during this solicitation process. All questions or request for clarification must be routed through the Contracts Manager at bids@fmbgov.com

The Town's final selection meeting dates will be listed on the Town website at www.fmbgov.com

Response Procedure: The deadline for submission of the Professional Qualifications and Letter of Interest for this Project by qualified consultants is **Monday, August 19, 2024 no later than 2:00 p.m. local time. Proposals MUST be electronically submitted via Demandstar.com.** Any questions regarding use of Demandstar.com for submittal should be directed to Demandstar prior to proposal due date.

The following format and sequence should be followed in order to provide consistency in the Consultant's responses and to ensure each proposal receives full consideration. Use 8.5" x 11" page format with separating page tabs so that each submittal section can easily be compared with other submittals.

Introduction and Background Information:

- a. Title page, including RFQ number and name, consultant's name and address; contact person; telephone and fax numbers; internet e-mail address and closing date and time.
- b. Table of contents, including page numbers.
- c. Letter of Interest stating interest in this project signed by the person who will have contract authority over this project and stating that the contents of the submittal are true and accurate. This letter must state that the Consultant will meet the insurance requirements of the attached Professional Services Agreement and is willing to execute the attached Professional Services Agreement with the Town of Fort Myers Beach, Florida.
- d. Description of the firm, including locations of offices, person(s) responsible for contracting services hereunder, and at which office the contract authority resides.

Qualifications and Experience FOR EACH TYPE OF WORK.

- e. A Completed Request for Qualification Submittal for Professional Consultants on the form attached.
- f. At least three (3) examples of completed projects representative of the work for which Consultant is applying hereunder, inclusive of contact information for the recipient of services. Projects may be duplicated if applying for multiple types of work.
- g. A listing of personnel who would be working on this project, listing their qualifications to perform the work hereunder. This listing must be on the Qualification Form and include the resumes for such personnel complete with a current copy of applicable certifications. The Consultant's Supervisor for this project shall also be identified.
- h. An outline of the Consultant's understanding of and approach to providing the required services, no longer than one (1) page in length.
- i. An explanation of why the Consultant is well suited to perform the service, no longer than one (1) page in length.
- j. A list of sub-consultants that Consultant would propose to use for any of the services associated with tasks awarded under the Professional Services Agreement.

Suitability and Stability of the Firm

- k. A list of at least three (3) client references, exclusive of those identified above, which includes the following information: 1) Name of contacting agency, 2) Contact name, address, e-mail address and telephone number, and 3) title of work performed for client.
- a. Any additional data that the Consultant feels will be helpful in qualifying it for this project (limited to 5 pages).
- l. Exhibit I - Public Entity Crimes Affidavit
- m. Exhibit J – Affidavit Certification of Compliance with Immigrations Laws in accordance with E-Verify
- n. Exhibit K – Affidavit of Confidentiality.

Note: Only the prime firm is required to fill out the forms on pages 8-14. The *Request for Qualification Submittal for Professional Consultants* only needs to be completed once. You may list multiple Types of Work on the form.

Selection Procedure: The selection of a consultant(s) will be made in accordance with Town of Fort Myers Beach Purchasing Policies and Chapter 287.055 Florida Statutes. Some, or all of the responding firms may be requested to provide telephone interviews or written or oral technical proposals (or both), for the ranking process. In such an event, the presentation must be made by the representative who would be the Project Manager (or Equivalent) under this award. After determination of qualified consultants by the Town Council, contract fees will be negotiated in accordance with Section 287.055, Florida Statutes.

DUTY TO UPDATE RECORDS: It shall be the responsibility of any individual or firm selected by the Town of Fort Myers Beach for this project to notify the Town promptly of any substantive amendment to the information provided in its Letter of Interest/Application for Qualification, as well as to update the information in the Application on an annual basis as appropriate.

EQUAL OPPORTUNITY STATEMENT: The Town of Fort Myers Beach, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, hereby notifies all firms and individuals that it will require affirmative efforts be made to ensure equal participation in all contracts for consultant services. No firm or individual shall be discriminated against on the grounds of race, color, gender, national origin, religion, age or disability in consideration for qualification or selection.

NOTICE OF A CONTRACT CRIME CONVICTION: Each person or firm who elects to submit a Letter of Interest (or Competitive Negotiations) package shall notify the Finance Director within thirty (30) days after a conviction of a contract crime applicable to them or to any officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate as further described in F.S. 287.133.

QUALIFICATION PROCEDURES: All applicants must be qualified to do business in the State of Florida.

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.

RIGHT OF PERFORMANCE: This contract does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all available required work in-house or by any other means it so desires. No amount of work is guaranteed upon the execution of a Professional Services Agreement. A consultant or multiple consultants may be selected for any, some or all the services being solicited hereunder. The Town reserves the right to add or delete, at any time, any or all tasks or services associated with the Agreement.

SCOPE OF WORK

The following is a nonexclusive list of the Types of Work the Town of Fort Myers Beach may utilize from time to time. Each Type of Work states the minimum requirements to be qualified by the Town of Fort Myers Beach.

Code Type of Work

101 Water Resource

Requires engineering expertise in planning, design, permitting, bidding, construction administration, long term loan and grant funding programs in connection with Water Resources as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Water Resources.

102 Architectural Design

Requires architectural expertise in planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

103 Stormwater

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Storm Water Design, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Storm Sewer.

104 Water Distribution, Including Lift and Pump Station Design

Requires engineering expertise in long term loan and grant funding programs, planning, designing, permitting, bidding, and construction administration phases of service for Water Distribution, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of gravity and pressure systems.

105 Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

106 Landscape Architect

Requires expertise in planning designing, permitting, bidding and construction administration phases of service for Landscape Architecture, including design of Community Parks and Streetscape. The firm must employ at least one landscape architect, registered with the Florida State Board of Landscape Architecture. Additionally, the firm must employ sufficient personnel to provide services normally associated with this type of work.

107 Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

108 Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

109 Structural Systems

Requires engineering expertise in planning, designing with an emphasis on hurricane resistant design, permitting, bidding and construction administration services in connection with structural design, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Structural Systems.

110 Geo-Technical Analysis

Requires engineering expertise in connection with Geo-Technical Analysis. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers having demonstrated experience in the activities normally associated with this work. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

111 Civil Engineering

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with Civil Engineering as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in this general area.

112 Development and Building Services

Requires engineering expertise with review of property development proposals and construction design plans. Must be familiar with local land development code and Florida Building Code, including plan reviews and inspection services for all professional disciplines. The firm must have the ability to provide Development order review and permit review services for all building disciplines with appropriately licensed inspectors and plans examiners according to Florida DBPR requirements.

113 Transportation Planning and Traffic Engineering Services

Requires engineering expertise in planning, design and operation of traffic control devices to provide technical support and engineering recommendations on traffic engineering and related issues. Services shall include but are not limited to; review of traffic impact statements/studies provided by development applicants, traffic data/counts, traffic models, signal operations, traffic monitoring, traffic analysis, roadway safety assessment, ITS applications, traffic operations improvements, traffic calming, roadway lighting and traffic control device assessment. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in transportation and/or traffic

114 Planning / Zoning

The selected individual/firm will work with Town staff to provide expertise in the detailed review of development projects (including projects seeking rezoning and Comprehensive Plan Amendments) and their consistency with all local, state and federal requirements; preparation of Land Development Code Regulations; preparation of Comprehensive Plan Amendments including Map products per State requirements;; oversight of development projects through all local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns, excluding those relating to the Florida Building Code and other issues under the purview of the Town Building Official The individual/firm will work with applicants, prepare staff reports and make presentations to the Local Planning Agency and Town Council. The firm must employ at least one member who is certified through AICP.

115 Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager. Historical Restoration

Requires experience in historical restoration projects according to the Secretary of the Interior's Standards for Rehabilitation of Historical Structures.

116 Archeological Services

Requires experience and registration in the State of Florida, Division of Historical Resources for archaeological services. Must comply with State Standards and Resource Protection.

117 Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and be able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and if needed, would be bid separately at a later time.

118 Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience in reading blueprints and site plans and be able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of professional Engineers, having training and experience in the area of marine design.

119 Geographical Information System

Requires Geographic Information System (GIS) support services and experience including familiarity with custom GIS applications for Zoning, Land Use, Development, Capital Improvement Plans (CIP), As-built Document Retrieval, Map Gallery, and other Town functions. Technical requirements including an understanding of relational database design, Command-line SQL capability, including the ability to construct triggers and stored procedures, demonstrated knowledge of PHP, HTML5 and CSS2, and the use of those tools to link tabular and spatial data sets. Support for geospatial data and applications that provide GIS integration with existing business applications and other enterprise databases e.g. the Lee County Tax Parcel data, for use within existing GIS applications. Technical experience with GIS data structures, and ability to utilize and integrate external data sets in necessary.

Town of Fort Myers Beach

Request for Qualification Submittal for Professional Consultants

Type(s) of Work (code): _____

Firm Name: _____
(As registered with Florida Secretary of State)

Address: _____

City, State, Zip Code: _____ County: _____

Telephone: _____ Fax: _____ Web-site: _____

Contact Person: _____ E-mail: _____

Name of Parent Company (if applicable): _____

Address: _____

Type of Firm: Corporation _____ Partnership _____ Individual _____ Other _____

If Corporation: Date Incorporated: _____ State Incorporated: _____

Date Authorized in Florida: _____ Name of President: _____

If Partnership: Date organized: _____ Type: General Limited Other

Name(s) of Partner(s): _____

Florida Secretary of State Document No.: _____

Florida State Board Professional Engineer's Certificate No.: _____ Date: _____

Firm Name: _____
(As registered with Florida Secretary of State)

Federal Employer Identification No. _____

Blanket Professional Liability Insurance: Yes No Amount: \$ _____

Policy No.: _____ Company: _____

Attach a copy of certificate showing policy number, company, amount and expiration date.

Request for Qualification Submittal for Professional Consultants

Does your firm have a CADD system? Yes No Type: _____

Does your firm have a GIS system? Yes No Type: _____

CERTIFICATION

I hereby certify that the information contained in this package is true and correct to the best of my knowledge and that this firm is duly authorized to conduct business in the State of Florida. I further certify that neither the firm, nor any officer, director, employee of the firm or any of its affiliates have been criminally or civilly charged with antitrust criminal acts under State or Federal law which involved fraud, bribery, collusion, conspiracy, antitrust violations or material misrepresentation with respect to a public contract, except for matters previously disclosed to the Town of Fort Myers Beach and filed in case no(s) _____ (if not applicable, enter N/A) with the Clerk of Agency Proceedings. I further certify that the employment practices of this organization fully comply with Title VI provisions of the 1964 Civil Rights Act.

Signature Title Date

List of Branch Offices in Florida

Please include address, city, zip code, county, contact person, telephone number and e-mail address.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

QUALIFICATION FOR TYPE OF WORK

Name of Firm: _____ Date: _____

Code: _____ Type of Work: _____

List the personnel permanently employed by your firm and indicate the 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

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 _____
(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 287.233(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.)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners,

shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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

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

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

(Signature)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: _____, 2024

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: _____

(Signature)

(Title)

(Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires: _____

Signature of Notary Public

Notary Public, State of _____

Printed, Typed or Stamped Name

Commission/Serial No. _____

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:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, _____, am an employee of _____, 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

Date

**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.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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 FBD 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 SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N		IS THE ACTIVITY OF THIS CONTRACT...																	
		DBE? Y N		CONSTRUCTION ? Y N																	
		MBE? Y N		CONSULTATION? Y N																	
		WBE? Y N		OTHER? Y N																	
		SDB 8A? 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)	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
ETHNICITY	CODE																				
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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		FMB CONTRACT # (FBI/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

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ 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 _____ ("Consultant"), whose address is _____.

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
2791 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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – 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.

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.

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.

Additional Terms. Notwithstanding any of 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City) (State) (Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Andrew Hyatt, Town Manager

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: _____
Printed name of organization

BY: _____
Signature

Printed name of person signing

Title (printed)

Witness Signature

Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

Ongoing Miscellaneous Professional Services RFQ-22-25-AD

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.

Type of Work

To be added at time of contract

QUALIFICATION FOR TYPE OF WORK

Name of Firm: _____

Date: _____

Code: _____ Type of Work: _____

List the personnel permanently 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

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date: _____

Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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 (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			
TOTAL				

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated _____, 20____, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated _____, 20____, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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)

*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.

CONSULTANT NAME: _____

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

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

 Signature of Notary Public

Notary Public, State of

 Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT “G”: INSURANCE

FOR THE PROJECT KNOWN AS:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

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 _____
(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 287.233(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.)

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

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

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

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

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced Identification _____ Notary Public – State of _____

(Type of Identification) My Commission expires _____

(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: _____

(Signature)

(Title)

(Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. 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:
Ongoing Miscellaneous Professional Services
RFQ -24-06-AD**

I, the undersigned, _____, am an employee of _____, 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.

Paragraph on AI needs to be added here

Signature

Date

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **ADG Architecture, LLC**, ("Consultant"), whose address is **3820 Colonial Blvd, Ste 100, Fort Myers, FL 33966**.

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work- in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

111. Civil Engineering

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with Civil Engineering as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in this general area.

113. Transportation Planning and Traffic Engineering Services

Requires engineering expertise in the planning, design and operation of traffic control devices to provide technical support and engineering recommendations on traffic engineering and related issues. Services shall include, but are not limited to; review of traffic impact statements/studies provided by development applicants, traffic data/counts, traffic models, signal operations, traffic monitoring, traffic analysis, roadway safety assessment, ITS applications, traffic operations improvements, traffic-calming, roadway lighting and traffic control device assessment. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in transportation and/or traffic.

115. Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager.

117. Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and, if needed, will be bid separately at a later time.

119. Geographical Information System

Requires Geographic Information System (GIS) support services and experience, including familiarity with custom GIS applications for Zoning, Land Use, Development, Capital Improvement Plans (CIP), As-built Document Retrieval, Map Gallery, and other Town functions. Technical requirements include an understanding of relational database design, Command-line SQL capability, including the ability to construct triggers and stored procedures, demonstrated knowledge of PHP, HTML5 and CSS2, and the use of those tools to link tabular and spatial data sets. Support for geospatial data and applications that provide GIS integration with existing business applications and other enterprise databases, e.g. the Lee County Tax Parcel data, for use within existing GIS applications. Technical experience with GIS data structures, and the ability to utilize and

integrate external data sets is necessary.

QUALIFICATION FOR TYPE OF WORK

TAB 2: Qualifications & Experience

Town of Fort Myers Beach
RFQ-2024-06-AD

Name of Firm: AIM Engineering & Surveying, Inc. Date: 8/1/2024

Code: 111 Type of Work: Civil Engineering

List the personnel permanently employed by your firm and indicate the 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
Daniel Schroeder, PE, MSE	Fort Myers	PE 78646	16	Lead Engineer, Design
Alex Ramos, PE	Naples	PE 96905	6	Planning, Design, Permitting
John Wagenhoffer, EI	Cape Coral	EI 1100024969	3	Permitting
Jamie Wilson, PE, CFM	Fort Myers	PE 94230	7	Planning Support, Design Support
Jadon Hull, PE, CGC	LaBelle	PE 72357 CGC 1529703	23	Constructability
Steve Neff, PE	Cape Coral	PE 33205	47	Quality Control

Code: 113 Type of Work: Transportation Planning Traffic Engineering Services

List the personnel permanently employed by your firm and indicate the 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
Scott Bickar, PE	Orlando	PE 82643	23	Lead Traffic Engineer, Planning
Greg Root	Tampa		37	Traffic Engineer, Planning
Michael Adams, AICP	Valrico	AICP 027305	19	Planning
Patrick Griffin	Zephyrhills		25	Senior Environmental Specialist, Permitting
Sean Donahoo, PE	Citrus Park	PE 59303	27	Quality Control

AIM Engineering & Surveying, Inc.

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TAB 2: Qualifications & Experience

Name of Firm: AIM Engineering & Surveying, Inc. Date: 8/1/2024

Code: 115 Type of Work: Floodplain Management

List the personnel permanently employed by your firm and indicate the 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
Jamie Wilson, PE, CFM	Fort Myers	PE 94230	7	Lead Floodplain Manager/Engineer
Steve Neff, PE	Cape Coral	PE 33205	47	Quality Control

Code: 117 Type of Work: Environmental Assessments

List the personnel permanently employed by your firm and indicate the 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
Chris Salicco	Seffner		20	Lead Senior Environmental Scientist
Patrick Griffin	Zephyrhills		25	Wetlands, Species Surveys, Habitat Assessment, Permitting, Contamination
Thomas Daniel	Spring Hill		7	Wetlands, Species Surveys, Habitat Assessment, Permitting, Contamination
Sean Donahoo, PE	Citrus Park	PE 59303	27	Quality Control

Code: 119 Type of Work: Geographical Information System

List the personnel permanently employed by your firm and indicate the 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
Thomas Daniel	Spring Hill		7	Lead GIS Specialist
Patrick Griffin	Zephyrhills		25	Mapping & Data Analysis
Mitchell Guerndt	Tampa		5	Mapping & Data Analysis
Daniel Schroeder, PE, MSE	Fort Myers	PE 78646	16	Quality Control

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

ATTACHMENT NO. 1 TO EXHIBIT B Ongoing Miscellaneous Professional Services RFQ-22-25-AD

Date: **April 19, 2023**

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: **AIM Engineering & Surveying, Inc.**

(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)
Principal	\$ 94.65	3.41	\$ 323.13
Senior Project Manager	\$ 74.50	3.41	\$ 254.32
Project Manager	\$ 68.90	3.41	\$ 235.23
Engineering Manager	\$ 75.37	3.41	\$ 257.31
Chief Engineer	\$ 83.47	3.41	\$ 285.64
Senior Engineer	\$ 70.27	3.41	\$ 239.90
Engineer	\$ 55.60	3.41	\$ 189.83
Engineer Intern	\$ 38.46	3.41	\$ 131.30
Chief Planner	\$ 67.91	3.41	\$ 231.83
Senior Planner	\$ 56.05	3.41	\$ 191.36
Chief Environmental Scientist	\$ 80.19	3.41	\$ 273.76
Sr Environmental Scientist	\$ 44.44	3.41	\$ 151.71
Environmental Scientist	\$ 37.86	3.41	\$ 129.27
CADD Technician	\$ 34.65	3.41	\$ 118.31
PIO	\$ 47.32	3.41	\$ 161.56
Secretary/Clerical	\$ 31.31	3.41	\$ 106.88
CEI Senior Project Engineer	\$ 84.83	3.41	\$ 289.60
CEI Project Administrator	\$ 63.54	3.41	\$ 216.94
CEI CSS	\$ 40.47	3.41	\$ 138.15
CEI Senior Inspector	\$ 40.47	3.41	\$ 138.15
CEI Inspector	\$ 30.62	3.41	\$ 104.55
CEI Inspector Aide	\$ 21.87	3.41	\$ 74.68
CEI Administrative & Compliance	\$ 32.26	3.41	\$ 110.15
Principal Land Surveyor	\$ 60.01	3.41	\$ 204.88
Professional Surveyor	\$ 78.35	3.41	\$ 267.48
Survey Field Crew Supervisor	\$ 39.37	3.41	\$ 134.42
Senior Survey CADD Technician	\$ 43.91	3.41	\$ 149.89
Survey CADD Technician	\$ 33.36	3.41	\$ 113.38
2 Person Survey Crew	\$ 63.43	3.41	\$ 216.56
3 Person Survey Crew	\$ 83.12	3.41	\$ 283.77
4 Person Survey Crew	\$ 102.81	3.41	\$ 350.98
1 Person Designating/Locating Crew	\$ 33.36	3.41	\$ 113.88
3 Person Designating/Locating Crew	\$ 79.34	3.41	\$ 272.57
4 Person Designating/Locating Crew	\$ 99.53	3.41	\$ 339.78
Hydro Crew – Single Beam	\$ 77.11	3.41	\$ 263.23
Hydro Crew – Multi Beam	\$113.74	3.41	\$ 388.32

*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.

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

L. EXHIBIT I Page 1 / 2

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 B. Lee Flynn, PE, Vice President/Principal
(print individual's name and title)
- for AIM Engineering & Surveying, Inc.
(print name of entity submitting sworn statement)
- whose business address is 2161 Fowler Street, Ste 100 Fort Myers, FL 33901

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0197775
(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 287.233(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 bribery, 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.

B. Lee Flynn
(Signature)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 1st day of August, 20 24, by B. Lee Flynn, PE, Vice President/Principal, by means of ☐ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

My Commission Expires: 4/29/2026



Melissa Beckum
Signature of Notary Public

Notary Public, State of
Florida

Melissa Beckum
Printed, Typed or Stamped Name

Commission/Serial No. HH 228870

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

M. EXHIBIT J

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 1st, 2024

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: AIM Engineering & Surveying, Inc.

B. Lee Flynn Vice President/Principal 8/1/2024
(Signature) (Title) (Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 1st day of August, 20 24, by B. Lee Flynn, PE, Vice President/Principal, by means of () 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: 4/29/2026



Melissa Beckum
Signature of Notary Public

Notary Public, State of
Florida

Melissa Beckum
Printed, Typed or Stamped Name

Commission/Serial No. HH 228870

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.*

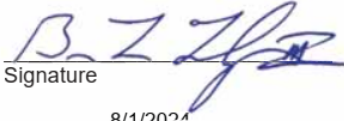
**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services**

N. EXHIBIT K

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, B. Lee Flynn, PE, am an employee of AIM Engineering & Surveying, Inc., 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

8/1/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and ADG Architectural LLC, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Axis Infrastructure, LLC** ("Consultant"), whose address is **70 Mansell Ct, Suite 200, Roswell, GA 30076.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work- in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

107. Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design, or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

108. Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

109. Structural Systems

Requires engineering expertise in planning and designing with an emphasis on hurricane-resistant design, permitting, bidding and construction administration services in connection with structural design, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Structural Systems.

114. Planning / Zoning

The selected individual/firm will work with Town staff to provide expertise in the detailed review of development projects (including projects seeking rezoning and Comprehensive Plan Amendments) and their consistency with all local, state and federal requirements; preparation of Land Development Code Regulations; preparation of Comprehensive Plan Amendments including Map products per State requirements;; oversight of development projects through all local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns, excluding those relating to the Florida Building Code and other issues under the purview of the Town Building Official The individual/firm will work with applicants, prepare staff reports and make presentations to the Local Planning Agency and Town Council. The firm must employ at least one member who is certified through AICP.

115. Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager.

119. Geographical Information System

Requires Geographic Information System (GIS) support services and experience, including familiarity with custom GIS applications for Zoning, Land Use, Development, Capital Improvement Plans (CIP), As-built Document Retrieval, Map Gallery, and other Town functions. Technical requirements include an understanding of relational database design, Command-line SQL capability, including the ability to construct triggers and

stored procedures, demonstrated knowledge of PHP, HTML5 and CSS2, and the use of those tools to link tabular and spatial data sets. Support for geospatial data and applications that provide GIS integration with existing business applications and other enterprise databases, e.g. the Lee County Tax Parcel data, for use within existing GIS applications. Technical experience with GIS data structures, and the ability to utilize and integrate external data sets is necessary.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Axis Infrastructure, LLC

Date: 8/19/24

Code: MULTI **Type of Work:** On-Call Services

List the personnel permanently employed by your firm and indicate the 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
Jason Green	Punta Gorda, FL	CPN: 026000	20	Certified Planner, Certified Floodplain Manager (CFM)
Sarah Propst	Bradentown, FL	CP:321939, PMP 5959624	15	Certified Planner, Project Management Professional
Dean Collins	Gwinnett, GA	PE59574	30	Principal In Charge, Professional Engineer
Alex Adekanmbi	Duluth, GA	AR99199	25	Senior Architect
Patrick Kelly	Marietta, GA	PE85562	16	Lead Structural Engineer
Michael Oduselu	Acworth, GA	PE88126	15	Lead Electrical Engineer
Luke Wemette	Simpsonville, SC	PE92423	16	Civil Engineer
Michael Penna	Tucker, GA	PE96294	7	M/P Engineer

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out of pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



Job Title	Hourly Rate
Principal In Charge	\$ 250.00
Sr. Project Manager	\$ 225.00
Project Manager	\$ 150.00
Sr. Construction Manager	\$ 175.00
Construction Manager	\$ 130.00
Sr. Technology Coordinator	\$ 145.00
Technology Coordinator	\$ 130.00
Principal Planner	\$ 165.00
Senior Planner	\$ 155.00
Planner	\$ 100.00
Senior Architect	\$ 175.00
Project Architect	\$ 165.00
Architect	\$ 150.00
Architectural Designer	\$ 110.00
Senior M/P Engineer	\$ 165.00
Project M/P Engineer	\$ 125.00
M/P Engineer	\$ 110.00
M/P Designer	\$ 100.00
Senior Electrical Engineer	\$ 230.00
Project Electrical Engineer	\$ 165.00
Electrical Engineer	\$ 125.00
Electrical Designer	\$ 110.00
Senior Structural Engineer	\$ 180.00
Structural Project Engineer	\$ 165.00
Structural Engineer	\$ 125.00
Structural Designer	\$ 110.00
Sr. Civil Engineer	\$ 175.00
Project Civil Engineer	\$ 150.00
Civil Engineer	\$ 125.00
Civil Designer	\$ 110.00
Sr. Permit Coordinator	\$ 110.00
Permit Coordinator	\$ 100.00
Administration	\$ 110.00
Environmental Coordination	\$ 160.00

Rates good from 6/30/24 through 5/31/25. Assume a minimum 3% increase after 5/31.

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 I. Dean Collins, President
(print individual's name and title)

for Axis Infrastructure, LLC
(print name of entity submitting sworn statement)

whose business address is 70 Marshall Ct., Ste. 200
Roswell, GA 30076

and (if applicable) its Federal Employer Identification Number (FEIN) is 81-2651071
(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 287.233(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,

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.

J. Dean Collins
(Signature)

STATE OF Georgia

COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by J. Dean Collins, by means of ☐ physical presence or ☒ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

My Commission Expires:
5/26/25

Traci Strom
Signature of Notary Public

Notary Public, State of
Georgia

Traci Strom
Printed, Typed or Stamped Name

Commission/Serial No. _____



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: _____

(Signature) (Title) (Date)

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. 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: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, J. Dean Collins, am an employee of Axis Infrastructure, 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

8/16/24

Date

EXHIBIT L

TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Axis Infrastructure, LLC, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this

addendum as follows:

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or

ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree

as follows:

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Burt Hill / Pollock Krieg Architects, Inc.** ("Consultant"), whose address is **8250 COLLEGE PARKWAY, SUITE 203, FT MYERS, FL 33919.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

102. Architectural Design

Requires architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Firm Name: Burt Hill / Pollock Krieg Architects, Inc. Date: August 15, 2024

Code: 102 Type of Work: Architectural Design

List the personnel permanently employed by your firm and indicate the 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
James J. Henley	Lehigh	R0011658	40	Architectural Design
Kristine Lemos	Cape Coral		11	Interior

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

Burt Hill/Pollock Krieg Architects, Inc.

8250 College Parkway,
Suite 203
Fort Myers, Florida 33919
239•482•4761
239•482•0265 FAX

Architecture
Interior Design
Planning

#AAC002219

2024 HOURLY RATES

<u>PROFESSIONAL SERVICES</u>	<u>HOURLY RATE</u>
Principal	\$187.00
Architect	\$139.00
Interior Designer	\$128.00
Technical Specialist	\$117.00
Clerical	\$91.00



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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 (print name of public entity)

by James J. Henley, Vice President
(print individual's name and title)

for Burt Hill / Pollock Krieg Architects, Inc.
(print name of entity submitting sworn statement)

whose business address is 8250 College Parkway, Suite 203
Fort Myers, Florida 33919

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0353342
(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 287.233(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.

(Signature)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this fifteenth day of August, 2024, by James J. Henley, by means of (☒) physical presence or () online notarization, personally appeared before me and (☒) is personally known to me or () who has produced X _____, as identification.

My Commission Expires:



Signature of Notary Public

Notary Public, State of
Florida

Evelyn B. Wiggins

Printed, Typed or Stamped Name

Commission/Serial No. HH005971 / 08.22.2024

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J- AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 15, 2024

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: Burt Hill / Pollock Krieg Architects, Inc.
(Signature) Vice President 08.15.2024
(Title) (Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this fifteenth day of August, 2024, by James J. Henley, by means of (☒) physical presence or () online notarization, personally appeared before me and (☒) is personally known to me or () who has produced x as identification.

My Commission Expires:

Evelyn B. Wiggins
Signature of Notary Public



Notary Public, State of
Florida

Evelyn B. Wiggins

Printed, Typed or Stamped Name

Commission/Serial No. HH005971 / 08.22.2024

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: Ongoing Professional Services**

**EXHIBIT K- AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Engineering Services
RFQ-20-22-AD**

Date: August 15, 2020

I, James J. Henley the undersigned, am an employee of Burt Hill / Pollock Krieg Architects, Inc., the Town's provider of technical support services, and serve as a member of the Technical Support Service team for the Town of Fort Myers 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

August 15, 2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Burt Hill / Pollock Krieg Architects, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **CAP Government, Inc.** ("Consultant"), whose address is **343 Almeria Ave, Coral Gables, FL 33134.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

112. Development and Building Services

Requires engineering expertise with review of property development proposals and construction design plans. Must be familiar with local land development code and Florida Building Code, including plan reviews and inspection services for all professional disciplines. The firm must have the ability to provide Development order review and permit review services for all building disciplines with appropriately licensed inspectors and plans examiners according to Florida DBPR requirements.

115. Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: C.A.P. Government, Inc. Date: 08/19/2024

Code: 112 Type of Work: Development and Building Services

List the personnel permanently employed by your firm and indicate the 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
William A. Pancake III	Naples	BU1344	35	Supervisor Building Code Administrator
William A. Pancake III	Naples	PX1711	35	Building, Electrical, Mechanical & Plumbing Plans Examiner
William A. Pancake III	Naples	BN2957	35	Building Commercial Electric 1&2 Family Mechanical, Plumbing, & Residential Electric
Samuel Lindsey	Fort Myers	BN8447	14	Building Inspector
Miles Seekford	North Port	PX4452	14	Electrical, Mechanical Plans Examiner
Miles Seekford	North Port	BN7605	14	Building, Electrical , Mechanical Inspector
Mark Deegan	Nokomis	BN4932	20	Electrical, Mechanical Inspector
Kathleen Croteau	Sarasota	BU1529,PX2485, BN5254	25	Building Plan Examiner and Inspector
Michael Hudkins	Lutz	15	15	Fire Plans Examiner
Carlos A. Penin, PE	Coral Gables	PE33216	40	Principal in Charge

QUALIFICATION FOR TYPE OF WORK

Name of Firm: C.A.P. Government, Inc. **Date:** 08/19/2024

Code: 115 **Type of Work:** Floodplain Management

List the personnel permanently employed by your firm and indicate the 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
Kathleen Croteau	Sarasota	BU1529 , PX2485 BN5254	25	Floodplain Management
Judson Dulany	Belle Glade	PX3626, BN6644, BU1990, ASFMP	35	Floodplain Management
Richard Benton	Davie	CFM	18	Floodplain Management
Keith Anthony NG	Pembroke Pines	CFM	18	Floodplain Management
Carlos A. Penin, PE	Coral Gables	PE33216	40	Principal In Charge

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

The Town of Fort Myers Beach
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD



PRICE SHEET

Description	Hourly Rate
Building Official	\$130.00
Plans Review	
Building	\$105.00
Mechanical	\$105.00
Electrical	\$105.00
Plumbing	\$105.00
Roofing	\$105.00
Flood plain	\$110.00
Inspections	
Building	\$95.00
Mechanical	\$95.00
Electrical	\$95.00
Plumbing	\$95.00
Roofing	\$95.00
Emergency Natural Disaster Inspections	
All Trades	\$120.00
Administrative	
Permit Technician	\$60.00

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 C.A.P. Government, Inc.
(print name of public entity)

by Carlos A. Penin, PE, President
(print individual's name and title)

for C.A.P. Government, Inc.
(print name of entity submitting sworn statement)

whose business address is 343 Almeria Avenue
Coral Gables, FL 33134

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0121594
(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 287.233(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) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter 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.)

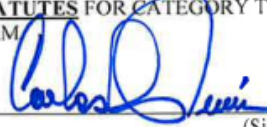
X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners,

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

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

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

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



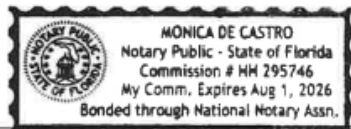
(Signature)

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 18th day of August, 20 24, by Carlos A. Penin, PE, by means of ☒ (X) physical presence or ☐ () online notarization, personally appeared before me and ☐ () is personally known to me or ☒ (X) who has produced _____, as identification.

My Commission Expires: 08/01/2026


Signature of Notary Public

Notary Public, State of
Florida

Monica De Castro
Printed, Typed or Stamped Name

Commission/Serial No. HH 295746

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 18, 2024

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:

C.A.P. Government, Inc.

(Signature)

President
(Title)

08/19/2024
(Date)

STATE OF

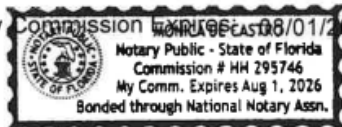
Florida

COUNTY OF

Miami-Dade

The foregoing instrument was acknowledged before me this 18th day of August, 2024, by Carlos A. Penin, PE, by means of (☒) physical presence or (☐) online notarization, personally appeared before me and (☒) is personally known to me or (☐) who has produced _____ as identification.

My Commission Expires 08/01/2026



Monica De Castro
Signature of Notary Public

Notary Public, State of
Florida

Monica De Castro

Printed, Typed or Stamped Name

Commission/Serial No. HH 295746

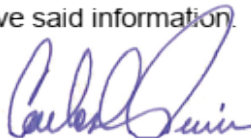
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, N/A, am an employee of _____, 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

08/19/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and CAP Government, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Coastal Engineering Consultants, Inc.** ("Consultant"), whose address is **28421 BONITA CROSSING BLVD., 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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

Consultant: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

105. Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

118. Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience of reading blueprints and site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of marine design.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Coastal Engineering Consultants, Inc. Date: 8/15/2024

Code: 118 Type of Work: Marine Engineering

List the personnel permanently employed by your firm and indicate the 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
Michael T. Poff, P.E.	Naples	48218	33	Project Management, QA/QC
Mark A. Kincaid, P.E.	Bonita Springs	58654	38	Project Management, Structure Inspections
Jeremy B. Herget, P.E.	Naples	79352	15	Fieldwork, ERP Tech Support
Grady V. Timmins, P.E.	Naples	86500	10	Fieldwork
Richard J. Ewing, P.S.M.	Naples	5295	40	Marine / Hydrographic Surveying
Mark Snowman, S.I.T.	Fort Myers		24	Survey Crew Chief, Survey Control, Data Collection
Vadim V. Alymov, Ph.D.	Naples		23	Coastal Modeler
Kyle A. Kincaid, P.E.	Estero	96121	8	Fieldwork
Kyle M. Gullikson, E.I.	Fort Myers		7	Fieldwork
Samantha D. Brasher	Ormond Beach		19	CAD Technician
Kris W. Thoemke, Ph.D.	Daytona Beach		43	Senior Scientist

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Coastal Engineering Consultants, Inc. **Date:** 8/15/2024

Code: 105 **Type of Work:** Surveying Services

List the personnel permanently employed by your firm and indicate the 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
Richard J. Ewing, P.S.M.	Naples	5295	40	Project Management, QA/QC, Data Collection
Mark Snowman, S.I.T.	Fort Myers		24	Survey Crew Chief, Survey Control, Data Collection
Michael Miller	Fort Myers		18	Survey Crew Chief, Survey Control, Data Collection
Donnie Collins	Cape Coral		14	Survey Crew Chief, Survey Control, Data Collection
Sean Newton	Cape Coral		6	Fieldwork, Data Collection
Matthew M. Ward	Fort Myers		26	Senior Survey Technician
Robert A. Andrea	Naples		28	Fieldwork, Data Collection

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out of pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B **CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE**

Effective Date of Fee Schedule: June 1, 2025



FL

Professional Consulting Fee Schedule

<u>Staff/Consultant Description</u>	<u>Hourly Rate</u>
Principal Consultant*	\$255
Senior Consultant*	\$223
Associate Consultant*	\$215
Managing Consultant*	\$195
Coastal Modeler	\$185
Project Consultant*	\$175
Staff Consultant*	\$155
Sr. Designer/Technician	\$140
Designer/Technician	\$120
Construction Manager	\$128
Construction Observer	\$102
Sr. Administration/Sr. Project Coordinator	\$100
Report Production Coordinator/Sr. Technical Writer	\$ 95
Administration/Project Coordinator	\$ 84
Labor	\$ 55

Survey & Mapping Crews

Three-man Survey & Mapping Crew	\$233
Two-man Survey & Mapping Crew	\$193
One-man Survey & Mapping Crew	\$155
Marine Surveyor	\$155
Sr. Survey & Mapping Crew Chief	\$155
Survey & Mapping Crew Chief	\$125
Survey & Mapping Crew Member	\$ 95

Expert Witness

Principal Consultant*	\$305
Associate Consultant*	\$284
Managing Consultant*	\$272

* Consultants include: Engineers, Planners, Environmental Specialists, Financial Specialists, Project Managers, Scientists, and Surveyors & Mappers.

CEC Equipment Schedule**Marine Survey Equipment**

Hydrographic RTK GPS Surveying & Mapping System.....	\$ 600 /day
Tide Recorder (1 wk. Min.).....	\$ 800 /mo.
	\$ 300 /wk.
ADCP Current Meter (1 wk. Min.).....	\$4,000 /mo.
	\$1,500 /wk.
Turbidimeter.....	\$ 500 /mo.
	\$ 150 /wk.
	\$ 50 /day
Survey Boat (20ft).....	\$ 430 /day
Survey Jon Boat (14ft).....	\$ 300 /day
Jet Pump (3").....	\$ 150 /day
Underwater Camera / GoPro.....	\$ 30 /day
SCUBA Equipment.....	\$ 45 /day
SCUBA Tank.....	\$ 18 /day
Drone.....	\$ 200 /day

GPS / Conventional Survey Equipment

RTK GPS Receiver.....	\$ 200 /day
Robotic Total Station.....	\$ 200 /day
Total Station / Data Collector.....	\$ 150 /day
Off-road Vehicle, (ATV).....	\$ 170 /day

Survey & Mapping Supplies

Aerial Target.....	\$15.00 /ea.
Permanent Reference Concrete Monuments.....	\$15.00 /ea.
Rebar.....	\$ 5.00 /ea.

Out of Pocket Expenses

Out of pocket expenses will be billed at cost plus 10% unless specifically modified in the terms and conditions of the base contract. Typical expenses include: out of town travel made on behalf of the Client relating to permitting, aerial reconnaissance, photographic expenses, and special project related materials that are not kept in stock.

Outside Services

Outside services, Subconsultants, or subcontractor fees will be administered at cost plus 15% unless specifically modified in the terms and conditions of the base contract. Typical outside services include civil engineering, geophysical and geotechnical services, landscape and architectural design, special traffic studies, biological surveys, subsurface and structural engineering services, etc.

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 Michael T. Poff, P.E., President
(print individual's name and title)

for Coastal Engineering Consultants, Inc.
(print name of entity submitting sworn statement)

whose business address is 28421 Bonita Crossings Boulevard
Bonita Springs, Florida 34135

and (if applicable) its Federal Employer Identification Number (FEIN) is 59-1728628
(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 287.233(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.)

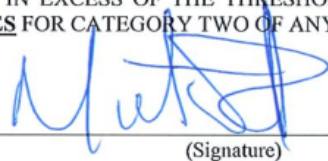
X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners,

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)

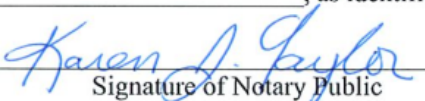
I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM 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.


(Signature)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 15th day of August, 20 24, by Michael T. Poff, 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: 10/1/2024 
Signature of Notary Public



Notary Public, State of
Florida

Karen J. Taylor
Printed, Typed or Stamped Name

Commission/Serial No. HH 016512

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 15, 2024

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: Coastal Engineering Consultants, Inc.
(Signature) [Signature] President 8/15/2024
(Title) (Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 15th day of August, 2024, by Michael T. Poff, 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: 10/1/2024



KAREN J. TAYLOR
Commission # HH 016512
Expires October 1, 2024
Bonded Thru Budget Notary Services

Signature of Notary Public [Signature]

Notary Public, State of Florida

Printed, Typed or Stamped Name Karen J. Taylor

Commission/Serial No. HH 016512

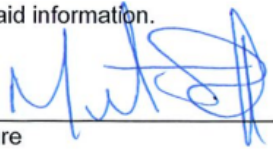
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. *TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.*

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, Michael T. Poff, am an employee of Coastal Engineering Consultants, Inc., 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

8/15/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Coastal Engineering Consultants, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Ensite, Inc.** ("Consultant"), whose address is **2401 FIRST STREET, SUITE 201, FORT MYERS, FL 33901.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

103. Stormwater

Requires engineering expertise in the planning, designing, permitting, bidding and construction administration phases of service for Storm Water Design, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Storm Sewer.

106. Landscape Architect

Requires expertise in the planning, designing, permitting, bidding and construction administration phases of service for Landscape Architecture, including the design of Community Parks and Streetscape. The firm must employ at least one landscape architect, registered with the Florida State Board of Landscape Architecture. Additionally, the firm must employ sufficient personnel to provide services normally associated with this type of work.

107. Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design, or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

111. Civil Engineering

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with Civil Engineering as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in this general area.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: EnSite, Inc.

Date: 08/13/2024

Code: 103, 106, 107 & 111 Type of Work: Stormwater, Landscape Architecture, Community and Neighborhood Improvements, and Civil Engineering

List the personnel permanently employed by your firm and indicate the 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
Brian R. Smith	Cape Coral		34	Project Manager, Principal
Matthew D. Horton, RLA	Fort Myers	LA0001749	34	Urban Design & Landscape Architecture
Jason Tomassetti, PE	Marco Island	PE66263	20	Civil Engineer
Cindy Leal Brizuela, MURP	Weston		9	Land Use Planning & GIS

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

EnSite, Inc. - Hourly Rate Schedule
Effective January 1, 2025



<u>Title</u>	<u>Rate</u>
Expert Testimony	\$260 per hour
Principal in Charge	\$230 per hour
Economic Research and Strategist	\$210 per hour
Senior Engineer	\$185 per hour
Principal Planner	\$185 per hour
Urban Designer	\$185 per hour
Landscape Architect	\$185 per hour
Senior Planner	\$175 per hour
Program Manager	\$175 per hour
Engineer Intern	\$135 per hour
Senior Project Manager	\$140 per hour
Junior Engineer	\$125 per hour
Lead Designer	\$125 per hour
Auto-CAD Technician III	\$95 per hour
Junior Landscape Designer	\$85 per hour
Auto-CAD Technician II	\$80 per hour
Auto-CAD Technician I	\$65 per hour
Permit Coordinator	\$60 per hour
Administrative Assistant	\$50 per hour

2401 First Street, Suite 201 | Fort Myers, Florida 33901 | 239.226.0024 | www.en-site.com

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No.

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 Brian R. Smith - President/Principal
(print individual's name and title)

for EnSite, Inc.
(print name of entity submitting sworn statement)

whose business address is 2401 First Street, Suite 201
Fort Myers, FL 33901

and (if applicable) its Federal Employer Identification Number (FEIN) is 20-3094339
(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 287.233(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.



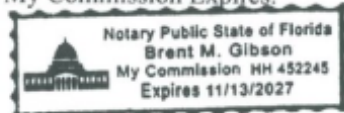
(Signature)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 13th day of August, 20 24, by Brian R. Smith, 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:



Signature of Notary Public

Notary Public, State of
Florida



Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: Aug. 13th, 2024

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).

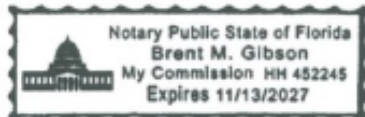
Company Name: EnSite, Inc.
[Signature] President/Principal 08/13/2024
(Signature) (Title) (Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 13th day of August, 20 24, by Brian R. Smith, 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:



[Signature]
Signature of Notary Public

Notary Public, State of
Florida

Brent M. Gibson
Printed, Typed or Stamped Name

Commission/Serial No. _____

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: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, Brian Smith, am an employee of EnSite, Inc., 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

08/13/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Ensite, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the _____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **GMA Architects & Planners, LLC** ("Consultant"), whose address is **43 BARKLEY CIRCLE, SUITE 202, FORT MYERS, FL 33907.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

102. Architectural Design

Requires architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

107. Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design, or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: GMA Architects & Planners, LLC Date: 8/19/24

Code: 102 & 107 Type of Work: Architectural Design

List the personnel permanently employed by your firm and indicate the 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
Ramon Acevedo	Fort Myers	AR95515	37 years	Architect
Noel Hernandez	Fort Myers	AR97085	22 years	Architect
Davide DiSpaldro	Naples	N/A	15 years	Project Designer
Zachary Smith	Fort Myers	N/A	16 years	Sr. Project Manager
Jeffrey Pardi	Fort Myers	N/A	25 years	Designer
Rich McConville	Ft Myers	N/A	42 years	Contract Administration
Kenneth Buschle	Fort Myers	N/A	46 years	Specifications

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

EXHIBIT "A"
CHARGE RATE SCHEDULE
GMA Architects & Planners
Effective January 1, 2025 thru December 31, 2025

PRINCIPAL ARCHITECT	\$240.00 PER MAN HOUR
SENIOR/ASSOCIATE ARCHITECT	\$185.00 PER MAN HOUR
SENIOR PROJECT MANAGER	\$180.00 PER MAN HOUR
PROJECT ARCHITECT	\$175.00 PER MAN HOUR
ARCHITECTURAL DESIGNER/PROJECT MANAGER	\$165.00 PER MAN HOUR
INTERIOR DESIGNER	\$125.00 PER MAN HOUR
PROJECT DESIGNER II	\$125.00 PER MAN HOUR
CAD OPERATOR	\$100.00 PER MAN HOUR
CONSTRUCTION ADMINISTRATOR	\$100.00 PER MAN HOUR
TECHNICAL STAFF	\$75.00 PER MAN HOUR
EXPERT WITNESS SERVICES:	
RESEARCH, REPORTING AND TRAVEL	\$350.00 PER MAN HOUR
DEPOSITION (2 HR. MIN.)	\$400.00 PER MAN HOUR
COURT APPEARANCE – (2 HR. MIN.)	\$450.00 PER MAN HOUR

The above rates represent the hourly costs for each classification of personnel, including salaries and office overhead.

CONSULTANT FEES SHALL BE CHARGED AT COST: 1.15 TIMES ARCHITECT'S COST

Reimbursable Expenses (including the following):

PRINTING AND DUPLICATION	1.15 TIMES ARCHITECT'S COST
OVERNIGHT COURIER/POSTAGE/FREIGHT	1.15 TIMES ARCHITECT'S COST
PHOTOGRAPHY	1.15 TIMES ARCHITECT'S COST
MILEAGE	1.15 TIMES ARCHITECT'S COST
PLOTTING	1.15 TIMES ARCHITECT'S COST

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 The Town of Fort Myers Beach
(print name of public entity)

by Ramon Acevedo, President
(print individual's name and title)

for GMA Architects & Planners, LLC
(print name of entity submitting sworn statement) whose business address is

43 Barkley Circle, Suite 202
Fort Myers, FL 33907

and (if applicable) its Federal Employer Identification Number (FEIN) is 26-3370987
(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 287.233(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,

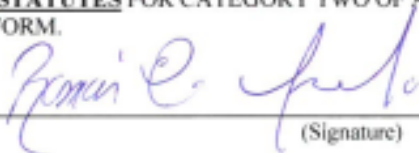
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shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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

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

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

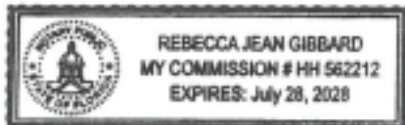

(Signature)

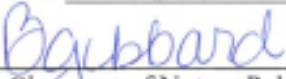
STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by Ramon Acevedo,
by means of () 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:




Signature of Notary Public

Notary Public, State of
Florida

Rebecca Gibbard

Printed, Typed or Stamped Name

Commission/Serial No. HH562212

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.

Company Name: GMA Architects & Planners, LLC

(Signature)

President

(Title)

8/16/24

(Date)

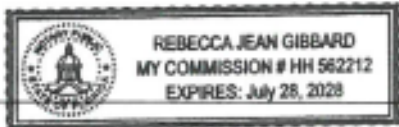
STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by Ramon Acevedo, by means of () 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:

Signature of Notary Public



Notary Public, State of
Florida

Rebecca Gibbard

Printed, Typed or Stamped Name

Commission/Serial No. HH562212

Rev. 5/2025

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services

I, the undersigned, _____, am an employee of _____, 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

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and GMA Architects & Planners, LLC, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Graef-USA, Inc.** ("Consultant"), whose address is **275 W Wisconsin Ave, SUITE 300, MILWAUKEE, WI 53203.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

108. Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

118. Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience of reading blueprints and site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of marine design.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Graef-USA Inc.

Date: August 19, 2024

Code: 108 Type of Work: Electrical Systems

List the personnel permanently employed by your firm and indicate the 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
Alex Parrish, P.E.	Apopka, FL	87322	25	Electrical Engineering
Augusto Valbuena, E.I.T.	Kissimmee, FL		5	Electrical Engineering
Marcos Andrade	Kissimmee, FL		10	Electrical Engineering

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Graef-USA Inc. Date: August 19, 2024

Code: 118 Type of Work: Marine Engineering

List the personnel permanently employed by your firm and indicate the 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
Peter Seidle, P.E.	West Palm Beach, FL	59493	26	Marine Engineering
Leaf Erickson, PhD, E.I.T.	Sarasota, FL		24	Marine Engineering
Olivia Barksdale, E.I.T.	Bradenton, FL		4	Marine Engineering

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

7201 Delaney Court
Sarasota, FL 34240
941 / 373 6460
www.graef-usa.com



collaborāte / formulāte / innovāte

BILLING RATES

Re: TOWN OF FORT MYERS BEACH
ONGOING MESCELLANEOUS PROFESSIONAL SERVICES
ELECTRICAL SERVICES
MARINE ENGINEERING
RFQ-24-06-AD

As requested, the following are our proposed hourly billing rates for projects with the Town of Fort Myers Beach as part of the above-referenced contract.

<u>Classification</u>	<u>Billable Hourly Rate</u>
Principal	\$278.00
Sr. Engineer	\$230.00
Project Engineer	\$201.00
Engineer/Sr. Designer	\$164.00
Engineer Intern/Designer	\$143.00
CADD Technician	\$127.00
Administrative Assistant	\$ 98.00

Scott D. Hinrichs, P.E., Principal, Vice President
Printed Name and Title

A handwritten signature in black ink, appearing to read "Scott D. Hinrichs", written over a horizontal line.

Signature

Date: September 9, 2025

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 James Hansen, P.E. - Principal
(print individual's name and title)

for Graef-USA Inc.
(print name of entity submitting sworn statement)

whose business address is 7201 Delainey Court, Sarasota, FL 34240

and (if applicable) its Federal Employer Identification Number (FEIN) is 38-1083592
(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 287.233(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.

James P. Hansen
(Signature)

STATE OF Florida

COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by James Hansen, P.E., 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:



AMY M. ZIMMERMAN
Notary Public
State of Florida
Comm# HH250211
Expires 7/17/2026

Amy M. Zimmerman

Signature of Notary Public

Notary Public, State of
Florida

Amy M. Zimmerman

Printed, Typed or Stamped Name

Commission/Serial No. HH250211

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 19, 2024

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: Graef-USA Inc.
James P. Hansen Principal 8/19/2024
(Signature) (Title) (Date)

STATE OF Florida

COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by James Hansen, P.E., by means of (☒) physical presence or (☐) online notarization, personally appeared before me and (☒) is personally known to me or (☐) who has produced _____, as identification.

My Commission Expires:



AMY M. ZIMMERMAN
Notary Public
State of Florida
Comm# HH250211
Expires 7/17/2026

Amy M. Zimmerman
Signature of Notary Public

Notary Public, State of
Florida

Amy M. Zimmerman
Printed, Typed or Stamped Name

Commission/Serial No. HH250211

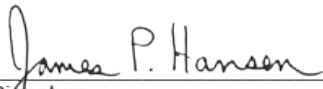
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, James Hansen, P.E., am an employee of Graef-USA Inc., 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

8/19/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Graef-USA, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Haley Ward, Inc.** ("Consultant"), whose address is **1 Merchants Plaza, Suite 701, Bangor, ME 04401.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

105. Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

117. Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and, if needed, will be bid separately at a later time.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Haley Ward, Inc. Date: 08.14.2024

Code: 105 Type of Work: Surveying Services

List the personnel permanently employed by your firm and indicate the 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
Josh Bragg, PLS, PSM	Fort Myers	7243	29	Property boundaries, right-of-way lines, drainage/topo, wetlands, riparian lines, expert witness testimony, legal descriptions.
Robert L. Carmelia, PSM	Cape Coral	6786	44	Surveying for property boundaries, right-of-way lines, drainage/topo, legal descriptions, coastal permitting specialist.
Stephen F. Shawles, PSM	Cape Coral	6419	37	Surveying for property boundaries, right-of-way lines, drainage/topo, legal descriptions.
James A. Hessler, PSM	Fort Myers	6410	34	Surveying for property boundaries, right-of-way lines, drainage/topo, wetlands, riparian lines, legal descriptions, coastal permitting specialist

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Haley Ward, Inc. Date: 08/19/2024

Code: 117 Type of Work: Environmental Assessments

List the personnel permanently employed by your firm and indicate the 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
Chris Griffin	Fort Myers, FL	N/A	7	Environmental Assessments, Site Development, Permitting
Andrea Dickinson, Sr. Project Manager	Clifton, Maine	N/A	12	Civil and Environmental Engineering
Jacalyn Gorczynski, LG, PG	Lyman, Maine	N/A	14	Geology, Environmental Investigation and Assessments
Johanna Szillery, CCS	Millinocket, Maine	N/A	17	Wetland and Natural Resource Investigations, Soil Science, Natural Resources Planning & Permitting, Phase I ESAs
John Pond, Principal	Bangor, Maine	N/A	40	Oversite and QA/QC for Ground Staff
Regina Gray, PHD	Glenburn, Maine	N/A	9	Environmental Remediation, Construction Quality Assurance, Field Investigations, Laboratory Analysis, Phase I ESAs, Natural Resource Permitting, Wetland Investigations
Dennis Kingman, CHMM	Levant, Maine	N/A	35	Environmental Assessments, HazMat, Environmental Management

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



SCHEDULE OF CHARGES (Effective December 1, 2024)

Title	Rate Per Hour
Principal	\$250
Senior Project Manager IV	\$240
Senior Project Manager III	\$230
Senior Project Manager II	\$220
Senior Project Manager I	\$210
Project Manager III	\$205
Project Manager II	\$200
Project Manager I	\$190
Senior Project Engineer/Architect/Surveyor/Scientist/Geologist/Planner/Professional IV	\$240
Senior Project Engineer/Architect/Surveyor/Scientist/Geologist/Planner/Professional III	\$230
Senior Project Engineer/Architect/Surveyor/Scientist/Geologist/Planner/Professional II	\$220
Senior Project Engineer/Architect/Surveyor/Scientist/Geologist/Planner/Professional I	\$210
Project Engineer/Architect/Scientist/Geologist/Planner/Professional III	\$205
Project Engineer/Architect/Scientist/Geologist/Planner/Professional II	\$200
Project Engineer/Architect/Scientist/Geologist/Planner/Professional I	\$180
Engineer/Architect/Scientist/Geologist/Planner/Professional	\$165
Senior Land Surveyor	\$190
Land Surveyor	\$165
Senior Designer II	\$185
Senior Designer I	\$170
Designer	\$155
Senior Technician II	\$170
Senior Technician I	\$160
Technician	\$145
Technical Aide	\$110
Senior Project Assistant	\$135
Project Assistant	\$120
One Person Robotic Survey Crew	\$220

LITIGATION/COURT RELATED MATTERS: When serving as consultants to members of the legal profession and as expert witnesses in courts of law, arbitration proceedings, and administrative adjudication proceedings, hourly fees for personnel will be invoiced at 1½ (one and one-half) times the standard hourly rate. This rate is also applicable to time associated with preparation for these services.

EXPENSES: Subconsultant's fees processed through Haley Ward will be marked up 15% to cover our direct costs associated with retaining these services. Mileage will be billed at the rate of \$.85 (eighty-five cents) per mile. Photocopies, blueprints, and other project related reimbursable expenses will be billed at cost.

INVOICES: Invoices for personnel time and expenses will be submitted on a monthly basis and will be due when rendered. Interest at a rate of 1½% per month will be assessed where allowed under applicable law, to bills remaining due and not paid within 30 (thirty) days.

HALEYWARD.COM

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 Haley Ward, Inc.
(print name of public entity)

by Ahmad Kareh, PE, Regional Manager
(print individual's name and title)

for _____
(print name of entity submitting sworn statement)

whose business address is 13041 McGregor Blvd. Fort Myers, FL 33919

and (if applicable) its Federal Employer Identification Number (FEIN) is 01-0360334 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 287.233(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.

Ahmad R. Karch

(Signature)

Ahmad R. Karch, P.E.
Senior Vice President

STATE OF

Florida

COUNTY OF

LEE

The foregoing instrument was acknowledged before me this 19th day of AUGUST, 2024, by AHMAD R. KARCH, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☐ is personally known to me or ☐ who has produced N/A, as identification.

My Commission Expires: 06/09/2026

Judy P. Sholtis

Signature of Notary Public

Notary Public, State of

Florida

Judy P. Sholtis

Printed, Typed or Stamped Name

Commission/Serial No.

HH 274079

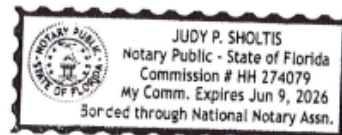


EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 19, 2024

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: Haley Ward, Inc.

Ahmed Karel
(Signature)

Senior Vice President
Regional Manager
(Title)

08.19.2024
(Date)

STATE OF Florida

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by Ahmed R. KAREH, by means of ☒ physical presence or () online notarization, personally appeared before me and ☒ is personally known to me or () who has produced _____ as identification.

My Commission Expires: 04/09/2026

Judy P. Sholtis
Signature of Notary Public

Notary Public, State of

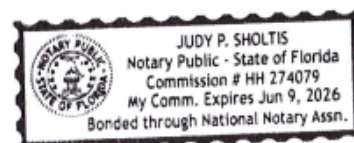
FLORIDA

Judy P. Sholtis

Printed, Typed or Stamped Name

Commission/Serial No. HH 274079

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: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, Ahmad Kareh, PE, am an employee of Haley Ward, Inc., 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 Ahmad R. Kareh, P.E.
August 19, 2024 Senior Vice President
Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Haley Ward, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such

contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

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

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages

or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Hans Wilson & Associates, Inc.** ("Consultant"), whose address is **1938 HILL AVE, FORT MYERS, FL 33901.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

117. Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and, if needed, will be bid separately at a later time.

118. Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience of reading blueprints and site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of marine design.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Hans Wilson & Associates, Inc. Date: August 19, 2024

Code: 117 / 118 Type of Work: Environmental Assessments / Marine Engineering

List the personnel permanently employed by your firm and indicate the 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
Hans J.M. Wilson, PE *	Fort Myers	39680	42	117 / 118
Chester Young	Fort Myers		42	117 / 118
Jack Walter, EI	Fort Myers		4	117 / 118
Jack Archambault, EI	Fort Myers		3	117 / 118
Nick Goerke, EI	Fort Myers		1	117 / 118
Johanna Shifflette	Fort Myers		32	117 / 118
* Project Supervisor				

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



Method of Compensation ~ 2025

<u>Consulting Fees</u>	<u>Hourly Rate</u>
Principal Consultant	\$205 - \$225
Professional Engineer	\$135 - \$200
Sr Project Engineer	\$130 - \$175
Project Engineer	\$ 95 - \$125
Sr. Project Manager	\$145 - \$175
Project Manager II	\$115 - \$140
Project Manager I	\$ 85 - \$110
Sr. Environmental Scientist / Biologist	\$115 - \$140
Environmental Scientist / Biologist	\$ 85 - \$110
Permits / Admin / CAD	\$ 80 - \$100
Expert Witness	Double Standard Rate

<u>Miscellaneous Expenses</u>	
Individual items less than \$50.00	Included in Hourly Rate
Individual items greater than \$50.00	Cost + 10%
Outside Consultant Expenses	Cost + 10%
Boat	\$250.00 per day
Canoe	\$75.00 per day
Equipment Rental ~ survey	\$50.00 per day

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 Hans J.M. Wilson, President
(print individual's name and title)

for Hans Wilson & Associates, Inc.
(print name of entity submitting sworn statement)

whose business address is 1938 Hill Avenue
Fort Myers, FL 33901

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0992851
(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 287.233(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.


(Signature)

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 15th day of August, 20 24, by Hans J.M. Wilson, by means of ☒ (X) physical presence or ☐ () online notarization, personally appeared before me and ☐ () is personally known to me or ☐ () who has produced _____, as identification.

My Commission Expires:



Signature of Notary Public

Notary Public, State of
FLORIDA

August 10, 2028

Tina M. Cesarino

Printed, Typed or Stamped Name

Commission/Serial No. HH 570700



TINA M. CESARINO
Commission # HH 570700
Expires August 10, 2028

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 15, 2024

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: Hans Wilson & Associates, Inc.

Hans J.M. Wilson
(Signature)

President
(Title)

8/15/24
(Date)

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 15th day of August, 20 24, by Hans J.M. Wilson, by means of (X) physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Tina M. Cesarino

Signature of Notary Public



TINA M. CESARINO
Commission # HH 570700
Expires August 10, 2028

Notary Public, State of
FLORIDA

August 10, 2028

Tina M. Cesarino

Printed, Typed or Stamped Name

Commission/Serial No. HH 570700

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: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, Hans J.M. Wilson, am an employee of Hans Wilson & Associates, Inc., 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.

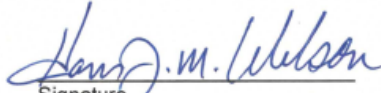

Signature
8/15/24
Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Hans Wilson & Associates, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the _____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Hyatt Survey Services, Inc.** ("Consultant"), whose address is **2012 LENA ROAD, BRADENTON, FL 34211.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

105. Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Hyatt Survey Services, Inc. **Date:** September 2, 2022

Code: 105 **Type of Work:** Surveying Services

List the personnel permanently employed by your firm and indicate the 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
Pamela A. Hyatt, PSM	Bradenton	LS5550	34	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions
Russell Hyatt, PSM *	Brandenton	LS5303	36	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions, Hydrographic Surveys
Dianne Collins, PLS	Lake Panasoffkee	LS3936	51	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions
Mark West, PLS	Tampa	LS4686	44	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions
Larry Sharp, PLS	Bartow	LS4388	45	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions
John Matthews, Project Manager	Lakewood Ranch		39	Boundary Survey, Topographic Survey, Right of Way Sketch & Legal Descriptions
Steven Long, CST II, Project Manager	Palmetto		14	Boundary Survey, Topographic Survey, Hydrographic Survey
Deric Rimes, CST IV, Project Manager	Ruskin		24	Boundary Survey, Topographic Survey, Right of Way
Mike Jones, Survey Technician	Bradenton		31	Boundary Survey, Topographic Survey, Right of Way
Nate Knorr, CST II, Survey Technician	Apollo Beach		29	Boundary Survey, Topographic Survey, Construction
Mike Ell, Crew Chief	Punta Gorda		34	Boundary Survey, Topographic Survey, Right of Way

* Hyatt Survey Supervisor for this project

020

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Hyatt Survey Services, Inc. Date: August 16,2024
 Code: 105 Type of Work: Surveying Services

List the personnel permanently employed by your firm and indicate the 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
Alberto Horta	Bradenton		30	Boundary Survey, Topographic Survey, Right of Way
Taylor Gay, Crew Chief	Myakka City		13	Boundary Survey, Topographic Survey, Right of Way
Rick Keithley, Crew Chief	Sarasota		36	Boundary Survey, Topographic Survey, Right of Way
Brandon Kelley, Crew Chief	Bradenton		21	Boundary Survey, Topographic Survey, Right of Way
Scott Woodson, Crew Chief	Bradenton		23	Boundary Survey, Topographic Survey, Right of Way
Adam Henry, Instrument Person	Bradenton		15	Hydrographic Survey, Topographic Survey, ROW
Josh Berry, Crew Chief	Bradenton		7	Boundary Survey, Topographic Survey, Right of Way
Scott Huibers, Boat Captain	Bradenton		9	Hydrographic Survey, Topographic Survey, ROW
Rich Williams, Instrument Person	Riverview		3	Boundary Survey, Topographic Survey, Right of Way
Paul Mahofski, Instrument Person	Bradenton		8	Boundary Survey, Topographic Survey, Right of Way
Zachary Clapp, Instrument Person	Bradenton		11	Boundary Survey, Topographic Survey, Right of Way

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



HYATT SURVEY SERVICES, INC. 2025 RATE SCHEDULE

<u>BILLING UNIT</u>	<u>HOURLY RATE</u>
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Field Crews:

Field Survey Crew: (1 Person)	\$ 155.00
Field Survey Crew: (2 Person)	\$ 205.00
Field Survey Crew: (3 Person)	\$ 255.00

Note: All Field Crew rates include either robotic total station or RTK GPS equipment.

Hydrographic Survey Crew:

Single Beam Surveys:	\$ 2,200.00/day
Multi Beam Surveys:	\$ 2,950.00/day

Note: Hydrographic Survey Crew rate includes all personnel and equipment for an 8-hour day.

Office:

Survey Technician	\$ 145.00
Professional Surveyor & Mapper	\$ 190.00
Senior Professional Surveyor & Mapper	\$ 240.00

Administrative Assistant:	\$ 85.00
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Additional Equipment:

Sherp ATV: (w/o operator)	\$ 950.00/day
Marshmaster: (w/o operator)	\$ 750.00/day
Airboat: (w/o operator)	\$ 500.00/day
4WD ATV/UTV:	\$ 100.00/day

2012 Lena Road, Bradenton, Florida 34211 Phone: 941-748-4693 Fax: 941-744-1643

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 _____
(print name of public entity)

by Pamela A. Hyatt, President
(print individual's name and title)

for Hyatt Survey Services, Inc.
(print name of entity submitting sworn statement)

whose business address is 2012 Lena Road, Bradenton, FL 34211

and (if applicable) its Federal Employer Identification Number (FEIN) is 03-0476653
(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 287.233(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.)

☒ 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.

Pamela A. Hyatt
(Signature)

STATE OF FL

COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 19 day of August, 2024, by Pamela Hyatt, by means of ☐ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

My Commission Expires:

[Signature]

Signature of Notary Public

Notary Public, State of

FL

Jacqueline O'Sullivan

Printed, Typed or Stamped Name

Commission/Serial No. HH 472370

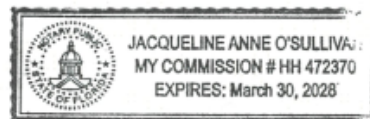


EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 16, 2024

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).

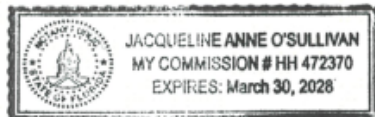
Company Name: Hyatt Survey Services, Inc.
Pamela A. Hyatt President 8/16/2024
(Signature) (Title) (Date)

STATE OF FL

COUNTY OF manatee

The foregoing instrument was acknowledged before me this 19 day of August, 2024, by Pamela Hyatt, by means of () physical presence or () online notarization, personally appeared before me and ☒ is personally known to me or () who has produced _____, as identification.

My Commission Expires:



[Signature]
Signature of Notary Public

Notary Public, State of
FL

Jacqueline O'Sullivan
Printed, Typed or Stamped Name

Commission/Serial No. HH 472370

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: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, Pamela A. Hyatt, am an employee of Hyatt Survey Services, Inc., 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.

Pamela A. Hyatt
Signature

8/16/2024
Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and **Hyatt Survey Services, Inc.**, hereinafter referred to as “Contractor”, concerning that certain agreement dated the _____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

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

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

“Coercion” means:

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

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

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

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

A. None.

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

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

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Jezerinac Group, PLLC** ("Consultant"), whose address is **1615 Forum Pl, Suite 3A, WEST PALM BEACH, FL 33401.**

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.

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

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

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

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

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

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

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

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

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

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

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

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

3.02 AVAILABILITY OF TOWN INFORMATION

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

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

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

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work- in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

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

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

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

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

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

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

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

109. Structural Systems

Requires engineering expertise in planning and designing with an emphasis on hurricane-resistant design, permitting, bidding and construction administration services in connection with structural design, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Structural Systems.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Jezerinac Group, PLLC Date: 8/1/24

Code: 109 Type of Work: Structural Systems

List the personnel permanently employed by your firm and indicate the 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
Laura Green, PE	Fort Myers	PE63139	23 years	structural engineering
Rômulo de Carvalho Silva, PE	Lake Worth	PE93650	6 years	structural engineering
Rob Jones	Cape Coral	n/a	34 years	structural engineering
Nevin Koshy	Royal Palm Beach	n/a	8 years	structural engineering
Kyle Koughan, EI	Lake Worth	11000244115	4 years	structural engineering
Matt Buttimer, EI	Jupiter	n/a	13 years	structural engineering
Bob Rude, PE, LEED AP	Fort Myers	PE44553	40 years	structural engineering

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



EXHIBIT B 2025 Billing Rates

TITLE	HOURLY BILLING RATE
Senior Principal / President	\$290.00
Principal / Vice President	\$220.00
Associate Principal	\$215.00
Senior Associate	\$195.00
Associate	\$175.00
Senior Project Manager/Senior Project Engineer	\$155.00
Project Manager/Project Engineer II	\$140.00
Assistant Project Manager/Project Engineer I	\$125.00
Design Engineer II	\$120.00
Design Engineer	\$115.00
Certified Building Inspector	\$125.00
Building Information Modeler (BIM) Manager	\$165.00
Assistant BIM Manager	\$125.00
Building Information Modeler II	\$110.00
Building Information Modeler I	\$90.00
Administrative Support Staff	\$80.00
Intern	\$70.00

*Rates are effective through December 31, 2025



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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

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

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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.

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),

FLORIDA STATUTES ON PUBLIC ENTITY CRIMES

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 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)

- THIS FORM MUST BE SIGNED AND SWORN TO BY THE PERSONS DESCRIBED ABOVE AT A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.
- 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 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)
1. Jezerinac Group, PLLC
(print name of entity submitting sworn statement)
2601 Six Mile Cypress Pkwy, Suite 501
Fort Myers, FL 33966
for the foregoing instrument was acknowledged before me this 20 day of August, 2024, by Ron Jezerinac, as identification.

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.

and (if applicable) its Federal Employer Identification Number (FEIN) is 46-5440248
(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 287.233(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 (X) physical presence, or () online authorization, personally appeared before me and (X) is personally known to me or () who has produced _____ as identification.

4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:

My Commission Expires: 1/01/2024

A predecessor or successor of a person convicted of a public entity crime, or a person who is in control of any natural person who is in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, shareholders, employees, members, and agents who are active in the management of an affiliate's business. Partnership 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.

Commission/Serial No. HH 059377

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,

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: 8/1/24, 2024

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: Jezerinac Group, PLLC

[Signature]
(Signature)

President
(Title)

8/1/24
(Date)

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1 day of August, 20 24, by Ronald Jezerinac, by means of (☒) physical presence or () online notarization, personally appeared before me and (☒) is personally known to me or () who has produced _____, as identification.

My Commission Expires:



[Signature]

Signature of Notary Public

Notary Public, State of
Florida

Eva Strickland

Printed, Typed or Stamped Name

Commission/Serial No. HH 059377

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: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, Laura Green, am an employee of Jezerinac Group, 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

8/1/24

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Jezerinac Group, PLLC, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

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

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

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

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

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

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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

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

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

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

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic Internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Johnson Engineering, Inc.** ("Consultant"), whose address is **2122 JOHNSON STREET, FORT MYERS, FL 33901.**

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.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

1. PROJECT GUIDELINES AND CRITERIA: Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL: At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONTRACTOR: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

101. Water Resource

Requires engineering expertise in planning, design, permitting, bidding, construction administration, long-term loan and grant funding programs in connection with water resources, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, and have training and experience in the area of water resources.

103. Stormwater

Requires engineering expertise in the planning, designing, permitting, bidding and construction administration phases of service for Storm Water Design, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Storm Sewer.

105. Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

106. Landscape Architect

Requires expertise in the planning, designing, permitting, bidding and construction administration phases of service for Landscape Architecture, including the design of Community Parks and Streetscape. The firm must employ at least one landscape architect, registered with the Florida State Board of Landscape Architecture. Additionally, the firm must employ sufficient personnel to provide services normally associated with this type of work.

108. Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

113. Transportation Planning and Traffic Engineering Services

Requires engineering expertise in the planning, design and operation of traffic control devices to provide technical support and engineering recommendations on traffic engineering and related issues. Services shall include, but are not limited to; review of traffic impact statements/studies provided by development applicants, traffic data/counts, traffic models, signal operations, traffic monitoring, traffic analysis, roadway safety assessment, ITS applications, traffic operations improvements, traffic-calming, roadway lighting and traffic control device assessment. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in transportation and/or traffic.

114. Planning / Zoning

The selected individual/firm will work with Town staff to provide expertise in the detailed review of development

projects (including projects seeking rezoning and Comprehensive Plan Amendments) and their consistency with all local, state and federal requirements; preparation of Land Development Code Regulations; preparation of Comprehensive Plan Amendments including Map products per State requirements;; oversight of development projects through all local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns, excluding those relating to the Florida Building Code and other issues under the purview of the Town Building Official The individual/firm will work with applicants, prepare staff reports and make presentations to the Local Planning Agency and Town Council. The firm must employ at least one member who is certified through AICP.

115. Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager.

117. Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and, if needed, will be bid separately at a later time.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 101 Type of Work: Water Resources

List the personnel permanently employed by your firm and indicate the 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
Erik Howard, PE, PSM	Arcadia	PE66574/LS6959	22	Water Resources
Rick Acosta, PE, CFM	Cape Coral	PE69121	22	Water Resources
Alec Piironen, PG	Fort Myers	PG3184	8	Water Resources
Jordan Varble, PE	Fort Myers	PE81414	13	Water Resources
Tim Denison	Cape Coral		28	Water Resources
Duane Heller	Fort Myers		1	Water Resources

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 103 Type of Work: Stormwater

List the personnel permanently employed by your firm and indicate the 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
Erik Howard, PE, PSM	Arcadia	PE66574/LS6959	22	Stormwater
Alfredo Perez, PE, PSM	LaBelle	PE84310	19	Stormwater
Rick Acosta, PE, CFM	Cape Coral	PE69121	22	Stormwater
Jordan Varble, PE	Fort Myers	PE81414	13	Stormwater
Mark Zordan, PMP	Fort Myers		42	Stormwater
Chris Zimmerly	LaBelle		18	Stormwater

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 105 Type of Work: Surveying Services

List the personnel permanently employed by your firm and indicate the 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
Mark Haines, PSM	Fort Myers	LS5312	40	Surveying Services
Matt Howard, PSM	LaBelle	LS4912	48	Surveying Services
Kevin RisCassi, PSM	Fort Myers	LS6433	32	Surveying Services
Rick Daniels, PSM	Port Charlotte	LS7229	33	Surveying Services
Danny Snook	Fort Myers		45	Surveying Services
Izzy Hernandez	LaBelle		11	Surveying Services
Matt Beaudoin	Fort Myers		18	CADD / Surveying Services
Paul Lohr, GISP	Knoxville, TN		24	GIS

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 106 Type of Work: Landscape Architect

List the personnel permanently employed by your firm and indicate the 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
Jeff Nagle, RLA	Estero	LA6667059	40	Landscape Architecture
Greg Byrer, RLA	Naples	LA6667543	38	Landscape Architecture
Tyler Rubley	Fort Myers		10	Landscape Architecture

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 108 Type of Work: Electrical Systems

List the personnel permanently employed by your firm and indicate the 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
Wayne Wright, P.E.	Bonita Springs	PE58220	42	Electrical Systems

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 113 Type of Work: Transportation Planning & Traffic Engineering Services

List the personnel permanently employed by your firm and indicate the 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
Ryan Bell, P.E., PTOE	Myakka City	60010	26	Transportation Planning & Traffic Engineering
Joshua Hildebrand, P.E., PTOE	Naples	73952	18	Transportation Planning & Traffic Engineering
Leah Holmes, PE	Cape Coral	85359	11	Transportation Planning & Traffic Engineering
Jessica Boardman, EI	Fort Myers		5	Transportation Planning & Traffic Engineering
John Glenn, PE	Fort Myers	84227	12	Transportation Planning & Traffic Engineering
Michele Newbury	Cape Coral		18	Transportation Planning & Traffic Engineering

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 114 Type of Work: Planning/Zoning

List the personnel permanently employed by your firm and indicate the 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
Chrissy Fisher, AICP	Cape Coral	017119 (AICP)	29	Project Manager/Planning/Zoning
Laura DeJohn, AICP	Naples	016747 (AICP)	26	Planning/Zoning
Amanda Martin, AICP	Cape Coral	34430 (AICP)	22	Planning/Zoning
Tyler Rubley	Fort Myers		10	Mapping & Visualization
Kaitlyn Zindle	Lehigh Acres		2	Mapping & Visualization

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 115 Type of Work: Floodplain Management

List the personnel permanently employed by your firm and indicate the 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
Erik Howard, PE, PSM	Arcadia	PE66574/LS6959	22	Floodplain Management
Alfredo Perez, PE, PSM	LaBelle	PE84310	19	Floodplain Management
Rick Acosta, PE, CFM	Cape Coral	PE69121	22	Floodplain Management
Mark Zordan, PMP	Fort Myers		42	Floodplain Management
Jordan Varble, PE	Fort Myers	PE81414	13	Floodplain Management

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Johnson Engineering, Inc. Date: 8/19/2024

Code: 117 Type of Work: Environmental Assessments

List the personnel permanently employed by your firm and indicate the 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
Laura Herrero	Fort Myers		30	Ecological & Environmental Services
John Curtis, CSE	Fort Myers		27	Ecological & Environmental Services
Gary Nychyk, CE	Fort Myers		22	Ecological & Environmental Services
Kyle Philpot, CE	Fort Myers		7	Ecological & Environmental Services
Greg Thomas, CE	Cape Coral		9	Ecological & Environmental Services
David Isley, CE	Fort Myers		8	Ecological & Environmental Services
Savannah Nease, CE	Babcock Ranch		8	Ecological & Environmental Services
Jennifer Korn, Ph.D, CWB	Lake Placid		19	Ecological & Environmental Services
Alec Piironen, PG.	Fort Myers	PG3184	8	Water Use & Quality/Environmental Assessment
Erik Howard, PE	Arcadia	PE66574	22	Water Use & Quality/Environmental Assessment
Tim Denison	Cape Coral		28	Water Quality/Environmental Assessment
Abe Elizarraraz	Fort Myers		9	Water Use & Quality/Environmental Assessment
Duane Heller	Fort Myers		1	Water Use & Quality/Environmental Assessment

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



SINCE 1946



PROFESSIONAL SERVICES HOURLY RATE SCHEDULE May 15, 2025

Professional

9	\$330
8	\$285
7	\$262
6	\$230
5	\$205
4	\$187
3	\$170
2	\$145
1	\$135

Technician

6	\$188
5	\$160
4	\$138
3	\$117
2	\$92
1	\$82

Administrative

3	\$108
2	\$98
1	\$80

Field Crew

4-Person	\$285
3-Person	\$245
2-Person	\$193

Field Equipment

Field Equipment on Separate Schedule

Expert Witness \$445

Reimbursable Expenses and Sub-Consultants Cost + 10%

Construction Engineering and Inspection (CEI Services)

CEI Services Manager	\$220
CEI Senior Project Administrator	\$190
CEI Project Administrator	\$172
Contract Support Specialist	\$145
Senior Inspector	\$132
CEI Inspector III	\$119
CEI Inspector II	\$110
CEI Inspector I	\$98
Compliance Specialist	\$108
CEI Inspector's Aide	\$80

Corporate Headquarters: 2122 Johnson Street, Fort Myers, Florida 33901
Phone: (239) 334-0046 ■ www.johnsonengineering.com

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in the Agreement above.

(4) 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: Ongoing Professional Services**

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 The Town of Fort Myers Beach
(print name of public entity)
by Michael Dickey, RE., Chairman of the Board/Vice President
(print individual's name and title)
for Johnson Engineering, Inc.
(print name of entity submitting sworn statement)
whose business address is 2122 Johnson Street
Fort Myers, FL 33901

and (if applicable) its Federal Employer Identification Number (FEIN) is 59-1173834
(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 287.233(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.)

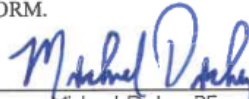
X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners,

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.



8/19/24

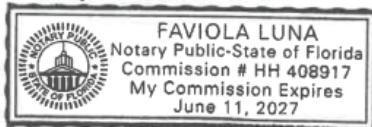
Michael Dickey, P.E. (Signature)

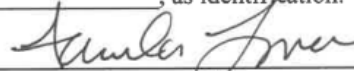
STATE OF Florida

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of August, 2024, by Michael Dickey, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

My Commission Expires:





Signature of Notary Public

Notary Public, State of

FL

Faviola Luna

Printed, Typed or Stamped Name

Commission/Serial No. ## 408917

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 19, 2024

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.**

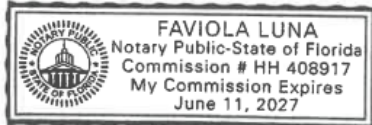
PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Johnson Engineering Inc
Michael Dickey Chairman of the Board/Vice President 8/19/24
(Signature) Michael Dickey, P.E. (Title) (Date)

STATE OF FL
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of August, 2024, by Michael Dickey, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____ as identification.

My Commission Expires:



Faviola Luna
Signature of Notary Public

Notary Public, State of
FL

Faviola Luna
Printed, Typed or Stamped Name

Commission/Serial No. HH 408917

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: Ongoing Professional Services**

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, Michael Dickey, P.E., am an employee of Johnson Engineering, Inc., 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
8/19/24

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Johnson Engineering, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Fla. Stat., contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
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.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

10. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

11. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic Internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **JR Evans Engineering, PA** ("Consultant"), whose address is **9961 Interstate Commerce Drive, Suite 230, Fort Myers, FL 33913.**

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.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

1. PROJECT GUIDELINES AND CRITERIA: Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL: At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONSULTANT: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

101. Water Resource

Requires engineering expertise in planning, design, permitting, bidding, construction administration, long-term loan and grant funding programs in connection with water resources, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, and have training and experience in the area of water resources.

112. Development and Building Services

Requires engineering expertise with review of property development proposals and construction design plans. Must be familiar with local land development code and Florida Building Code, including plan reviews and inspection services for all professional disciplines. The firm must have the ability to provide Development order review and permit review services for all building disciplines with appropriately licensed inspectors and plans examiners according to Florida DBPR requirements.

115. Floodplain Management

The selected individual/firm will work with Town staff to provide expertise in Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The firm must employ at least one Certified Floodplain Manager.

118. Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience of reading blueprints and site plans and being able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of marine design.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: JR Evans Engineering, P.A. **Date:** August 19, 2024

Code: *See Below **Type of Work:** *See Below

List the personnel permanently employed by your firm and indicate the 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
Joshua R. Evans, P.E.	Naples	PE57436	27 (overall)	Water Resource, Surface Water Management, Hydrologic Restoration
Elizabeth Fountain, P.E., CFM Supervisor for this Contract	Alva	PE60077	23 (overall) 14 (Flood)	Water Resources, Water Management Systems, Floodplain Analysis & Mapping, Coastal Analysis
Zachary Taylor, P.E., CFM	Cape Coral	PE88605	10	Water Resource, Surface Water Management Systems, Civil Engineering Design & Permitting, Coastal Analysis
Jim vonRinteln, M.A., FPEM, CEM, CFM	Naples	N/A	37	Water Resource/Developmt./Building Services-National Flood Ins. Program (NFIP), CRS Consultant, Emergency Management
Christopher R. Mitchell, P.E.	Naples	PE56740	25	Civil Engineering Design & Permitting, Stormwater Systems, Water Distribution
Brandon Frey, P.E.	Fort Myers	PE86651	10	Civil Engineering, Utility Design and Permitting, Stormwater Systems, Water Distribution
Austin Wise, P.E.	Citrus Springs	PE99328	4	Coastal Engineering, Coastal Wave Analysis, Sediment Transport Analysis, Marine Engineering and Permitting, Coastal Environmental Permitting
Faleesha Fernandez, EI, CFM	Naples	N/A	7	Surface Water Management Systems, Civil Engineering Design & Permitting, Coastal Analysis, CCCL Permitting

* Code 101/Type: Water Resources
 Code 103/Type: Stormwater
 Code 104/Type: Water Distribution, Including Lift and Pump Station Design
 Code 111/Type: Civil Engineering
 Code 112/Type: Development and Building Services

*Code 115/Type: Floodplain Management,
 Code 118/Type: Marine Engineering
 Code 119/Type: Geographical Information System

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B



Hourly Rate Codes (effective 01/01/25):

These rates are subject to any increases which may take effect over the term of the contract.

Principal Engineer	\$295
Senior Coastal Engineer	\$265
Coastal Project Manager II	\$245
Coastal Project Manager I	\$220
Coastal Engineer II	\$190
Coastal Engineer	\$160
Senior Project Manager III	\$265
Senior Project Manager II	\$240
Senior Project Manager I	\$220
Project Manager II	\$205
Project Manager I	\$195
Hydrologic/Hydraulic Engineer	\$200
CRS/NFIP Consultant	\$165
Project Engineer IV	\$165
Project Engineer III	\$150
Project Engineer II	\$140
Project Engineer I	\$130
CAD Manager	\$190
Senior Designer III	\$170
Senior Designer II	\$155
Senior Designer I	\$140
Designer	\$125
GIS Specialist	\$145
Construction Inspector II	\$135
Construction Inspector I	\$110
Intern	\$80
Project Coordinator II	\$95
Project Coordinator I	\$85

Sub-Consultant and Reimbursable Expenses: Cost plus 20%

Expert Witness at 200% of Scheduled Rate

Survey Equipment Usage: \$200/day

Reproduction: Administrative Rate plus below cost:

24x36 B/W Print	\$1.50/sheet	24x36 Color Print	\$15/sheet
24x36 Color Aerial	\$35/sheet	8 1/2 x 11 B/W	-\$0.25/sheet
8 1/2 x 11 Color	-\$1.00/sheet	11 x 17 B/W	-\$1.25/sheet
11 x 17 Color	-\$2.50		

J.R. EVANS ENGINEERING

9961 INTERSTATE COMMERCE DRIVE, STE. 230 / FORT MYERS, FL 33913 / 239.405.9148 (p) / 239.288.2537 (f)
WWW.JREVANSENGINEERING.COM

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in the Agreement above.

(4) 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: Ongoing Professional Services

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: N/A

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 _____
(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 287.233(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.)

_____. Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, **FLORIDA STATUTES** FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced Identification _____

Notary Public – State of _____

(Type of Identification)

My Commission expires _____

(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: _____

(Signature) (Title) (Date)

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. 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: Ongoing Professional Services

I, the undersigned, _____, am an employee of _____, 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

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and JR Evans Engineering, PA, hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Fla. Stat., contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
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.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

10. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

11. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic Internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **K2M Design, Inc.** ("Consultant"), whose address is **1150 Virginia Street, Key West, FL 33040.**

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.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

1. PROJECT GUIDELINES AND CRITERIA: Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL: At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONTRACTOR: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

102. Architectural Design

Requires architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

107. Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in the planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design, or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

108. Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

120. Historical Restoration

Requires experience in historical restoration projects according to the Secretary of the Interior's Standards for Rehabilitation of Historical Structures.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: K2M Design, Inc.

Date: August 15, 2024

102,107,108,109,120

Code: Type of Work: Architectural/Engineering

List the personnel permanently employed by your firm and indicate the 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
Scott Maloney	Tampa, FL	AR93161	28	Principal, Architect of Record
Heather Carruthers	Key West, FL	N/A	43	Director, Principal in Charge
Devon Ayers	Key West, FL	AR100778	12	Senior Project Manager
Meghann Gregory	Morgantown, WV	N/A	17	Architect
Dan Raphael	Troy, MI	N/A	13	Mechanical / Fire Protection Engineer
Kirk Puterbaugh	Cleveland, OH	N/A	14	Electrical Engineer
Ken Kramer	Grapevine, TX	N/A	30	Plumbing Engineer
Eddie Blanco	Cape Coral, FL	PE99172	6	Structural Engineer
Alyssa Allen	Charlotte, NC	N/A	10	Interior Designer
Joe Moody	Venice, FL	N/A	39	Historic Restoration Specialist
Vaughan Miller	Cleveland, OH	N/A	33	Public Safety Specialist

Rusty Elferdink Estero, FL N/A 48 Construction Administration

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

2025 HOURLY RATES

The following is a listing of hourly rates assigned by staffing type for K2M Design®, Inc. and only applies for services authorized beyond our base fees. Hourly rates quoted are for the current calendar year and are subject to change thereafter.

GENERAL

Principal	\$365.00 / hour
Director	\$285.00 / hour
Senior Project Manager	\$210.00 / hour
Project Manager	\$170.00 / hour
Construction Administrator	\$150.00 / hour
Facility Assessor	\$150.00 / hour
Design Technology Specialist III	\$125.00 / hour
Design Technology Specialist II	\$105.00 / hour
Design Technology Specialist I	\$ 95.00 / hour
Administration	\$ 95.00 / hour
Clerical	\$ 65.00 / hour
Student Intern	\$ 65.00 / hour

ARCHITECTURE

Senior Architect	\$200.00 / hour
Architect III	\$175.00 / hour
Architect II	\$155.00 / hour
Architect I	\$140.00 / hour
Designer III	\$140.00 / hour
Designer II	\$120.00 / hour
Designer I	\$110.00 / hour

ENGINEERING

Senior Engineer	\$210.00 / hour
Engineer III	\$175.00 / hour
Engineer II	\$165.00 / hour
Engineer I	\$150.00 / hour
Engineering Designer III	\$140.00 / hour
Engineering Designer II	\$130.00 / hour
Engineering Designer I	\$120.00 / hour

INTERIOR DESIGN

Senior Interior Designer	\$150.00 / hour
Interior Designer III	\$135.00 / hour
Interior Designer II	\$120.00 / hour
Interior Designer I	\$100.00 / hour

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in the Agreement above.

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

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 City of Fort Myers Beach, Florida
(print name of public entity)
by Scott Maloney, President
(print individual's name and title)
for K2M Design, Inc.
(print name of entity submitting sworn statement)
whose business address is 1150 Virginia Street, Key West, FL 33040

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-1246327
(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 287.233(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.

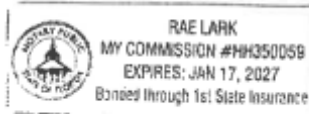
Scott Maloney
(Signature)

STATE OF FL

COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by Scott Maloney, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

My Commission Expires:



Rae Lark

Signature of Notary Public

Notary Public, State of
Florida

Rae Lark

Printed, Typed or Stamped Name

Commission/Serial No. HH350059

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: August 16, 2024

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:

K2M Design, Inc.

(Signature)

President

(Title)

August 16, 2024

(Date)

STATE OF

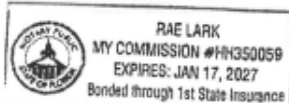
FL

COUNTY OF

Monroe

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by Scott Maloney, by means of (☒) physical presence or () online notarization, personally appeared before me and (☒) is personally known to me or () who has produced _____, as identification.

My Commission Expires:



Signature of Notary Public

Notary Public, State of
Florida

Rae Lark
Printed, Typed or Stamped Name

Commission/Serial No. HH350059

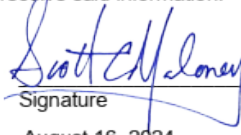
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, Scott Maloney, am an employee of K2M Design, Inc., 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
August 16, 2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and K2M Design, Inc., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Fla. Stat., contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
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.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

10. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

11. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic Internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:
Title:

APPROVED AS TO FORM

Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and **Radise International, L.C.** ("Consultant"), whose address is **4152 WEST BLUE HERON BOULEVARD, # 1114, RIVIERA BEACH, FL 33404.**

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.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

1. PROJECT GUIDELINES AND CRITERIA: Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL: At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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), 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
6231 ESTERO BLVD
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

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Additional Terms. Notwithstanding any of 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"
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment"
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance"
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)"
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria"
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate"
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles"
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit"
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws"
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality"
- (12) EXHIBIT "L" entitled "Town of Fort Myers Beach, Florida Standard contract Addendum"

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, 6231 Estero Blvd, 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:

(Consultant's Business Name)

(Street/ P.O. Box)

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
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

ATTEST:

By: _____
Name:
Title:

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

CONTRACTOR: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

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.

Type of Work

110. Geo-Technical Analysis

Requires engineering expertise in connection with Geo-Technical Analysis. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having demonstrated experience in the activities normally associated with this work. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: RADISE International, LC **Date:** 8/19/2024

Code: 110 **Type of Work:** Geo-Technical Analysis

List the personnel permanently employed by your firm and indicate the 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
Kumar A. Allady, P.E	Riviera Beach	52845	28	Principal Geotechnical Engineer
Panneer Shanmugam, P.E	Riviera Beach	57006	27	Quality Assurance - Geotechnical
Sastry Putcha, Ph.D., P.E.	Riviera Beach	39762	31	Quality Assurance - Geotechnical
Jamshid Sajadi, Ph.D, P.E	Riviera Beach	55756	37	Chief Geotechnical Engineer
Akash Bissoon, P.E.	Riviera Beach	74582	15	Senior Geotechnical Engineer
Hieu Huynh, P.E	Riviera Beach	60728	20	Senior Geotechnical Engineer
Nitesh Goli, EI, PMP	Riviera Beach		5	Geotechnical Project Engineer
Kristina H. McCoy, P.G	Riviera Beach	2718	20	Senior Geologist
Newton Brooks	Riviera Beach		28	CMT Lead - Field
Sasidhar Ayithi, P.E.	Riviera Beach	81655	20	CMT Lead - Laboratory

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

TOWN will compensate Consultant for services under each Task Authorization. The fee due to the Consultant shall be set forth in each Task Authorization and shall be in accordance with Consultant's personnel hourly rate schedule formalized in contained in ATTACHMENT NO. 1 to this Agreement. Consultant's personnel hourly rate schedule formalized in ATTACHMENT NO. 1 shall include all services, material, supplies and any other items or requirements necessary to complete the work as described herein, including but not limited to out-of-pocket expenses, such as, identifiable communication expenses, reproduction costs, postage, printing, copying, and long-distance telephone, etc.

CONSULTANT shall submit an invoice to the TOWN upon completion of the Scope of Service as defined by the Task Authorization. Each invoice shall be detailed and include, but not be limited to, hours worked by each person assigned to the Task Authorization, date worked, and all ancillary expenses incurred and by whom.

Payments shall be made in accordance with the Florida Local Government Prompt Payment Act. Payment for services rendered is due within thirty days of receipt and approval of invoice by Town.

ATTACHMENT NO. 1 TO EXHIBIT B

RADISE INTERNATIONAL LC					
2025 Standard Unit Rate Fee Schedule					
Geotechnical Engineering Services					
A	Geotechnical Field Explorations			Rates	Unit
1	Drilling Equipment Mobilization				
	1.1	Truck Mounted			
		1.1.1	0-50 Miles	\$546.25	Each
		1.1.2	51-100 Miles	\$569.25	Each
		1.1.3	100+Miles	TBN	Each
	1.2	Track Mounted			
		1.2.1	0-50 Miles	\$603.75	Each
		1.2.2	51-100 Miles	\$661.25	Each
		1.2.3	100+Miles	TBN	Each
	1.3	Support Vehicle		\$172.50	Day
	1.4	Tri-Pod		\$1150.00	Each
	1.5	Barge Mount		TBN	Each
	1.6	Amphibious		TBN	Each
	1.7	Maintenance of Traffic		TBN	Each
2	Field Drilling/Sampling/Coring				
	2.1	Auger Boring		\$13.80	LF
	2.2	Standard Penetration test Borings			
		2.2.1	Truck/Track Rig (0-50 Ft)	\$18.98	LF
		2.2.2	Truck/Track Rig (51-100 Ft)	\$20.70	LF
		2.2.3	Truck/Track Rig (101-150 Ft)	\$24.15	LF
		2.2.4	Truck/Track Rig (151-200 Ft)	\$31.05	LF
	2.3	Extra SPT Samples			
		2.3.1	Truck/Track Rig (0-50 Ft)	\$40.25	Each
		2.3.2	Truck/Track Rig (51-100 Ft)	\$46.00	Each
		2.3.3	Truck/Track Rig (101-150 Ft)	\$63.25	Each
		2.3.4	Truck/Track Rig (151-200 Ft)	\$92.00	Each
	2.4	Rock Coring (Less than 4 in ID)			
		2.4.1	Truck Rig (0-50 Ft)	\$57.50	LF
		2.4.2	Truck Rig (51-100 Ft)	\$69.00	LF
		2.4.3	Truck Rig (101-150 Ft)	\$86.25	LF
		2.4.4	Truck Rig (151-200 Ft)	\$109.25	LF
	2.5	Temporary Casing (Up to 4 in ID)			
		2.5.1	Truck/Track Rig (0-50 Ft)	\$10.35	LF
		2.5.2	Truck/Track Rig (51-100 Ft)	\$12.65	LF
		2.5.3	Truck/Track Rig (101-150 Ft)	\$16.10	LF
		2.5.4	Truck/Track Rig (151-200 Ft)	\$20.70	LF
	2.6	Undisturbed Sampling			
		2.6.1	Truck/Track Rig (0-50 Ft)	\$172.50	Each
		2.6.2	Truck/Track Rig (51-100 Ft)	\$230.00	Each
		2.6.3	Truck/Track Rig (101-150 Ft)	\$287.50	Each
		2.6.4	Truck/Track Rig (151-200 Ft)	\$345.00	Each
	2.7	Borehole Grouting			
		2.7.1	Truck/Track Rig (0-50 Ft)	\$6.90	LF
		2.7.2	Truck/Track Rig (51-100 Ft)	\$8.05	LF
		2.7.3	Truck/Track Rig (101-150 Ft)	\$10.35	LF
		2.7.4	Truck/Track Rig (151-200 Ft)	\$13.80	LF
	2.8	Permeability/Exfiltration/Infiltration Testing			
		2.8.1	Field Perm 0-10 Ft Open-End Borehole Method	\$460.00	Each

	2.8.2	Field Perm 10-25Ft Open-End Borehole Method	\$575.00	Each
	2.8.3	Double Ring Infiltration	\$632.50	Each
2.9	Monitor Well/Piezometer Installation & Testing (Non- Environmental)			
	2.9.1	Monitoring Well Piezometer 2in (0-50 Ft)	\$34.50	LF
	2.9.2	Well Development	\$172.50	Hour
	2.9.3	Concrete Pad & Cover for Monitoring Wells	\$345.00	Each
2.10	Miscellaneous Services			
	2.10.1	Dynamic Pile Testing/Pile Driving Analyzer	\$1,750.00	Day
	2.10.2	Dynamic Pile Testing/Embedded Data Collector Equipment (not	\$850.00	Day
	2.10.3	Mini Shaft Inspection	\$275.00	Hour
	2.10.4	Pile Integrity Testing	\$275.00	Hour
	2.10.5	Saximeter Testing	\$115.00	Hour
	2.10.6	Thermal Integrity Tester (TI)	\$350.00	Hour.
	2.10.7	Crosshole Sonic Logging (CSL)	\$2,000.00	Day
	2.10.1	Field Vane Shear Test ASTM D2573	\$258.75	Test
	2.10.2	Vibration Monitoring / Noise Monitoring (Equipment Only)	\$350.00	Day
B	Laboratory Testing Services			Rates Unit
1	Soil/Rock Testing			
	1.1	Chloride Soil or water FM-5-552	\$57.50	Test
	1.2	Consol-Addtl Incrmnts AASHTO T216 (up to 12 Loads)	\$632.50	Each
	1.3	Corrosion Series FM 5-550 through 5-553	\$201.25	Test
	1.4	Flexible Wall Permeability ASTM D5084	\$517.50	Test
	1.5	Hydrometer Only AASHTO T88	\$126.50	Test
	1.6	Limerock Bearing Ratio (LBR) FM 5-515	\$488.75	Test
	1.7	Liquid Limit AASHTO T89	\$86.25	Test
	1.8	Materials Finer than 200 Sieve FM 1-T011	\$1.75	Test
	1.9	Miniature Vane Shear Test ASTM D4648	\$28.75	Test
	1.10	Moisture Content Laboratory AASHTO T265	\$23.00	Test
	1.11	Moisture Content Microwave AASHTO D4643	\$23.00	Test
	1.12	Organic Content Ignition FM 1 T-267	\$55.20	Test
	1.13	Particle Size Anlys AASHTO T88 (Incl. Hydrometer)	\$195.50	Test
	1.14	Particle Size Anlys AASHTO T88 (No Hydrometer)	\$86.25	Test
	1.15	Permeability Constant Head AASHTO T215	\$345.00	Test
	1.16	pH Soil or Water FM 5-550	\$46.00	Test
	1.17	Plastic Limit & Plasticity Index AASHTO T90	\$97.75	Test
	1.18	Proctor Modified FM 1-T180	\$189.75	Test
	1.19	Proctor Standard AASHTO T99	\$189.75	Test
	1.20	Resistivity Soil or Water FM 5-551	\$57.50	Test
	1.21	Specific Gravity AASHTO T100	\$86.25	Test
	1.22	Spill Tensile Strgth of Rock Cores ASTM D3967	\$172.50	Test
	1.23	Sulfate Soil or Water FM 5-553	\$57.50	Test
	1.24	Triaxial Tests	\$632.50	Point
	1.25	Unconfined Compression - Rock ASTM D7012, Method C	\$161.00	Test
	1.26	Unconfined Compress- Soil AASHTO T208/ASTM D2166	\$207.00	Test
C	Engineering & Administrative Support Services			Rates Uunit
1	Engineering & Administartive Support Services			
	1.1	Principal Engineer	\$253.00	Hour
	1.2	Senior Project Engineer	\$212.75	Hour
	1.3	Project Engineer	\$172.50	Hour
	1.4	Staff Engineer	\$132.25	Hour
	1.5	Senior Engineering Technician	\$97.75	Hour
	1.6	Engineering Technician	\$86.25	Hour
	1.7	Draftsman	\$97.75	Hour
	1.8	Administrative Assistant	\$74.75	Hour

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

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.	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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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:

BY:

TITLE:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: Ongoing Professional Services

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:

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; (3) Comprehensive Automobile Liability; and (4) 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) 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:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in the Agreement above.

(4) 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: Ongoing Professional Services

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: N/A

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

I. Exhibit I - Public Entity Crimes 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 Panneer Shanmugam, P.E.; President
(print individual's name and title)

for RADISE International, LC
(print name of entity submitting sworn statement)

whose business address is 4152, W Blue Heron, Suite 1114, Riviera Beach
FL 33404

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0785837
(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 287.233(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.

(Signature)

STATE OF

Florida

COUNTY OF

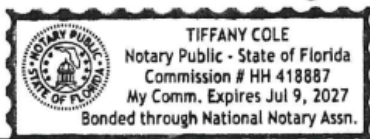
Palm Beach

The foregoing instrument was acknowledged before me this 16th day of August, 20 24, by Rameesh Shanmugam, by means of (☒) physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

July 9, 2027

Signature of Notary Public



Notary Public, State of

Florida

Tiffany Cole

Printed, Typed or Stamped Name

Commission/Serial No.

418887

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: 8/16, 2024

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.**

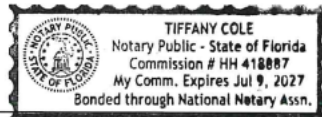
PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: RADISE International, LC
(Signature) [Signature] President (Title) (Date)

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 16th day of August, 2024, by Ramona Shanmugam, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____ as identification.

My Commission Expires:



July 9, 2027

[Signature] Signature of Notary Public

Notary Public, State of

Florida

Tiffany Cole
Printed, Typed or Stamped Name

Commission/Serial No. #418887

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: Ongoing Professional Services

EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD

I, the undersigned, Panneer Shanmugam, P.E., am an employee of RADISE International, LC, 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

8/16/2024

Date

EXHIBIT L
TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this _____ day of _____, 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Radise International, L.C., hereinafter referred to as “Contractor”, concerning that certain agreement dated the ____ day of _____, 2025 (“Agreement”).

RECITALS:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Section 287.0582, Fla. Stat., requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6), Fla. Stat., related to data management, and Section 287.05701, Fla. Stat., related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Fla. Stat., contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute; and

WHEREAS, pursuant to Section 252.505, Florida Statutes, each local government contract for goods or services related to emergency response for a natural emergency entered into, renewed, or amended on or after July 1, 2025, must include a provision that requires a vendor or service provider that breaches such contract during an emergency recovery period to pay a \$5,000 penalty and damages.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
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.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

10. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

11. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given

preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic Internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

17. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the Town of Fort Myers Beach for review or approval.

18. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. 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 addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

19. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Name:

Title:

APPROVED AS TO FORM

Town Attorney

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AUTHORIZING AND DIRECTING TOWN STAFF TO SUBMIT A FUNDING REQUEST TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ESTERO ISLAND SHORE PROTECTION PROJECT, INCLUSIVE OF BEACH MAINTENANCE, PHYSICAL MONITORING AND BIOLOGICAL MONITORING; AUTHORIZING THE USE OF TOWN FUNDS AT A LATER DATE TO MATCH FUNDING TO BE RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Beach and Dune System is the Town's most important economic resource. It provides recreational space for residents and tourists, and reduces storm impacts.

What the action accomplishes:

Enables the Town to conduct Physical and Biological Monitoring to satisfy FDEP permit annual monitoring conditions.

The LGFR application also requests funds to restore beach and dune areas (e.g. scour holes, beach access points, berms) within the permitted fill limits to address erosion caused by Hurricanes Helene and Milton.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

Funding for Florida's critically eroded beaches is managed by the Beach Management Funding Assistance Program. The program provides and manages grants to local governments for planning and implementing beach and inlet management projects on the Gulf of Mexico, Atlantic Ocean or Straits of Florida to protect upland structures and infrastructure, provide critical habitat for threatened and endangered species, provide recreational opportunities, and support local economies through tourism.

Recognizing the importance of the state's beaches, the Florida Legislature in 1986 adopted a posture of protecting and restoring the state's beaches through a comprehensive beach management planning program. The program evaluates beach erosion problems throughout the state seeking viable solutions. The program is authorized by Section 161.101, Florida Statutes, and rules of Chapter 62B-36, Florida Administrative Code.

Attachments:

1. NS Reso. 25-297; FDEP LGFR FY26-27
2. TFMB EI FY26-27_LGFR_Beach_Application
3. CEC POPC
4. TFMB EI Att 4-1 Location Map 20250725

Financial Impact:

At this time there is no financial burden to the Town ending approval of the grant and finding financial matches from TDC and FDEP.

6. **Alternative Action**

Do not authorize Town Staff to submit a funding Local Government Funding Request to the Florida Department of Environmental Protection, and do not authorize local matching funds for funding received from the FDEP.

7. **Management Recommendations:**

\

8. **Recommended Approval:**

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/22/2025
Approved - 9/24/2025
Approved - 10/2/2025
Approved - 10/3/2025
Approved - 10/3/2025
Final Approval - 10/3/2025

RESOLUTION NUMBER 25-297

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AUTHORIZING AND DIRECTING TOWN STAFF TO SUBMIT A FUNDING REQUEST TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ESTERO ISLAND SHORE PROTECTION PROJECT, INCLUSIVE OF BEACH MAINTENANCE, PHYSICAL MONITORING AND BIOLOGICAL MONITORING; AUTHORIZING THE USE OF TOWN FUNDS AT A LATER DATE TO MATCH FUNDING TO BE RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; 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, Estero Island’s coastal beach, which is among the Town of Fort Myers Beach (“Town”) most important ecological, economic, and recreational assets, is subject to erosion that results in detrimental impacts to nesting and wintering areas for wildlife species such as sea turtles and shorebirds; loss of outdoor recreational opportunities for the Town’s residents and visitors; and damage to and loss of public and private property; and

WHEREAS, beach erosion control and restoration projects are an effective tool for preventing and offsetting some of the negative impacts of beach erosion, including loss of habitat, loss of recreational opportunities, and endangerment of public and private property; and

WHEREAS, the Town Council finds that beach erosion control and restoration projects are in the public interest and in the best interest of the health, safety, and welfare of the residents, property owners and visitors of the Town 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.

Section 2. The Town Council expresses its support for the Estero Island Beach Nourishment and Hurricane Recovery Project (the “Project”), described in Exhibit “A”, a copy of which is attached hereto and made a part of this Resolution.

Section 3. To conserve sand resources and/or reduce Project costs the Town supports regionalization of the Project and work with Lee County to coordinate bidding and construction of the Project where possible.

Section 4. The Town authorizes Town staff to take all necessary actions to request and obtain funds from the Florida Department of Environmental Protection for the Project and will provide matching funds/local cost share for the Project and serve as local sponsor for the Project including matching funds from the Town Beach Restoration Reserves and Lee County Tourist Development Council.

Section 5. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of October 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of October 2025.



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
Beach Projects Application

PART I: GENERAL INFORMATION

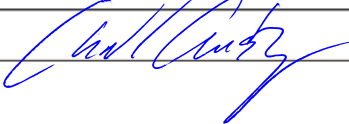
Local Sponsor	Town of Fort Myers Beach		
Federal ID Number (FEID)	65-0632342		
Primary Contact Name	Chadd Chustz	Title	Project Manager
Mailing Address Line 1	2525 Estero Blvd		
Mailing Address Line 2			
City	Fort Myers Beach	Zip Code	33931
		Telephone Number	(239) 765-0202
Email Address	Chadd@fmbgov.com		

Additional Contact Information

PART II: CERTIFICATION

I hereby certify that all information provided with this application is true and complete to the best of my knowledge.

Signature of Local Sponsor



Electronic or scanned signatures accepted.

Printed Name

Chadd Chustz

Date

July 29, 2025



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
Beach Projects Application

PART III: EVALUATION CRITERIA

1. Project Name: (as listed in the Strategic Beach Management Plan)

Estero Island Beach Nourishment Project

2. Project Description: Include county, location with reference to DEP range monuments, brief project history, and description of proposed activities.

The project is to periodically nourish approximately 5.45 miles of critically eroding gulf shoreline and offset impacts from Hurricane Ian along Estero Island in Lee County. The project includes sand placement in three different segments: North Fill Segment (Terminal Groin – R-182), which is contiguous with the Central Fill Segment (R-182 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R-207); utilizing offshore sand sources. Upland sand sources may also be used for hot-spot maintenance and post-storm recovery and to maintain and repair the dune and beach berm as needed. This permit also authorizes beach management activities consistent with the approved Dune Management Plan.

FDEP determined that 83.4% of the Project is eligible for state cost sharing in the North and Central Fill Segments (R175-400' to R198) and 100% of the Project is eligible for state cost sharing in the South Fill Segment (R203 to R207).



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
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3. Use of Requested Program Funds: Provide a brief description of tasks to be completed in each requested phase (Feasibility, Design, Construction, Monitoring, or USACE Multiphase). Indicate which tasks are cost reimbursement from previous fiscal years.

Physical and Biological Monitoring for Annual Monitoring.

Request funds to restore beach and dune areas within the permitted fill limits to address storm erosion from Hurricanes Helene and Milton.

4. Map: Provide as an attachment. The map(s) of the project area must be formatted at a minimum of 1" = 200' scale and include a compass rose and legend.

Map elements must include:

1. **Project boundary:** DEP reference monuments and shoreline designated as critically eroded
2. **Eligibility:** Indicate lengths of eligible shoreline based on criteria outlined in Chapter 62B-36.007, F.A.C.
 - a. Beach access locations: indicate primary or secondary access, and include the shoreline length, number and location of auto parking spaces, mass transit stops, bike parking spaces, and public restroom facilities within 1/4 mile walking distance of each access
 - b. Public lodging establishments: include the length fronting the project shoreline, and include the length of street-side frontage for lodging within 1/4 mile walking distance of a secondary beach access location
3. **Recreational benefits:** Comprehensive list of current land use designations of properties fronting the project shoreline
4. **Value of upland property:** Include one-quarter mile buffer and provide a comprehensive list of the values of properties (data from year 2024) that are enclosed or intersected by the buffer. The 2024 property value tax roll data and ArcGIS shapefiles can be obtained from the Department of Revenue website: https://floridarevenue.com/property/Pages/DataPortal_RequestAssessmentRollGISData.aspx. See Guidance Document for more information.

5. Project length: Total restored project length (in feet) of the critically eroded area (as listed in the Strategic Beach Management Plan).

28,790 feet



Beach Management Funding Assistance Program
Local Government Funding Request
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6. Eligibility: Required for all beach projects pursuant to Chapter 62B-36.007, F.A.C. Provide as a separate attachment, if needed.

- Location/Access Name: Use the official name of the park or road that is associated with the public access.
- DEP Reference Monument: Use the DEP monument that is closest to the main public access location.
- Type of Access: Indicate Primary or Secondary beach access in accordance with the definitions in Chapter 62B-36, F.A.C.
- Width of Access/Frontage: The length of the legal boundary (in feet) of the public access or lodging along the beach project shoreline. For public lodging establishments that do not front the beach, indicate the street-side length of the legal property boundary (in feet) that is used as the main access to the establishment.
- Number of Eligible Units: A unit is defined as one automobile parking space, one rental unit in a public lodging establishment, one mass transit stop, or four bicycle parking spots.
- Additional Width from Eligible Units: Total distance (feet) added to the Width of Access/Frontage. If there are multiple types of eligibility units used for this calculation, show the calculation separately for each.
- Total Eligible Shoreline: Sum of the Width of Access/Frontage and Additional Width from Eligible Units columns. Eligible shorelines cannot overlap.
- Website Link for DBPR License: Provide the link to the Department of Business and Professional Regulation (DBPR) website for proof of licensure for any public lodging establishments used for eligibility or the Recreational Benefits ranking criteria.

Location/ Access Name	DEP Reference Monument	Type of Access	Width of Access/ Frontage (ft)	Number of Eligible Units	Additional Width from Eligible Units (ft)	Total Eligible Shoreline (ft)	Website Link for DBPR License
Refer to Maps							
State Cost Share=41.7%	C174.5-R198						
State Cost Share=100%	R203-R207						



Beach Management Funding Assistance Program
Local Government Funding Request
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7. Schedule and Budget: Provide as a separate attachment, if needed. Clearly indicate project phase: Feasibility (F), Design (D), Construction (C), Monitoring (M), or USACE Multiphase (USACE). Include the year of post-construction monitoring in the description.

• **Cost Reimbursement:** Specify eligible costs incurred during the three years prior to the current application's fiscal year that are not in a current DEP agreement and have not been reimbursed (this includes fiscal years 23/24, 24/25, and 25/26). Eligible costs will be added to the current funding request.

• **Current and Future Costs:** Specify eligible costs for the current application's fiscal year that are not in a current DEP agreement and have not been reimbursed as well as the estimated costs for the next 4 years. Note: If Construction costs are requested in the current fiscal year, then the Year 1 Post-Construction Monitoring costs will be added to the current funding request.

Fiscal Year	Project Phase	Description	Federal Cost	State Cost	Local Cost	Total Cost
23/24						
23/24						
23/24						
24/25						
24/25						
24/25						
25/26						
25/26						
25/26						
26/27	Design	Hurricanes Helene/Milton Recovery	\$0	\$33,110	\$43,890	\$77,000
26/27	Construction	Hurricanes Helene/Milton Recovery	\$0	\$3,305,797	\$4,382,103	\$7,687,900
26/27	Monitoring	First Annual Bio & Physical Mon	\$0	\$79,550	\$105,450	\$185,000
27/28						
27/28	Monitoring	Second Annual Bio & Physical Mon	\$0	\$82,990	\$110,010	\$193,000
27/28						



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
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Fiscal Year	Project Phase	Description	Federal Cost	State Cost	Local Cost	Total Cost
28/29	Design	Hot Spot Maintenance	\$0	\$12,040	\$15,960	\$28,000
28/29	Construction	Hot Spot Maintenance	\$0	\$1,893,720	\$2,510,280	\$4,404,000
28/29	Monitoring	Third Annual Bio & Physical Mon	\$0	\$82,130	\$108,870	\$191,000
29/30						
29/30	Monitoring	Fourth Annual Bio & Physical Mon	\$0	\$42,570	\$56,430	\$99,000
29/30						
30/31	Design	Hot Spot Maintenance	\$0	\$12,900	\$17,100	\$30,000
30/31	Construction	Hot Spot Maintenance	\$0	\$2,010,680	\$2,665,320	\$4,676,000
30/31	Monitoring	Fifth Annual Bio & Physical Mon	\$0	\$44,290	\$58,710	\$103,000

8. Tourism-related impacts: Criteria is calculated by the Department using 2024 data. For reference, tax data can be obtained from the Department of Revenue website: <https://floridarevenue.com/DataPortal/Pages/TaxResearch.aspx> See Guidance Document for more information.

- ☒ Current funding request includes construction and year one post-construction monitoring
☐ Project is managed by two or more counties

Additional comments

9. Federal involvement: The documentation to verify authorization, federal cost share percentage, and status of funding award must be provided with the application materials for the award of points.

Is the project Federally authorized by the USACE?

No

Authorization Year:

Expiration Year:

Does this project have a signed USACE Chief's report or Civil Works Congressional authorization for the requested phase?

USACE federal cost share percentage for this project (excluding FCCE):



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
Beach Projects Application

Select all that apply for the requested project phase(s) and include documentation with application materials.

- ☐ Executed USACE project agreement
☐ Included in USACE work plan
☐ Approved FEMA Project Worksheet
☐ Included in Congressional Appropriations Act
☐ Other documentation:

10. Storm damage reduction benefits: Criteria is calculated by the Department.

What is the volume (cy) of advanced nourishment lost since the last sand placement event of a beach restoration or nourishment project as measured above the Mean High Water contour? Data should be consistent with the annual post-construction monitoring reports.

53,721 (North Segment Helene and Milton impacts)

For restoration projects, what is the historical erosion rate?

North=-12.6 (1/12-05/24); Central=+8.1 (3/10-5/24), South=-15.5 (3/10-5/24)ft/yr

11. Cost effectiveness: Criteria is calculated by the Department. A project design analysis and supporting documentation must be provided with the application materials for the award of points. See Guidance Document for more information.

What is the proposed sand placement volume (cy)?

110,848

What is the nourishment interval (years)?

10

Select all that apply for the current project funding request:

- ☒ Enhanced longevity: Propose structural or design components that could extend the beach nourishment interval
☒ Dune addition: Incorporate new or enhanced dune structures or new or existing dune restoration and revegetation projects
☐ Innovative technology: Propose innovative technologies designed to reduce project costs
☒ Regionalization: Two or more local sponsors manage projects together or projects propose regional sediment management strategies to conserve sand resources or reduce project costs

Additional comments for storm damage reduction benefits and cost effectiveness

Town of Fort Myers Beach has expanded the original 2011 Shore Protection Project to include the designated critically eroded shoreline along the ECL and/or Critical Wildlife Area (state owned land on Estero Island). Plantings will be installed upon completion of construction consistent with the Fort Myers Beach Dune Management Plan.

Beach Fill template was designed for the Central Segment to account for the USACE Maintenance Dredging of Matanzas Pass and placement of 130,000 CY of sand in nearshore disposal between R182 to R186.



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
Beach Projects Application

12. Previous state commitment

Has the Department previously reviewed, approved, and cost-shared on a feasibility or design phase for this project?

Has the current proposed project phase(s) received a partial state appropriation within 3 years of phase completion?

Additional comments

13. Accessible beach area: Criteria is calculated by the Department. Provide additional information for consideration.

Describe the landward and seaward edge of the accessible beach width

75ft wide design beach width plus advanced nourishment width (varies from 10ft to 110ft), plus equilibrium profile adjustment width of 60ft

Provide the project boundaries (R-monuments)

North Fill Segment (Terminal Groin- R-182), which is contiguous with the Central Fill Segment (R-182 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R- 207). Total length = 5.45 miles.

Provide citations of reference sources

Project Permits. CEC Design Report.

Total accessible beach area = 28,790 ft * 75 ft = 2,159,250 sq ft.

14. Recreational benefits: Provide the percentage of linear footage within the project boundaries which is zoned recreational or open space; for commercial use; or to allow for public lodging establishment, or the equivalent. Provide additional documentation and DBPR website link in a separate attachment, if needed.

100%, Beachfront Properties including parks, hotels, condos, and residential lots are Zoned Environmentally Critical which is a recreation and open space zoning classification; or are within the Little Estero Island Critical Wildlife Area. Refer to Attachment 4-3.

15. Mitigation of inlet effects: Criteria is calculated by the Department.

Additional comments

16. Successive unfunded requests

Is the current proposed project phase(s) a successive, unfunded request? If so, how many years of successive request(s) is the current application?

Does the successive request add the construction phase?



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
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17. Environmental habitat enhancement: Criteria is calculated by the Department. See Guidance Document for more information.

Is the project within a designated critical habitat area for threatened or endangered species that is subject to extensive shoreline armoring?

Yes

Is the project within a non-designated area where extensive shoreline armoring threatens the habitat of threatened or endangered species?

If yes to either of the above, does the project exceed best management practices to incorporate turtle-friendly designs and management strategies to protect resources or benefit critical habitat preservation?

Yes

Provide an explanation and supporting documentation for the strategies which exceed best management practices

Due to significant beach erosion properties at R-204 have installed seawall to protect upland property within the Critical Wildlife Area. Project proposes to restore and sustain beach habitat along designated critically eroded South Fill Segment. Further, design template was modified to lower the beach berm elevation to match habitat type and existing conditions within the Critical Wildlife Area. For example, berm elevation was lowered from +3.2 ft NAVD88 to +1.3 ft NAVD88 along the sub-segment between R205 to R207.

18. Readiness to construct

Does the project have an active state permit?

Yes

Does the project have an active federal permit?

Yes

Permit number

0413684-001-JC

Permit number

SAJ-2000-03017 (SP-SJF)

Authorization date

Jan 18, 2023

Authorization date

November 14, 2023

Expiration date

Jan 18, 2038

Expiration date

November 14, 2038

Have all necessary easements been acquired for the upcoming or proposed construction phase?

Yes

Has the necessary local funding been secured for the proposed project? If so, provide a copy of the draft Resolution. The signed Resolution is due by September 26, 2025.

Yes

Is an Erosion Control Line established along the project length?

Yes

Additional comments for readiness to construct

Construction of Central Segment is near complete. Construction of North and South Segments is complete. This application is for Hurricane Helene and Milton Recovery and monitoring.

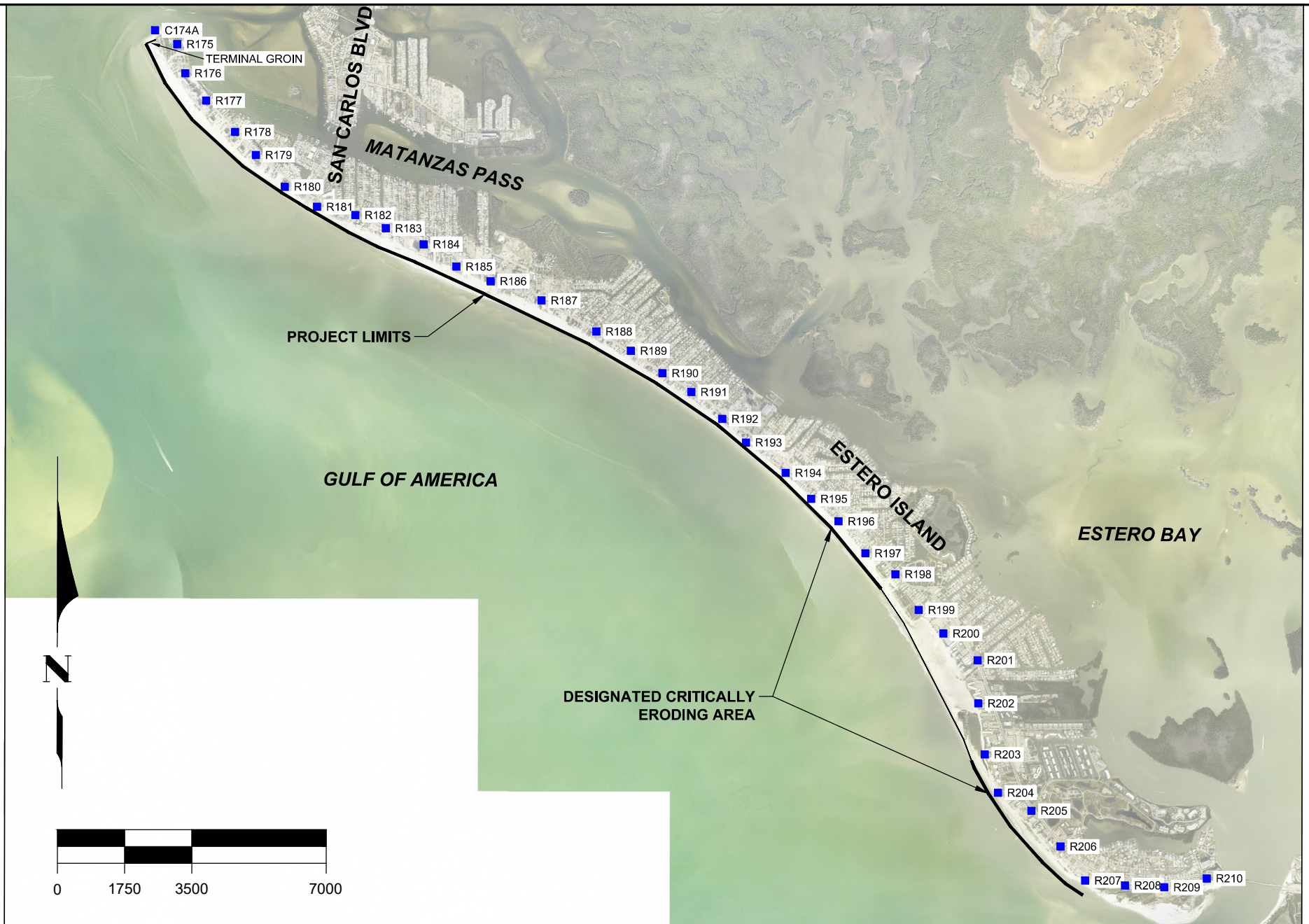


Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2026-2027
Beach Projects Application

Provide additional information and comments below or attach supporting documents.

**NORTH & CENTRAL ESTERO ISLAND BEACH REPAIRS
PRELIMINARY OPINION OF PROJECT COST
YEAR OF CONSTRUCTION: 2026**

Item	Description	Unit	Quantity	Unit Price	Extended Price	Subtotals
C-1	Mobilization/Demobilization	LS	1	\$170,000	\$170,000	
C-2	Construction Access/Staging	LS	1	\$75,000	\$75,000	
C-3	Maintenance of Traffic	LS	1	\$85,000	\$85,000	
C-4	Sand (Production)	Ton	126,353	\$14.00	\$1,768,942	
C-5	Sand (Delivery/Placement)	Ton	126,353	\$37.00	\$4,675,061	
					Const Subtotal	\$6,774,003
D-1	Storm Assessment/Design	LS	1	\$70,000	\$70,000	
D-2	Const Mgmt/Survey/Inspection	LS	1	\$185,000	\$185,000	
D-3	Environmental Monitoring	LS	1	\$30,000	\$30,000	\$285,000
					Subtotal	\$7,059,003
					10% Contingency	\$705,900
					Grand Total	\$7,764,903



SHEET 1
FILE NO.: 24504 FALM



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SURVEYING: LB 2464

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@cecifi.com

CLIENT:	FDEP
TITLE:	ESTERO ISLAND BEACH NOURISHMENT PROJECT FUNDING APPLICATION LOCATION MAP

DATE:	7/1/2025	SCALE:	AS NOTED				
DRAWN:	KMG	F.B.					
CHECKED:	MTP	PG.					
SEC.	TWP.	RNG.					
ACAD NO. 24504 Funding Application-Location Map.dwg							
REF. NO.	24.504	NO.	DATE	BY	REVISION DESCRIPTION		

1. **Request:**

Meeting Date: October 6, 2025

Request to hold a special event with alcohol on Sunday, October 19, 2025 on the beach adjacent to Crescent Beach Park

Why the action is necessary:

Per Ordinance 20-17

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Thomas Yozzo, Emergency
Services Director, Tracie Raski,
Magistrate Coordinator

5. **Background:**

The request is for a post-wedding celebration taking place on the beach adjacent to Crescent Beach Park on Sunday, October 19, 2025, from 11:00 a.m. to 5:00 p.m. Approximately 70 guests are expected to attend.

Guests will be transported from the Luminary Hotel in downtown Fort Myers by bus and dropped off at the Crescent Beach Park bus stop. Buses will then park off-site until pick-up.

Food and beverage service will be provided by licensed vendors. The Twisted Trotter will supply a full bar, bartender, and beverages. Catering will include sandwiches and assorted cold items served on platters.

Event planners are requesting the use of the beach area for the event, which would include umbrellas, lounge chairs, tables, a welcome wall, and lawn games.

Logistics:

- **Setup:** Beginning at 7:00 a.m. for an 11:00 a.m. event start.
- **Event Duration:** 11:00 a.m. – 5:00 p.m.
- **Cleanup:** 5:00 p.m. – 6:00 p.m.

Attachments:

1. 27933889-Beach Party Permit
2. 27933888-GL_ACORD_TownofFortMyersBeach_08_20_2025_P101171006-2958736687556
3. 27933886-Beach Party Layout
4. 27933885-Certificate (CG20 26)_PLF194992-F306306-6

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 10/2/2025
Approved - 10/2/2025
Approved - 10/3/2025
Final Approval - 10/3/2025



Town of Fort Myers Beach

Special Event Application Checklist

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

BQ A **completed** application is to be turned in 45 days **prior** to the event or a \$5.00 per day cost will be added to the permit cost. You need to submit application to FMB Fire and LSCO.

BQ All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.

BQ If Town Council action is required the **completed** application must be turned in 60 days prior to the event in order to get put on the Council agenda to be brought forth to Council, also any application turned in after the 60 days a 10% additional charge to the permit will be added.

BQ Detailed description of entire event including set up and breakdown

BQ Letters of permission if using someone else's property for event.

BQ Site plan – marked off with placement of objects (chairs, tables, tents, etc.)

BQ Parking Plan – if applicable

BQ Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder

BQ A copy of the 500 foot notification letter for any amplification along with the mailing list

You must initial & sign you have read and understand all requirements above.

Brianna Gates



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

Name of event Spacarelli Post-Wedding Beach Party

Attach separate sheet of paper with detailed description of event

Date(s) and times of event Sunday, October 19, 2026 | 7am-6pm (event time with guests is 11-5pm)

Address of event 1026 Estero Blvd Parking, Fort Myers Beach, FL 33931

Expected # of participants/attendees 70

Sponsoring Organization Faithful Weddings

Organization address 867 12th Street NE Naples, FL 34120

Contact Person/Phone# Brianna Gates (802) 342-1220

E-mail brianna@faithful-weddings.com

Amplified Music Y ☐ N ☒ 500 Ft Notifications _____ Copy of Letter _____

Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☒ N ☐

How many Spaces? 4 How many hours 12

Extension of Premises? Y ☐ N ☒ ABT Form _____ **How many days?** _____ (Over 3 days needs to go to Council)

Letters of Permission to use Property _____

Letters of Permission to use Parking _____ Parking Plan _____

Site Plan ☒ Insurance _____ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

Requires Council Approval:

Waiver of open container Y ☒ N ☐ Waiver of Town parking fees Y ☐ N ☐

Waiver of Noise Ordinance Y ☐ N ☐ Recurring Event Y ☐ N ☐

Applicant Signature

Brianna Gates

Printed Name

Brianna Gates

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: Faithful Weddings

No. of dumpsters: N/A Type of dumpsters: We will have trash cans

Who is responsible for clean-up and payment: _____

Faithful Weddings will handle all trash clean-up

City right-of-way Parking Use: N/A Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: _____

Approval: _____ Date: _____

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239)770-7502 Fax(850)412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ Date: _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ Date: _____

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name_____
Approval Signature_____
Date

prevention@fmbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPTTel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name_____
Approval Signature_____
Date



Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street · Fort Myers Beach, Florida 33931

Phone (239) 590-4210 • Email: prevention@FMBFirefl.gov

Special Events Application and Guidebook

Event Type:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: 8/18/2025		Date of Event: 10/19/2025
Location: 1026 Estero Blvd Parking, Fort Myers Beach, FL 33931		
Event Start Date/Time: 10/19/25 11:00am		Event End Date/Time: 10/19/25 5:00pm
Setup Date: 10/19/25	Setup Time: 7:00am	Inspection Time: 9:00am
Event Sponsor: Faithful Weddings		
Sponsor Contact: Brianna Gates	Sponsor Phone #: 802-342-1220	Sponsor Email: brianna@faithful-weddings.com
Anticipated Number of Attendees: 70	Anticipated Number of Event Workers: 4	
Will there be carnival or mechanical rides: No	Number of Stages: N/A	
Total Number of Vendors: 1	Total Number of Hot Food Vendors: N/A	
Number of Tents larger than 20 x 20: N/A	Number of 10 x 10 Tents: N/A	

Every vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact information for the responsible party below.

Please Note: If the event sponsor elects not to pay the vendor's inspection fee, a list of vendors, with full contact information, must be provided to the Fort Myers Beach Fire District. This information shall include contact name, number, and e-mail. All inspection fees will be due at time of service, and must be paid prior to release of any approvals.

Event applications submitted less than thirty (30) days prior to the event will be subject to additional fees. An expedited review may be requested and will be based upon availability, additional fees will apply.

Applications shall include the following:

1. A legible site plan to include proposed layout of the event; fire hydrant locations; fire/emergency access; and distances to any structures.
2. A life safety evaluation may be required based on the size of the event in accordance with the fire code.
3. All vendors should review FMBFD guidelines, on our website at www.FMBFirefl.gov
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

Brianna Gates	<i>Brianna Gates</i>
Submitting Party Name (Print)	Submitting Party Name (Sign)
Date: 8/18/2025	

OUTDOOR FESTIVAL and SPECIAL EVENT GUIDEBOOK

The purpose of this guidebook is to establish responsibilities for event promoters, sponsors, and vendors.

Event Sponsor: The Event Sponsor assumes overall responsibility for overseeing the setup and activities of the event, and ensures compliance with all applicable fire and life safety codes.

The Event Sponsor shall:

1. Ensure completion and approval of all required permits from the Fort Myers Beach Fire District, Town of Fort Myers Beach and/or Lee County.
2. Provide a site plan to the FMBFD with the following information:
 - a. Name of all streets and areas that are included in the event.
 - b. Location(s) of fire lanes (minimum 20 feet) width.
 - c. Location of all stages, non-food booth vendors, food vendors, and all displays. Provide details for cooking operations and displays that use heat-producing appliances.
 - d. Identify all emergency exits.
 - e. Identify any fire hydrants that are in the vicinity of the event.
 - f. A list of all food vendors with the type of food and cooking method is required.
 - g. Event Sponsor is responsible for distributing a copy of the Fire District's requirements to the hot food vendors.
 - h. Event radios (if used) shall be provided with a list of assigned channels.
 - i. **PARADE FLOATS:** Refer to float inspection/checklist provided on page 6 of this document.

Event Vendors: Event Vendors are responsible for the safe operation of their booth, display and/or attraction. All vendors shall coordinate with the Event Sponsor on the event setup, take down times, and ensure their setup complies with the following:

1. Fire lanes, fire department connections, and building access is clear and unobstructed.
2. Be prepared, at any time, for a fire inspection and correct any cited deficiencies prior to event start time.
3. Shall ensure all fire and life safety code requirements are maintained for the duration of the event.

Fire Department Special Event Staff: FMBFD staff will conduct an inspection on the special event prior to the scheduled start day and time. If required, correction notices shall be issued and a follow-up inspection will be required prior to opening. Fire inspections will include, but is not limited to, the following:

1. Hot food vendors – cooking operations, setup, extinguishing systems, fire extinguishers.
2. Fire Department Access – minimum 20 foot width; vertical clearance of 13.5 foot.
3. Access to fire hydrants, fire department connections, fire alarm panels, and command centers.
4. Event egress – accessible exits, required signage.
5. Rides and displays – inspect for safety and proper state certification tags.
6. Generators and propane tanks – location of fuel, stable base provided.
7. Stages – location of stage setup, extension cords used, fire extinguisher provided.
8. Non-Food vendors – setup, required fire extinguisher provided operations.
9. Beer and wine gardens – setup, exits marked, required fire extinguisher provided.
10. Pyrotechnic displays and open flame effects. **REQUIRES SEPARATE PERMIT** – Refer to permit application/checklist provided on page 8 of this document.

Pyrotechnic Displays and Open Flame Effects: Pyrotechnic displays require a separate permit from the FMBFD. Refer to permit application and checklist provided on page 7 of this document. The FMBFD shall review all open flame and theatrical flame effects. Open flame effects shall include, but are not limited to the following:

1. Fire dancing
2. Stage props and effects
3. Fire eating
4. Magic acts

Access for Fire Apparatus: During large events, it is important to maintain access points for apparatus. This includes not only fire trucks for suppression, but also other emergency vehicles including medical units. To ensure a safe event, all fire access requirements shall be enforced at all times.

Access through the event shall include the following:

1. A designated fire lane, no less than 20 feet wide with a vertical clearance of no less than 13.5 feet.
2. Access roads that exceed 150 feet with no exit, shall be provided with a means to turn around. A FMBFD representative shall approve all turning radiuses.
3. Any designated fire accesses shall be clearly identified with signage indicating “Fire Access – No Parking”.

Access to Structures: Access to structures and walkways shall be provided as required by FMBFD. Identified access points shall be reviewed at the time of permit submittal and may vary depending on the building and the venue. Access to the following shall be required:

1. All exterior doors and openings
2. Fire control rooms
3. Fire pump rooms
4. Parking structures
5. Exterior utility distribution vaults

Access to Water Supplies: Event Sponsors, Vendors, and all other event staff shall be required to maintain a 15-foot clearance around all fire hydrants and other water supply connections. If a setup is found to be blocking access to water supplies the set-up shall be immediately relocated. Access to the following shall be maintained at all times:

1. Fire Hydrants
2. Fire Department Connections
3. Post indicator valves – fire backflows – OS&Y valves

Event Egress: This section shall apply to two (2) types of events:

1. Fenced events – commonly located in parks or other large open areas.
2. Blocked streets – commonly done at events where main streets and cross streets are closed.

Fenced Events: These events typically take place in a park or other large open area where the designated area for the event is closed off by temporary fencing.

1. The number of exits shall be in addition to what is defined as the main entrance of the event. Three (3) exits shall be provided when the site accommodates 1,000 to 3,000 attendees and four (4) exits shall be provided when the site accommodates more than 3,000 attendees.
2. Exits shall be spaced equally along the perimeter of the fence. The maximum travel distance between exits shall not exceed 400 feet of travel. Additional exits shall be added, if needed.
3. The width of exits on temporary fencing shall be no less than 48 inches or approximately one (1) panel width.
 - A. A member of security shall staff every exit. The security provider shall be able to provide a gate assignment roster upon request.
4. Emergency exits shall be marked by one (1) of the following:
 - A. Exit signs shall have a white background with contrasting red letters.
 - B. Exit signs shall measure, at a minimum, 18 inches x 24 inches.
 - C. Sign letters shall measure 12 inches in height.
 - D. Signs shall be placed at the top center of exit panels.

Blocked Streets: Some events will require that main or cross streets be blocked from vehicular traffic. These types of closures shall account for fire and emergency vehicles and public egress.

1. Exits shall be located at each end of any street closure. Cross streets shall also have emergency exit access.
2. A fire lane, no less than 20 feet wide and no less than 13.5 feet high, shall be maintained as designed by FMBFD.

TENTS, CANOPIES and TEMPORARY MEMBRANE STRUCTURES

Tents and canopies used for occupancy and/or cooking operations are subject to a fire inspection.

Sources of Ignition: Smoking is prohibited in or around tents, canopies, and temporary membrane structures. “No Smoking” signs shall be clearly posted. Fireworks, open flames, and any other device that is capable of igniting combustible materials shall not be used in any area in or around tents, canopies, and temporary membrane structures as well as around any combustible material. **Propane heaters are not permitted inside any enclosed area.**

Applications for any tent, canopy, or temporary membrane structure shall include the following:

1. A site plan with the proposed location of the tent including measurements showing distances to surrounding buildings, and/or property lines. A minimum 20-foot separation and fire access is required.
2. Proposed floor plan of the tent, showing the location and number of exits, fire extinguishers, stages, seating arrangements, tables and, any other items.
3. Certificates of flame retardant shall be submitted with the application and should be the manufacturers’ documentation attesting to the certification.
4. Any cooking and/or open flames.
5. Heaters and ventilation.
6. Items specific to the event should be included for review.

FMBFD MAY REQUEST APPLICANTS TO SUBMIT A LIFE SAFETY EVALUATION ALONG WITH A SPECIAL EVENT APPLICATION. Life Safety Evaluation:

1. Name of event, participants, and projected number of attendees.
2. Access and egress movement, including crowd density problems.
3. Medical emergency mitigation plan.
4. Fire hazards.
5. Permanent and temporary structural systems.
6. Severe weather mitigation plan.
7. Civil or other disturbances mitigation plan.
8. Mitigation plan for a hazardous material incident within or near the facility.
9. Relationships among facility management, event participants, emergency response agencies, and others that have a role in the events taking place in the facility.
- 10.

Please ensure that all items are addressed, any missing and/or incomplete evaluations will result in a delay and/or denial of the submitted application.

TENT INSPECTION CHECKLIST

☐	Fire extinguishers shall be provided by each vendor with a current state inspection tag from a licensed contractor. (Minimum size permitted is 2A:10BC). Operations conducting deep-frying shall have a K Class fire extinguisher with a current state inspection tag.
☐	Propane tanks shall be installed not less than 5 feet from tents, properly secured, and identified.
☐	“No Smoking” signs shall be clearly posted.
☐	Tents larger than 10x10 shall have the manufacturer’s flame retardant tag affixed and visible.
☐	Cooking under tents will be permitted <u>ONLY</u> when a manufacturer’s flame retardant tag is affixed to the tent, the tent is not enclosed (on any side), and only persons preparing food are permitted under the tent. Any size tent that fails to have the affixed flame retardant tag may not be used to cook under.
☐	Heavy duty <u>grounded type only</u> extension cords may be used. Wiring shall not be frayed, damaged, or spliced.
☐	Temporary lights or lamps may be used, but must be UL Listed. Wiring shall not be frayed, damaged, or spliced.
☐	Exit signs and/or emergency lights (if required) must be clearly visible.
☐	Occupant load sign (if required) must be clearly visible.
☐	Tents shall not obstruct any fire department access.

Please be advised that FMBFD inspects tents for the safety of all parties involved. These are minimum safety requirements and all parties must be in compliance.

HOT FOOD VENDOR REQUIREMENTS

The use of food booths or food trucks is regulated by FMBFD. These requirements shall apply to single vendors, freestanding booths, and food trucks. Cooking within tents containing seating is subject to additional requirements. All food vendors are subject to inspection prior to the start of the event. ***Failure to comply with the following regulations may result in closure until compliance is met.***

Flame Retardant Requirements: All sidewalls, drops, and tops of tents and canopies, shall be of flame resistant material or treated with a flame retardant application as recommended by the manufacturer.

Portable Fire Extinguishers: Each food booth shall have, at a minimum, one (1) – 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. If there will be any deep fat frying or cooking that produces grease-laden vapors, a Class K fire extinguisher with a current state inspection tag from a licensed contractor, shall be provided in addition to the ABC type.

Vendor Location: Food booths shall have a clearance of at least 20 feet on two (2) sides. The booth shall not be located within 10 feet of any rides or devices. Cooking that produces sparks and/or grease-laden vapors shall not be conducted within 10 feet of a structure or combustible overhang.

Cooking Appliances: Any cooking appliance used shall be listed for its intended use.

1. Deep fat fryers are not permitted to be used under tents and shall be located at least 18 inches from the outside wall of the tent. If a fryer is to be used in conjunction with a Barbeque (BBQ), it shall be at least three (3) feet away from the BBQ. Use of fryers also requires a Class K fire extinguisher as outlined above.
2. BBQ's are not permitted to be used in food booths. In addition, any fuels are to be kept at least 10 feet away from any heat source. BBQ's that are in use shall be located at least 10 feet from a structure, combustible materials, and overhangs. BBQ's and other open flame devices located outside of a structure, shall be secured from falling and kept away from contact by the public.

Smoking: Smoking is prohibited at all times within food booths, or within 25 feet of any fuel source.

Generators: Generators shall be located a minimum of 20 feet from tents or canopies and isolated from the public by a means approved by the FMBFD.

1. Flammable liquid filled equipment shall not be used within temporary membrane structures, tents, or canopies.
2. Flammable and combustible liquids shall be stored outside and in approved/marked containers. Containers shall be located no less than 50 feet from temporary membrane structures, tents, or canopies.
3. Refueling shall be performed in an approved location not less than 20 feet from temporary membrane structures, tents, or canopies. **Refueling of hot generators is not permitted.**
4. A 2A:10BC fire extinguisher with a current state inspection tag is required for any operation with a generator.

Fuel: Fuel tanks (LPG) shall be stored outside of the structure. The tanks shall be secured (to prevent tipping) and located away from any public contact. The size of the tank is restricted to 25 pounds, unless prior approval is received from the FMBFD. Propane tanks, fittings, and hoses will be checked to ensure there are no leaks.

FLOAT INSPECTION CHECKLIST

It is recommended that owners and/or operators be advised of their compliance with these regulations.

☐	Exhaust pipes on vehicles shall not come in contact with anything flammable on floats.
☐	Exhaust pipes shall be kept clear allowing for proper ventilation of fumes and preventing a carbon monoxide hazard.
☐	All dried vegetation, or similar items being used shall be fire resistant or treated with fire retardant materials. Documentation shall be forwarded to FMBFD for review.
☐	No smoking is permitted on or around any floats.
☐	No re-fueling of generator while generator is running or hot.
☐	All generators shall be secured and provided with a shut-off switch that is easily visible and accessible.
☐	Gasoline containers shall be UL listed type safety cans.
☐	All pull behind trailers and floats shall be equipped with a 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. The fire extinguisher shall be mounted so that it is visible and easily accessible.
☐	All seating shall be properly secured to float.
☐	Trailer hitches shall be secured in the locked position by a tie strap or bolt.
☐	Trailers must have safety chains attached to tow vehicle.
☐	All extension cords shall be listed and approved for outdoor use.

Please remember that this list is subject to change and additional fire and life safety requirements may be required.

PYROTECHNICS PERMIT APPLICATION

Please be advised that application must be filed at least 30 days prior to the scheduled event. All permit fees must be paid prior to approval. Permits are non-transferable.

Date of Application: _____

Sponsoring Organization: _____

Phone/Emergency Contact Number: _____

Applicant/Company Name: _____

Phone/Emergency Contact Number: _____

Name and Address of technician: _____

Name(s) of assistants: _____

A copy of the technician's driver's license must be included along with a resume and three (3) references. Please include a copy of all assistants' drivers' licenses indicating they are a minimum of 18 years of age.

Date, Time and expected length of show: _____

Location of Display: _____

(Attach aerial site map showing required fall out and safety zones)

DISCHARGE DETAILS: Displays are only permitted to be electronically fired. Please provide detail on quantity, size, type, number of bursts (single/multiple) as well as a description of the display in the space below:

QTY	Size	Type	# of burst	Description of Display

The following documents/information must be submitted along with completed application:

1. Event Itinerary
2. Security/Fire Watch Agreement (if required)
3. Coast Guard Application and Approval Letter (if required)
4. FAA Application and Approval Letter (if required)
5. Aerial Site Plan indicating minimum setbacks/required radius, per NFPA Standard

Notification shall be given prior to the Life Safety Division arriving at the site with transport vehicle. Final approval is subject to an onsite inspection. The FMBFD reserves the right to deny or revoke any permit for unsafe conditions, acts, or non-compliance with provisions of applicable standards. Shows may be cancelled or delayed based on changes in weather or other conditions as deemed necessary by the onsite Life Safety Division representative.

ORDINANCE NO. 20-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES ENTITLED "SPECIAL EVENTS"; AND AMENDING PROVISIONS OF CHAPTERS 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PERTAINING TO SPECIAL EVENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach 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 Council desires to update the Chapters of the Town of Fort Myers Beach Code of Ordinances and Fort Myers Beach Land Development Code regulating special events to clarify, improve, simplify, and create consistency among sections of the Code of Ordinances and Land Development Code; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by the proper regulation of special events and temporary uses; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 19, 2021 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. Chapter 22 of the Town of Fort Myers Beach Code of Ordinances entitled “Special Events” is hereby amended to read as follows:

Chapter 22 - Special Events

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights of way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business~~ An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) ~~Any garage sale conducted in compliance with the requirements of this chapter.~~

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ may conduct ~~or advertise~~ a special event unless a permit has been obtained from the town.

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff, then this exemption will not apply.

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;

- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

⁰
Sec. 22-67. - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- (3) ~~For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (4) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ may need to obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (5) The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;

c. Recurring special events (see section 22-76);

d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);

e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request (~~see subsection (6)g~~) of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;

f. Special events for which a waiver of ~~parking or other town~~ fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and

g. Special events for which a waiver of the ~~Fort Myers Beach Noise Ordinance~~ noise regulations is requested.

h. Special events, which require the closure of streets or sidewalks.

(6) Special events that occur on or near the beach or dune.

a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases, this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.

1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75 of the Fort Myers Beach Code of Ordinances.

2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied.

4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

i. During the sea turtle season (May 1 through October 31), special

event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the

individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 22-78. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-89. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

(11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

~~(154) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(175) The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.~~

Sec. 22-~~910~~. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-~~89~~ and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

Sec. 22-~~10~~11. - Grounds for denial.

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a

special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

Sec. 22-~~11~~12. - Notification of denial and right of appeal.

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

Sec. 22-~~12~~13. - Litter.

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

Sec. 22-~~13~~14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. 22-~~14~~15. - Indemnification and liability insurance.

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

~~Sec. 22-15. - Signage.~~

~~(a) All signage relating to special events must comply with LDC chapter 30.~~

~~(b) Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~

~~(e) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 6-366. - Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter

the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.

b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events permit held on the beach, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22 of the Code.

c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 14-11. Special events on the beach.~~

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

~~(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~

~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~

~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:~~

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68 E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922 4330.~~

~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~

~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-2. - Definitions

Garage sale or yard sale mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. ~~Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.~~ See *Residential accessory use*.

Use, temporary means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

Sec. 34-2441. Special events defined.

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. See. 34-2442. Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3041. - Generally.

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-3050 this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

~~(4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.~~

(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~
If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~*Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant. Signs. A sign permit may be required for any proposed signs.~~

(h) ~~*Damage to public right of way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right of way as a result of the event. In lieu of. Any proposed use, which exceeds the criteria or regulations of this code subdivision, may apply for a Special Event permit.~~

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.~~

(a) ~~Location of amusement devices and other structures. Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

(b) ~~Off-street parking. Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

(c) ~~Hours of operation. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

(d) ~~Special event permit. In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~Sec. 34-3043. Christmas tree sales.~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) ~~No parking lot required for another use shall be used for display of trees; and~~

(2) ~~Temporary off street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

(b) ~~The maximum length of time for display and open lot sales shall be 45 days.~~

~~Sec. 34-3044. Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045. Alcoholic beverages.~~

~~Temporary one day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046. Temporary use of mobile home.~~

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) Rehabilitation or construction of damaged business or commercial uses following disaster.~~
N/A0

~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(e) Conditions for use:~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047. Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company.~~

~~Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048. Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Sec. 34-3055. Special events.~~

~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~

~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 11. 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 12. This ordinance shall become effective upon adoption by the Town Council.

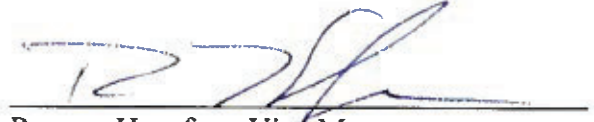
Faithful Weddings

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Allers, and upon being put to a roll call vote, the result was as follows:

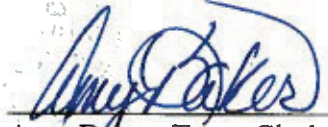
Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

ADOPTED this 19th day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

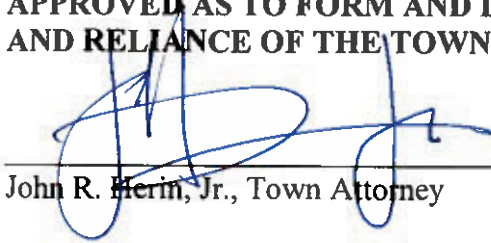
TOWN OF FORT MYERS BEACH


Rexann Hosafros, Vice 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:


John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21 day of January, 2021.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/20/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	CONTACT NAME: PHONE (A/C. No. Ext): (888) 202-3007 E-MAIL ADDRESS: contact@hiscox.com FAX (A/C. No): INSURER(S) AFFORDING COVERAGE INSURER A: Hiscox Insurance Company Inc INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 10200
INSURED Faithful Weddings, LLC 867 12th St NE Naples, FL 34120		

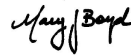
COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY 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 INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

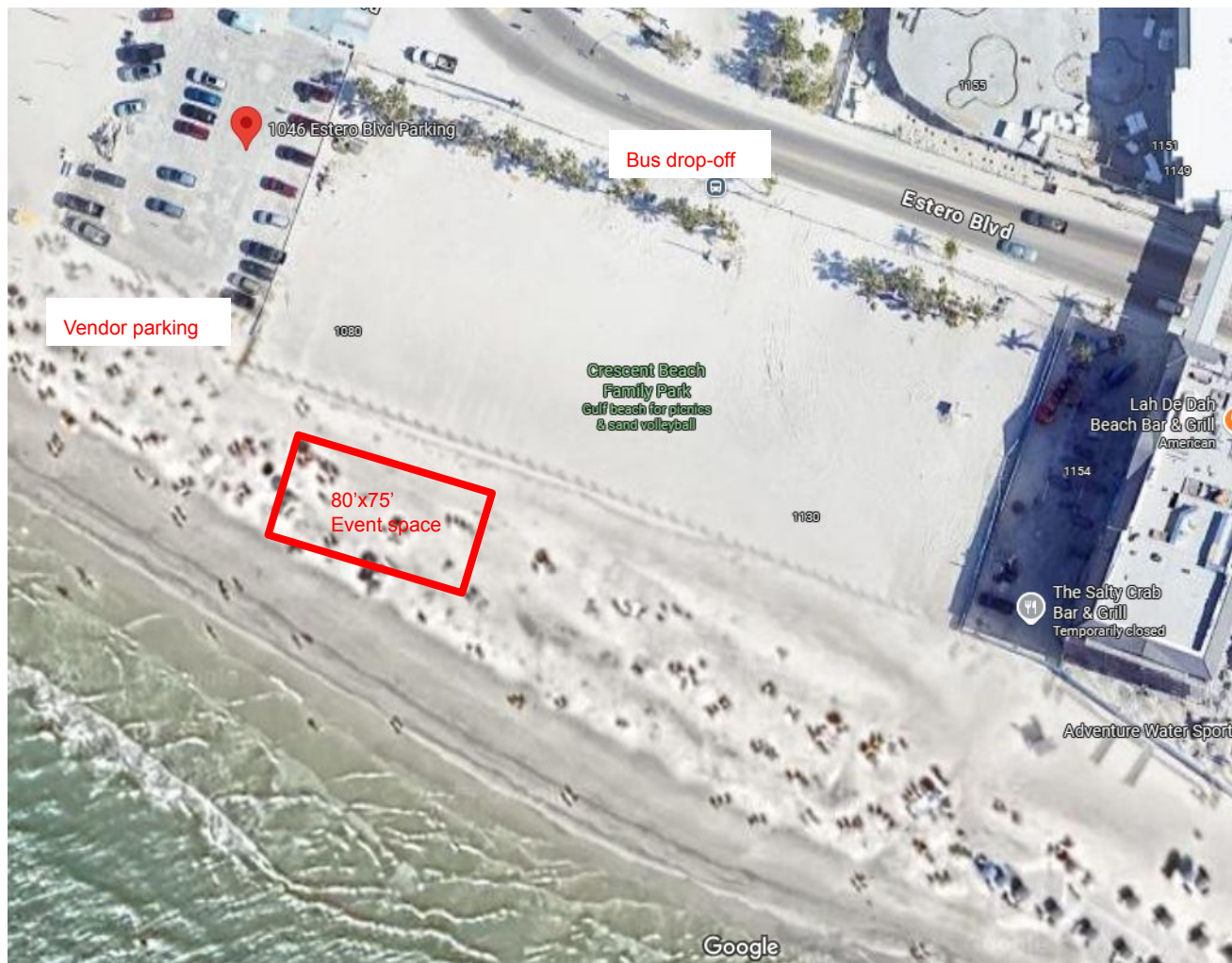
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		Y	P101.171.006.4	05/01/2025	05/01/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐ N / A					PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach 2525 Estero Boulevard Fort Myers Beach, Florida 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Details:

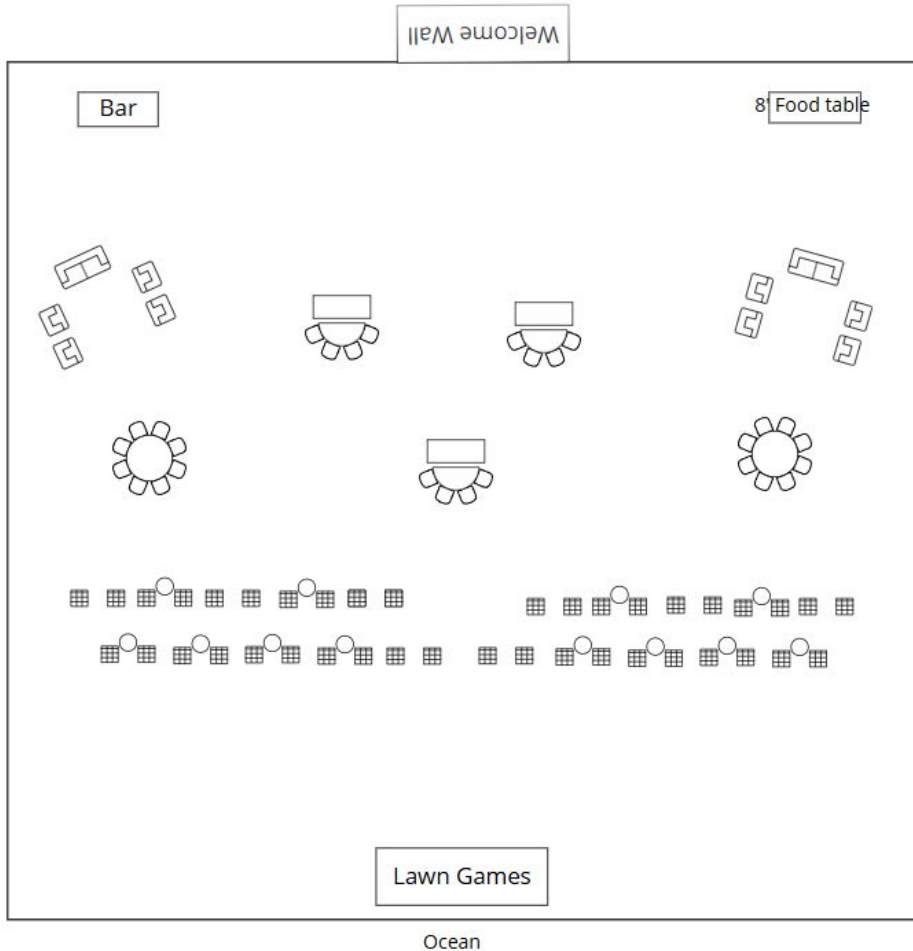
This is a post-wedding beach party. The gathering will take place from 11-5pm with about 70 people expected. Guests will be transported from Luminary Hotel in downtown FM via buses, dropped off at location, and then buses will park off-site until pick up. A bar, bartender and drinks provided by licensed company, The Twisted Trotter and food will be catered in on platters (sandwiches, cold items- no cooking on-site)

The client is providing beach chairs and umbrellas. Also decor and towels, sunglasses, hats.

A rental vendor will provide lounge seating, tables and chairs.

Just a small speaker will be playing music, nothing largely amplified.

Faithful Weddings, a wedding planner will oversee all vendor setup and breakdown. Page 1124 of 1458



- 12 Umbrellas + 40 Chairs
- Lounge furniture
- Tables + chairs
- Twisted Trotter bartender for beverages
- Sandwich platters delivered
- Welcome wall with towels + decor



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/20/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Veracity Insurance Solutions, LLC. 260 South 2500 West, Suite 303 Pleasant Grove UT 84062	CONTACT NAME: FLIP Program Support PHONE (A/C, No, Ext): (844)-520-6992 FAX (A/C, No): E-MAIL ADDRESS: info@flipprogram.com																					
INSURED The Twisted Trotter, LLC, DBA The Twisted Trotter Mobile Bar Co. 12447 Country Day Cir Fort Myers FL 33913	<table border="1"><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Great American Alliance Insurance Co.</td><td>26832</td></tr><tr><td>INSURER B:</td><td></td><td></td></tr><tr><td>INSURER C:</td><td></td><td></td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Great American Alliance Insurance Co.	26832	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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INSURER F:																						

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC	☒	PLF194992-F306306	05/15/2025	05/15/2026	EACH OCCURRENCE \$ 1,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000				
		MED EXP (Any one person) \$ 5,000				
		PERSONAL & ADV INJURY \$ 1,000,000				
		GENERAL AGGREGATE \$ 2,000,000				
	PRODUCTS - COMP/OP AGG \$ 2,000,000					
	ANIMAL BAILEE \$					COMBINED SINGLE LIMIT (Ea accident) \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	☐				BODILY INJURY (Per person) \$
		☐				BODILY INJURY (Per accident) \$
		☐				PROPERTY DAMAGE (Per accident) \$
		☐				\$
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED RETENTION \$	☐				EACH OCCURRENCE \$
		☐				AGGREGATE \$
		☐				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐ N / A ☐				WC STATUTORY LIMITS OTH-ER
						E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder had been added as additional insured regarding the above mentioned policy per attached
Additional Insured - Designated Person or Organization (CG 20 26 Ed. 04 13)

CERTIFICATE HOLDER

CANCELLATION

The Town of Fort Myers Beach The Town of Fort Myers Beach Fort Myers Beach, FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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ACORD 25 (2014/01)
INS025 (201401)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Schedule

Name of Additional Insured Person(s) or Organization(s):

The Town of Fort Myers Beach

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. SECTION II - WHO IS AN INSURED is amended to include as an Additional Insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. in the performance of your ongoing operations; or
2. in connection with your premises owned by or rented to you.

However:

1. the insurance afforded to such additional insured only applies to the extent permitted by law; and
2. if coverage provided to the Additional Insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these Additional Insureds, the following is added to SECTION III – LIMITS OF INSURANCE:

If coverage provided to the Additional Insured is required by a contract or agreement, the most we will pay on behalf of the Additional Insured is the amount of insurance:

1. required by the contract or agreement; or
2. available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

1. **Request:**

Meeting Date: October 6, 2025

Reject and cancel the RFQ-25-10-AD qualification proposal for the Fort Myers Beach Engineering & Architectural Services Bay Oaks Community Pool Rehabilitation Project with cause, due to lack of adequate competition as provided in the Request for Qualifications and Sections 2-480(i)(12) and 2-480(h)(5)(e) of the Town Code, and provide direction to staff to re-bid the project.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director, Frankie
Kropacek, Community
Development Director

5. **Background:**

The above-mentioned RFQ-25-10-AD solicitation was bid out for the second time for the project following the Town's procurement procedures and the Selection Committee held a public interview for the sole responder to the Request for Qualifications. This RFQ is in relation to the Town's CDBG-DR grant for the redevelopment of the Fort Myers Beach Community Pool project and aims to qualify an engineering/design firm to assist in the first step of the project. Due to the single response, the Town is seeking authorization to reject and cancel the single response to the RFQ and re-advertise the bid solicitation again in hopes of increased competition and responses.

Sec. 2-480(i)(12). - Purchasing procedures.

(12) Cancellation of request for proposals.

A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:

- a. All bids exceed the estimated or budgeted amount.
- b. The specifications contain an error which causes confusion and misunderstanding among bidders.
- c. The items or services are no longer needed.

d.Lack of adequate competition.

- e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-480(h)(5)(e). - Purchasing procedures.

If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.

Attachments:

1. RFQ-25-10-AD Bay Oaks Community Pool Rehabilitation Final
2. Addendum 1 RFQ-25-10-AD Bay Oaks Community Pool
3. Addendum 2 RFQ-25-10-AD Bay Oaks Community Pool
4. 24-11, Purchasing Ordinance Amendments Signed

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 - 10/3/2025
Approved - 10/3/2025
Approved - 10/3/2025
Final Approval - 10/3/2025

THE TOWN OF FORT MYERS BEACH



REQUEST FOR QUALIFICATIONS RFQ 25-10-AD

DATE ISSUED: Tuesday, July 1, 2025

Electronic responses are to be submitted via Demandstar.com

Thursday, July 31, 2025, by 12:30 PM

To:
TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM

QUALIFICATION OPENING: July 31, 2025, at 1:15pm

Fort Myers Beach Engineering & Architectural Services Bay Oaks Community Pool Rehabilitation Project

Town of Fort Myers Beach
6231 Estero Blvd
Fort Myers Beach, FL 33931

LEGAL NOTICE TO RESPONDERS

NOTICE IS HEREBY given that **sealed electronic responses** will be received by the TOWN OF FORT MYERS BEACH electronically through www.demandstar.com until 12:30 PM LOCAL TIME on Thursday, July 31, 2025. Responses will be opened at 1:15 PM, July 31, 2025, location to be determined. Any responses received by the Town after the above date and time shall remain unopened.

PROJECT: Fort Myers Beach Engineering & Architectural Services Bay Oaks Community Pool Rehabilitation

Payment for these services will be funded in part or in whole by a U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program. Responders are required to comply with all Federal Grant Requirements, 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications.

INTRODUCTION: The Town of Fort Myers Beach (the "Town") seeks qualifications from professional engineering and design firms to provide comprehensive design, permitting, and construction-phase engineering and inspection (CEI) services for the Parks and Recreation Revitalization Project. This project, funded in part through Community Development Block Grant Disaster Recovery (CDBG-DR) funds, aims to restore, improve, and modernize public recreation facilities that were severely impacted by Hurricane Ian. The selected firm will provide professional services as described for **The Bay Oaks Community Pool Rehabilitation Project**. The successful firm must have experience in post-disaster infrastructure restoration, flood mitigation planning, resilient and sustainable design, and compliance with federal procurement and CDBG-DR regulations.

Through this solicitation, the Town seeks an experienced, engineering, and design firm to provide comprehensive professional services that align with FEMA flood mitigation guidelines, CDBG-DR program requirements, and sustainable development best practices. The project will not only restore these vital community assets but also integrate resilient infrastructure solutions to protect against future climate-related threats.

The official response documents and project specifications shall be obtained from www.demandstar.com. If you do not have Internet access, you may obtain the documents by contacting the Contracts & Procurement Specialist at bids@fmbgov.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 responses; to make award(s) including multiple awards; to waive any non-substantive, in Town's sole judgment, irregularity or technicality in responses received, and/or to reject any or all responses.

Ordering Instructions: The official Documents (project specifications and drawings) shall be obtained from Demandstar.com at www.demandstar.com

RESPONDENTS must furnish the TOWN with a mailing address, e-mail address, phone number for contact purposes. It shall be the RESPONDER'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 response **will not** be accepted for consideration by the TOWN.

Complete sets of Documents must be used in preparing the Response. The TOWN will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Qualification Documents.

QUESTIONS about the meaning or intent of the RFQ documents must be directed in writing via e-mail to Contracts & Procurement Specialist (bids@fmbgov.com). **No verbal inquiries will be accepted.** Questions received less than seven (7) days prior to the submittal date may not be answered. All properly received questions will be answered by written addenda and will be binding. Oral and other interpretations or clarifications that are not contained in an official addendum will be without legal effect. All addenda shall be signed by the Respondent as acknowledged and incorporated with the submittal.

SUBMITTAL OF RESPONSE

RESPONSE SUBMITTALS MUST COMPLY WITH THE FOLLOWING TO BE VALID:

Responses must be electronically submitted via Demandstar.com and identified as

**Fort Myers Beach Engineering & Architectural Services
Bay Oaks Community Pool Rehabilitation Project**

Any questions regarding the use of Demandstar for submittal should be directed to Demandstar prior to the response's due date.

ALL REQUIRED FORMS MUST BE ELECTRONICALLY SUBMITTED THROUGH DEMANDSTAR.COM.
FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE RFQ.

The TOWN reserves the right to waive informalities in any responses; to reject any or all responses with or without cause; and/or to accept the response that in its judgment will be in the best interest of the TOWN.

The TOWN is not responsible for any cost incurred by any RESPONDERS in preparing these RFQ Documents.

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PART I: RFQ GENERAL INFORMATION

For the purposes of this Request for Qualifications (RFQ): **Responder** shall mean the contractor, consultant, respondent, organization, firm, or other person submitting a response to this RFQ. **Town** shall mean the Town of Fort Myers Beach, Town Manager, as applicable, and any officials, employees, agents, and elected officials.

A. GENERAL INFORMATION

INVITATION TO PROPOSE; PURPOSE

The Town solicits RFQ's from responsible Responders to perform work for or provide goods and/or services to the Town as specifically described in Part II, Statement of Work.

ACCOMODATION FOR DISABILITIES

Prospective Responders with disabilities requiring accommodation to attend the pre-Qualification meeting or to otherwise participate in this RFQ process should contact the Town Clerk's Office as promptly as possible to allow the Town to examine the request and determine what if any accommodation is possible.

DEVIATION FROM SPECIFICATION

Any deviation from specifications must be clearly stated, explained in detail, and accepted by the Town in writing. Otherwise, items offered are expected to be in strict compliance with specifications and the successful Proposer shall be held accordingly.

INFORMALITIES

The Town reserves the right to both waive any informality in RFQ and to determine, in its sole discretion, whether or not, the informality is minor.

INFORMATION AND LITERATURE

Responders are to furnish all information and literature requested. Failure to do so may be cause for rejection.

PRICING

As provided in Proposal C, which will be attached to the Contract.

RESPONSIBLE RESPONDER

A contractor, business entity or individual which is fully capable to meet all of the requirements of the solicitation and subsequent contract, which possesses the full capability, including financial and technical, to perform as contractually required, and which must be able to fully document the ability to provide good faith performance in accordance with Town Ordinance 24-11.

RESPONSIVE RESPONDER

A contractor, business entity or individual which has submitted a proposal that fully conforms in all material respects to the RFQ and all of its requirements, including requirements as to form and substance in accordance with Town Ordinance 24-11.

AGREEMENT AWARDS

The Town Council anticipates entering into an agreement with the Responder who submits the response judged by the Town to be most responsive and responsible. The Town anticipates the awarding of one contract but reserves the right to award more than one contract if it is in its best interest. If the Town selects a Response, the Town will provide a written notice of the award.

The Town reserves the right to reject responses containing any additional terms or conditions not specifically requested in the original conditions and specifications.

The Responder understands that neither this RFQ nor the notice of award constitutes an agreement or a contract with the Responder. A contract or agreement is not binding until a written contract, or agreement has been approved as to be formed by the Town Attorney and has been executed by both the Town (with Council approval, if applicable) and the successful Responder.

If an agreement is awarded, the agreement will not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all available required work in-house or by any other means it so desires. No amount of work is guaranteed upon the execution of a Professional Service Agreement. A consultant or multiple consultants may be selected for any, some or all services being solicited hereunder. The Town reserves the right to add or delete, at any time, any or all tasks or service associated with the Agreement.

PROPOSED EXPENSES

The response should be prepared simply and economically, providing a straightforward, concise description of the responders' ability to fulfill the requirements of the response. No out-of-scope services shall be provided in the absence of prior written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the contract. The Town will not pay a retainer or similar fee. The Town is not responsible for any expenses that the proposer may incur in preparing and submitting proposals called for in this request. The Town will not pay for any out-of-pocket expenses, such as word processing, photocopying, postage, per diem, travel expenses and the like, incurred by the proposer. The Town will not be liable for any costs incurred by the proposer in connection with any interviews/presentations (i.e., travel, accommodation, etc.).

INQUIRIES

The Town will not respond to oral inquiries. Responses may be mail or email written inquiries for interpretation of this RFQ to the attention of the Contract and Procurement Specialist.

bids@fmbgov.com Please mark the correspondence "RFQ-25-10-AD QUESTION".

The Town will respond to written inquiries received no later than seven (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 Responder to remain informed as to any changes to the RFQ.

DELAYS

The Town may postpone scheduled due dates at its sole discretion. The Town will attempt to notify all registered Responders of all changes in scheduled due dates by written addenda.

COMMITTEE MEETINGS AND NOTIFICATIONS

Notice of the Evaluation Committee meetings will be posted with reasonable advanced notice in advance of such meetings. Responders are responsible for checking the following locations for updates on this response's status: physical posting at Town Hall, a link to which may be found on the Town's web page www.fmbgov.com.

Pursuant to Florida Statutes § 286.0113, any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation, or answers questions as part of a competitive solicitation is exempt from the Public Meeting requirements of Florida Statutes § 286.011 and Art. I, § 24(b) of the Florida Constitution.

TAX EXEMPTIONS

The Town of Fort Myers Beach is tax exempt.

RESPONDERS SUBMISSION

RESPONDER MUST COMPLY WITH THE FOLLOWING TO BE VALID:

Responses must be electronically submitted via Demandstar.com and identified as

**Fort Myers Beach Engineering & Architectural Services
Bay Oaks Community Pool Rehabilitation Project**

RFQ-25-10-AD

Any questions regarding the use of Demandstar for submittal should be directed to Demandstar prior to the qualification due date.

ALL REQUIRED FORMS MUST BE ELECTRONICALLY SUBMITTED THROUGH THE DEMANDSTAR.COM. **FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE RESPONSE.**

The TOWN reserves the right to waive informalities in any proposals; to reject any or all proposals with or without cause; and/or to accept the proposal that in its judgment will be in the best interest of the TOWN.

The TOWN shall not be responsible for any cost incurred by any RESPONDER in the preparation of these RFQ Documents.

B RESPONDERS 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 herein. Unless otherwise specified, Responders 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 Response in ink. All information submitted by the Responder shall be printed, typewritten, or completed in ink. Responses shall be signed in ink.

All responses shall be submitted as specified in this RFQ. Any attachments shall be clearly identified. In order to be deemed responsive and considered for contract award, the Responder must respond to all parts of the RFQ. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the RFQ. If publications are supplied by a Responder to respond to a requirement, the response should include reference to the document number and page number. Responses lacking this reference may be considered to have no reference material included in the additional documents.

Responders shall prepare their response using the following format:

- **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 people authorized to make representations for or on behalf of the Proposer, and must include their titles, addresses, email, and telephone numbers. An official authorized to negotiate and execute a contract on behalf of the Proposer must sign the letter of transmittal.
- **Title Page**
The title page shall show the name of Proposer's agency/firm, address, telephone number, name of contact person, email, date, and the RFQ No. and the Project name.
- **Table of Contents**
Include a clear identification of the material by section and by page number.
- **Organization Profile and Qualifications**
This section of the proposal must describe the Proposer, including the size, range of activities, and experience providing similar services.
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, qualifications, and authority.
- **Experience**
The Proposer must describe its expertise in and experience with providing goods and/or services similar to those required by this RFQ. Describe previous experience relating to the Scope of Work requested in this RFQ. 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 accomplishments for each.
- **Approach to Providing Services**
This section of the proposal should explain the Scope of Work as understood by

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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 RFQ.

- **Compensation**
The proposal shall document the fee proposal for the goods and/or services on RFQ Form C.
- **Additional Information**
Any additional information which the Proposer considers pertinent for consideration should be included in a separate section of the proposal.
- **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.

C. PROPOSAL – PROCEDURAL INFORMATION

- **Interviews**
The Town reserves the right to conduct personal interviews or require presentations prior to award. The Town is not responsible for any expenses which Responders may incur in connection with a presentation to the Town or related in any way to this RFQ.
- **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 the additional information requested may result in disqualification of the proposal.
- **Proposal Acknowledgement**
By submitting a proposal, the proposer certifies that it has completely reviewed the RFQ and has full knowledge of the scope, nature, and quality of work to be performed.
- **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 a case, the Proposer may choose whether or not to continue to honor the proposal terms.

Alternate Proposals An alternate proposal is viewed by the Town as a proposal describing an approach to accomplishing the requirements of this RFQ 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 RFQ. Alternate proposals may be in the area of technical approach, or other provisions or requirements of this RFQ. 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.

▪ **Proposer's Certification Form**

Each Proposer shall complete the "Proposer's Certification" form included as RFQ Form D and submit the form with the proposal. This form must be acknowledged before a notary public with a notary seal affixed on the document.

D. PUBLIC RECORDS

The Responder is required to comply with the provision of F.S. 119.0701. Specifically, the Responder is required to keep and maintain the records required the Town to perform the services. Upon request by the Town, Responder 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 Responder 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, 6231 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931.

Pursuant to Section 119.071(2) Florida Statutes: Sealed proposals, proposals or replies received by the Town pursuant to a competitive solicitation are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution until such a time as the Town provides notice of its intended decision or until 30 days after opening the proposals, proposals, or final replies, whichever is earlier.

E. CONFIDENTIALITY PROVISION:

In accordance with Florida Statute 337.168, a document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07 (1) until the contract for the project has been executed or until the project is no longer under active consideration. The bid analysis and monitoring system of the department is confidential and exempt from the provisions of F.S. 119.07 (1). This exemption applies to all system documentation, input, computer processes and programs, electronic data files, and output, but does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

F. 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 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 RFQ must be supplied to constitute a proposal.

G. CONSULTANT'S COMPETITIVE NEGOTIATION ACT (CCNA)

Evaluation of submittals shall be in accordance with the requirements of Florida Statutes Chapter 287 Procurement of Personal Property and Services; Part 1: Commodities, Insurance, and Contractual Services, 287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties, Section (4)(b), which states: The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5)."

H. EVALUATION METHOD AND CRITERIA

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 RFQ 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
- G. Past performance records
- H. Qualifications of Proposer
- I. References
- J. Related experience in Florida
- K. Technical soundness of RFQ
- L. Past history of meetings required time frames
- M. Approach to work.

The Town of Fort Myers Beach will evaluate the bids received based upon the following criteria:

**Relevant Project Experience Rebuilding the Bay Oaks Community Pool and facilities
(25 points)**

Description: Explain project experience in rebuilding a community pool and the facility in an area in a post-disaster environment. What cutting-edge concepts, national best practices, and evidence-based programs are used to integrate a resilient infrastructure. Assesses the innovative qualities of the proposed approach and familiarity with recognized standards from organizations such as APA, FEMA, and NIST.

Considerations:

- Inclusion of innovative planning tools and technologies
- Alignment with national best practices and proven, research-backed strategies
- Ability to adapt and apply lessons learned from similar coastal and post-disaster contexts

Experience with CDBG-DR and Federal Procurement Procedures (25 points)

Description: Explain current and past experience with CDBG-DR and Federal Funded projects. Any issues due to CDBG-DR and Federal Procurement Procedures how the issues were dealt in respect to timelines or budget.

Considerations:

- Demonstrated experience in similar federally funded or CDBG-DR projects
- Technical competence in areas such as HUD and CDBG-DR construction procurement, quality assurance and compliance.
- Strength and relevance of key personnel and staff's expertise

Project Understanding & Technical Approach (25 points)

Description: Understanding of the Town's urgency to renovate and enhance the Bay Oaks Community pool areas infrastructure to increase resilience against future storms and compliance with modern flood mitigation and accessibility standards. The Bay Oaks Community pool is to be designed as not just a swimming pool but innovative facilities and to become a destination for all members.

Considerations:

- Depth of understanding of extreme weather conditions and Florida requirements.

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- Proposed work plan, including timeline and guarantee deliverables
- Clarity in addressing Comprehensive Plan amendments and adoption process

Reference and Past Experience (15 points)

Description: Describe the expertise and experience in providing services similar to the requirements for his RFQ as well as the experience described in the Scope of the Work. 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 accomplishments for each.

Considerations:

- Expertise and Experience in similar federally funded projects
- Experience working with governmental entities

M/WBE or Veteran-Owned Business Status (10 points)

Description: Considers whether the prime or subconsultants are minority-owned, women-owned, or veteran-owned businesses, reflecting the Town's commitment to supplier diversity and compliance with 2 CFR 200.321.

Considerations:

- Prime or subconsultant status as a certified M/WBE or Veteran-Owned Business
- Demonstrated outreach or utilization of M/WBE or Veteran-Owned Business enterprises in project delivery

I. CONSULTANT QUALIFICATION AND SELECTION CRITERIA

The Town will evaluate responses based on criteria including, but not limited to and as per:

- **Project Understanding and Approach:** Demonstrated understanding of the Town's needs, clarity of proposed methodology, and originality of approach.
- **Relevant Experience and Qualifications:** Proven success in comparable post-disaster recovery particularly in coastal communities. Experience integrating HUD and FEMA Community Lifelines, addressing community-specific vulnerability, and focusing on equity.
- **Innovation and Best Practices:** Demonstrated familiarity with innovative concepts, cutting-edge technologies, national best practices (APA, FEMA, NIST), and evidence-based programs.

- **Public Engagement & Inclusivity:** Proven track record of conducting inclusive and meaningful stakeholder outreach. Ability to engage diverse populations effectively and incorporate input into the final Plan.
- **Personnel and Capacity:** Qualifications and experience of key personnel, and the capacity to complete the project on time and within budget.
- **Local Knowledge and Coordination:** Familiarity with Florida's planning framework, coastal community considerations, and demonstrated ability to avoid redundancies by building on existing plans.
- **Adherence to Federal Requirements:** Experience with CDBG-DR or similar federally funded projects, compliance with 2 CFR 200.321 for M/WBE utilization, and readiness to meet all reporting and documentation requirements.

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") as per Ordinance 24-11. Either the Town Manager or the Committee will review all proposals received and establish a list of selected Responders 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 Responders. Responders 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.

J REPRESENTATIONS AND WARRANTIES

In submitting an RFQ, Responder warrants and represents that:

- a. The Responder has examined and carefully studied all data provided, and any applicable Addenda; receipt of which is hereby acknowledged.
- b. Responder 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 response.
- c. Responder 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.
- d. If applicable, Responder has obtained and carefully studied (or assumes responsibility for having done so) all documents available related to the subject of the RFQ 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 Responder, including safety precautions and programs incident thereto.

- e. Responder has given Town written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in this RFQ and any addenda thereto, and the written resolution thereof by the Town is acceptable to Responder.
- f. The RFQ 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.
- g. 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 RFQ or contract.

K. TOWN CONTRACT

The selected Proposer is expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney. A sample of the agreement is attached for reference and may need to be modified by the Town before execution of the official agreement.

End of Part I

PART II– SCOPE OF SERVICES AND WORK

Project Background

Hurricane Ian caused catastrophic damage to the Town of Fort Myers Beach, severely impacting on its parks and recreation facilities, which serve as critical hubs for community engagement and environmental stewardship. In response, the Town has initiated the Parks and Recreation Revitalization Project to restore and enhance key public spaces, ensuring they are resilient, sustainable, and accessible for future generations.

This project is supported by Community Development Block Grant Disaster Recovery (CDBG-DR) funds, administered through Lee County, and aims to address post-disaster infrastructure needs while mitigating future flood risks and improving overall community resilience. **The Bay Oaks Community Pool Rehabilitation Project** is meant to rebuild an essential piece of the communities' recreational facilities, ensuring compliance with modern flood elevation and accessibility standards, while softening its impact in its space.

Through this solicitation, the Town seeks an experienced, engineering, and design firm to provide comprehensive professional services that align with FEMA flood mitigation guidelines, CDBG-DR program requirements, and sustainable development best practices. The project will not only restore this vital community asset but also integrate resilient infrastructure solutions to protect against future climate-related threats.

Scope of Work

The Town intends to renovate and enhance the Bay Oaks community pool area, its parks and recreation infrastructure to increase resilience against future storms. This project seeks to improve community engagement and ensure compliance with modern flood mitigation and accessibility standards. At the same time creating a space that can be used by all members of the community not just as a swimming pool but as a destination and cornerstone to the Bay Oaks Park area.

Bay Oaks Community Pool Rehabilitation

1. Site Assessment and Design Development
 - Evaluate existing pool basins, deck, mechanical systems, restrooms, and support facilities.
 - Provide a modern design.
 - Integrate FEMA flood elevation standards (BFE +2' minimum) and stormwater management.
 - Incorporate ADA-compliant features and sustainable materials.
2. Final Engineering Design & Permitting
 - Prepare engineering plans, specifications, and cost estimates.
 - Secure all necessary permits from FDEP, local agencies, and other regulatory bodies.

Procurement and Construction Administration

1. Pre-Construction Services
 - Assist the Town in preparing construction procurement documents.
 - Provide a detailed Opinion of Probable Construction Costs (OPCC).
 - Conduct pre-bid meetings and respond to bidder inquiries.
 - Bid Evaluation and Contractor Selection
 - Assist in evaluating contractor bids and proposals.

- Ensure that selected contractors meet CDBG-DR, Davis-Bacon Act, and Section 3 compliance.
- Provide recommendations for contractor selection and award.

Construction Oversight and Quality Assurance

1. Construction Phase Services

- Monitor construction activities for compliance with approved designs, specifications, and project schedule.
- Provide construction-phase engineering and inspection (CEI) services.
- Ensure adherence to FEMA flood elevation standards and environmental mitigation plans.
- Regulatory Compliance and Reporting
- Verify contractor compliance with CDBG-DR, Davis-Bacon, and Section 3 requirements.
- Conduct regular site inspections and progress reports.
- Address any construction modifications and approvals as required.

Post-Construction and Project Closeout

- Final Inspections and Testing
- Conduct final walk-through inspections with Town representatives and regulatory agencies.
- Ensure all punch list items are addressed before project closeout.
- Provide as-built documentation and final project certifications.
- Project Completion and Documentation
- Ensure compliance with CDBG-DR closeout reporting requirements.
- Submit all final reports, warranties, and maintenance documentation.

Compliance Requirements

The selected firm must ensure that all work complies with:

- FEMA flood elevation standards (BFE +2' minimum) and flood-resistant design guidelines.
- Community Development Block Grant Disaster Recovery (CDBG-DR) regulations (2 CFR 200).
- Davis-Bacon and Related Acts (DBRA) for wage compliance.
- Americans with Disabilities Act (ADA) accessibility requirements.
- Florida Building Code and local permitting requirements.
- HUD green building standards and energy efficiency guidelines.
- National Environmental Policy Act (NEPA) and related environmental laws.

PERIOD OF PERFORMANCE, BUDGET, AND COMPLIANCE AND STANDARDS

Period of Performance

The exact period of performance will be negotiated with the selected Consultant and incorporated into the contract. The Consultant will be expected to adhere to the approved schedule, meet agreed-upon milestones and deliverable deadlines, and provide timely updates on project status.

Budget

Consultants must provide a detailed, line-item budget in their response, including labor, materials, travel, public engagement activities, and any other direct costs. A copy of the budget shall be attached to RFQ Form C.

Compliance and Standards

All services and work must comply with applicable federal, state, and local laws and regulations. This includes, but is not limited to, compliance with CDBG-DR requirements, federal procurement standards under 2 CFR Part 200, and adherence to Section 163.3177, Florida Statutes, for comprehensive plan updates.

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
3. The proposer shall have verified references from the past (2) Years' or present contracts for services similar to the services requested herein.
4. Appropriate licensure and insurance required for completion of the project.

INSURANCE AND LICENSES REQUIREMENTS

Minimum Insurance Requirements: Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendor's interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The TOWN reserves the right to request additional documentation regarding the insurance provided.

Commercial General Liability – Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence

\$1,000,000 General Aggregate

\$1,000,000 Aggregate for Bodily Injury Liability

\$14,000,000 products and completed operations

Business Auto Liability – Automobile Liability will be required, and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$2,000,000 Combined Single Limit (CSL) or
\$1,000,000 Injury per person
\$1,000,000 Aggregate Bodily injury per accident
\$1,000,000 Property damage per accident

With coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership. Employer's liability with a minimum limit per accident in accordance with statutory requirements.

Workers Compensation – Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation Insurance to comply for all employees for statutory limits in compliance with the applicable State and Federal laws.

Error and Omission – Coverage shall include professional liability insurance, to cover claims arising out of negligent acts, errors or omissions of professional advice, privacy and network security insurance covering for losses arising from disclosure of confidential information, or other professional services:

\$1,000,000 Per Occurrence

This required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" of "Commercial Umbrella Policies." In which case a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

The Proposer shall provide original certificates of coverage and receive notification of approval of those certificates from the Town prior to providing services under this RFQ. The insurance coverage provided by Proposer is subject to the approval of the Town. The insurance certificates and required policies (except for worker's compensation) shall list the Town of Fort Myers Beach as ADDITIONAL INSURED and shall provide for the Town to receive no less than thirty (30) days' written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the Town if circumstances change, or adequate protection of the Town is not presented. Responder, by submitting a Response, agrees to abide by such modif

PART III– FEDERAL AND STATE

A. STATE REQUIRED CONTRACTUAL TERMS AND CONDITIONS

VENDOR LIST CERTIFICATIONS The Town requires a certification from Responder that their firm is not on the following Vendor List maintained by the Florida Department of Management Services. The Florida Department of Management Services prohibits the use of vendors which appear on their Vendor Lists.

Forced Labor Vendor List

- In accordance with Florida Statute 2887.1346, Florida Statute, "Forced labor vendor list" (list), means the list required to be created and maintained by the department pursuant to paragraph (4)(d). Paragraph 4d, the department shall create and maintain a forced labor vendor list that contains the name and address of each company that has been disqualified from the public contracting and purchasing process under this section. The department shall publish an updated version of the list quarterly. The updated quarterly list shall be electronically posted on the department's website

- Convicted Vendor List/Public Entity Crimes

- In accordance with Section 287.133(2)(a), Florida Statute a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; and may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

- Discriminatory Vendor List

- In accordance with Section 287.134, Florida Statute an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or relay on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

- Suspended Vendor List

- In accordance with Section 287.1351, Florida Statute an vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its

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duties under those contracts may not submit a bid, proposal, or reply to an agency or enter into or renew a contract to provide any goods or services to an agency. The term "vendor" means a person or an entity that provides goods and services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

- Antitrust Violation List
 - In accordance with Section 287.137, Florida Statute a person or an affiliate who has been placed on the antitrust violator consultant list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal or reply for any new contract to provide any goods or services,
- Anti-Lobbying Clause (Cone of Silence)
 - In accordance with Section 287.057(23), Florida Statute, respondents to this solicitation or persons acting on their behalf may not contact, communicate with and/or discuss any matter relating in any way between the release of the solicitation and the end of the agency posting. Violation of this provision may be grounds for rejecting a response.
- Scrutinized List of Prohibited Companies
 - In accordance with Section 287.135 Florida Statute, prohibits state and local government entities from contracting with companies that are on the Scrutinized Companies List. Also prohibits companies that are engaged in certain business practices from contracting with these entities.
- Federal Excluded Parties List
 - An excluded party is any individual or entity that has been suspended or debarred from doing business with federal funds. Typically, a suspended individual or entity can not receive federal funds for a set time period or until specific requirement is met.

FLORIDA CIVIL RIGHT ACT The Contractor shall comply with Chapter 760, Florida Statutes, which states that the contractor shall comply with the Florida Civil Rights Act of 1992, which states that individuals in the state are free from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

AFFIRMATIVE ACTION AND NONDISCRIMINATION Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active-Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

EQUAL OPPORTUNITY CERTIFIED Suppliers, Contractors and/or Vendors that operate under Disadvantage Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Small Business Enterprise (SBE) and/or Veteran Business Enterprise (VBE) should not be excluded in the bidding process,.

LOCAL GOVERNMENT PROMPT PAYMENT ACT In accordance with Section 218.70, Florida Statute, the Town shall make payment of all sums properly invoiced within thirty (30) days of the Town's receipt of such invoice. Town shall pay contract amount of such invoice within thirty (30) day period. If Town shall give such notice to the contractor within such fifteen (15) day period, such dispute over the proper amount of such invoices shall be resolved, and after final resolution of such disputes, Town

shall promptly pay the contractor the amount so determined, less any amounts previously paid by Town with respect to such invoice. In the event it is determined that Town has overpaid such invoice, the contractor shall promptly refund to the Town the amount of such overpayment.

PUBLIC QUALIFICATION DISCLOSURE Per Florida Statute 218.80, there are no permit fees for this project, therefore permitting fees to be paid by contractor is zero dollars.

BACKGROUND SCREENING In accordance with Florida Statute 435, all employees required by law to be screened must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED Pursuant to Florida Statute 607.1501(1), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if:

- a. The entity is owned by the government of a foreign country of concern.
- b. The government of a foreign country of concern has a controlling interest in the entity; or
- c. The entity is organized under the laws of or has its principal place of business in a foreign country of concern; or
- d. Foreign corporations are prohibited from transacting business in Florida until the corporation obtains a certificate to do business from the state department.

Beginning January 1, 2024, a governmental entity may not accept a proposal on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c).

Beginning July 1, 2025, a governmental entity may not extend or renew a contract with an entity listed in paragraphs (2)(a)-(c) if the contract would give such entity access to an individual's personal identifying information.

Beginning July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c). The Attorney General may bring a civil action in any court of competent jurisdiction against an entity that violates this section.

PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING In accordance with Florida Statute 287.05701 the Town may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

INSPECTOR GENERAL COOPERATION In accordance with Florida Statutes § 20.055(5), it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

BUSINESS RELATIONSHIP DISCLOSURE REQUIREMENT Sections 112.313(3), 112.313(7) and 112.317, F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this disclosure is applicable, the Bidder must request the 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:

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TOWN HALL
6231 ESTERO BLVD
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

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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 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 (HUD)

NO LOBBYING; REQUIRED AFFIDAVIT

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss, either in person, by phone, email or text message, any matter relating to the solicitation or the renegotiation with any Town officers, agents or employees (including the Town council and Town manager) other than the purchasing agent designated in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the designated purchasing agent or procurement official. This prohibition includes copying such persons on written communications with the purchasing agent but does not apply to presentations made to evaluation committees or at a council meeting where the council is considering approval of a proposed contract. The prohibition ends upon execution of the final contract or when the solicitation has been canceled, or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the council directing renegotiation or on issuance of a written notice from the procurement official to the existing contractor instituting a renegotiation process. **Failure of businesses seeking to conduct business with the Town to strictly adhere to this section will result in the offender's proposal, proposal or response being disqualified from further consideration, and may also result in the suspension or debarment of the offending business.**

As part of its proposal submission, each Responder must submit the attached Affidavit acknowledging the foregoing Code provision and attesting compliance therewith.

NON-COLLUSION AFFIDAVIT As part of its response submission, each Responder must submit the attached Non-Collusion Affidavit.

CONFLICT OF INTEREST DISCLOSURE As part of its proposal submission, each Responder must submit the attached certification confirming that the proposal was not influenced by or the result of collusion with any other actual or potential Responder, and is not otherwise in violation of federal, state, associate, or agent which is also an officer or employee of the Town or of its agencies. Offerors must disclose the name of any officer or employee of the Town who owns, directly or indirectly, an interest of five percent (5%) or more in the Offeror's firm or any of its branches or affiliate companies.

ANTI-DISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY The successful Responder will be required, during the term of its performance, to refrain from discrimination against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin.

REHABILITATION ACT OF 1973 SECTION 504 AS AMENDED Contractor or Consultant shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

AMERICANS WITH DISABILITIES ACT OF 1990 Contractor or Consultant shall comply with Public Law 101-336, Americans with Disabilities Act of 1990, which provides, subject to such Act, that no

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qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

This project is funded in part or in whole by: U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program. Responders are required to comply in accordance with Federal Grant Requirements, 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications which apply as follows:

BYRD ANTI-LOBBYING AMENDMENT

31 U.S.C. § 1352 (as amended). Contractors who responds/propose for an award of \$100,000 or more shall file the required certification (Exhibit IV). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

SUSPENSION AND DEBARMENT

1. This contract is a covered transaction for purposes of Chapter 2 Code of Federal Regulations. As such, a contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR § 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the Town of Fort Myers Beach. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Fort Myers Beach, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The proposer or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SUBCONTRACTS The CONTRACTOR or sub- CONTRACTOR must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable

wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage

determination(s) in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

ACCESS TO RECORD The Contractor agrees to provide the Town of Fort Myers Beach, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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.

RECORDS AND RETENTION UNDER COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER (CDBG-DR) PROGRAM The Contractor or Consultant agrees to maintain such records and follow such procedures as may be required under the CDBG-DR Program and any such procedures as the Town may prescribe. In general, such records will include information pertaining to the Agreement, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance. All such records and all other records pertinent to the Agreement and work or services performed thereunder shall be retained by the Contractor or Consultant for a period of three years after a final audit of the Town's CDBG-DR project unless a longer period is required to resolve the audit findings or litigation. In such cases, the Town shall request a longer period of record retention.

Access to records and site where appropriate, the Town and other authorized representatives of the county and federal government shall have access to any books, documents, papers, and records of the Contractor or Consultant that are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The Contractor or Consultant agrees to provide the Town, Lee County, the federal agencies with interest in the Agreement or any of the activities undertaken pursuant thereto, or their authorized representatives access to construction or other work sites, if any, pertaining to the work being completed under this Agreement.

Audits, the Town, the County Auditor, and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG-DR project and the Agreement by whatever legal and reasonable means are deemed expedient by the Town, the County Auditor, and HUD.

Compliance with laws and Indemnification the Agreement is funded in whole or in part with CDBG funds through the Town's Community Development Block Grant Program, as administered by the Lee County's United States Department of Housing and Urban Development (HUD) award. The Contractor or Consultant shall comply with those regulations and restrictions normally associated with federally funded programs and any other requirements that the county may prescribe, whether herein recited. The Contractor or Consultant shall comply with all applicable laws, ordinances and codes of the county and local government. The Contractor or Consultant shall indemnify and hold the Town, its officials, agents, and employees harmless with respect to any damage arising or alleged to arise from any act performed by the Contractor or Consultant or which should have been performed by the Contractor or Consultant in performing any of the obligations under the Agreement.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS This is an acknowledgement that ARPA and/or FEMA financial assistance/grants may be used to supplement all or a portion of the contract. If so, the proposer will comply with all 16 applicable Federal law, regulations, executive orders, FEMA and ARPA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT The Federal Government will not be a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CHANGES Either party may request modification of the provisions of this Agreement including the not to exceed amount, duration, scope, and rate(s). Changes which are mutually agreed upon shall be valid only when reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

TERMINATION FOR CAUSE If, through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the Town of Fort Myers Beach, shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Contractor under this Contract shall become the property of the Town of Fort Myers Beach, and Contractor shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the Town of Fort Myers Beach, in its sole discretion. Notwithstanding the above, Contractor shall not be relieved of liability to the Town of Fort Myers Beach for damages sustained by the Town of Fort Myers Beach by virtue of any intentional and/or negligent act or omission or any breach of the Contract by Contractor, and the Town of Fort Myers Beach may withhold any payment for the purpose of reasonable setoff until such time as the exact amount of damages due the Town of Fort Myers Beach from Contractor is determined. Contractor agrees that the Town of Fort Myers Beach shall have all rights and remedies afforded to it at law to recover any damages sustained by the Town of Fort Myers Beach in connection with the work performed by Contractor under the Contract. In the alternative, the Town of Fort Myers Beach shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice the enforcement of any other right or remedy allowed at law or in equity.

TERMINATION FOR CONVENIENCE The contractor or the Town of Fort Myers Beach may terminate this contract for its convenience at any time by giving at least thirty (30) calendar days' notice in writing to the other party. If the Contract is terminated by the Town of Fort Myers Beach and/or Contractor as provided herein, Contractor will be paid for the time and work properly provided, and expenses incurred up to the termination date, if such final compensation is approved by the Town of Fort Myers Beach, in its sole discretion.

EQUAL EMPLOYMENT OPPORTUNITY The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: "During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT Pursuant to Subsection (F) of Appendix II to 2 C.F.R. Part 200, if the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient agrees to comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

DAVIS-BACON ACT If this Contract is subject to a requirement by the Federal program legislation related to the funding award, the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. The Contractor acknowledges it is in possession of a copy of the current prevailing wage determination issued by the Department of Labor. The Contractor acknowledges that the decision of the Town to award the Agreement, and Contractor's agreement to enter a contract with any subcontractor, is conditioned upon the acceptance of the wage determination. The Town will report all suspected or reported violations to the Federal awarding agency.

The Contractor (and its subcontractors) shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he or she is otherwise entitled. The Town will report all suspected or reported violations to the Federal awarding agency.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT For contracts that are only subject to the Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where additional contract provision is required:

The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, 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 PART III

RFQ FORM A

Responder: _____

QUALIFICATIONS STATEMENT

Note: Forms A, B & C are available in WORD format from the Contracts and Procurement Specialist upon request.

THIS FORM MUST BE SUBMITTED WITH THE RESPONSE TO BE DEEMED RESPONSIVE.

- h. 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.)
 - i. The correct and full legal name of the Responder is:
 - ii. The business is a (Sole Proprietorship) (Partnership) (Corporation).
 - iii. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:
- i. Please describe your company in detail.
- j. The address of the principal place of business is:
- k. Company telephone number and e-mail addresses:
- l. Number of employees:
- m. Name of employees to be assigned to this Project:
- n. Company identification numbers for the Internal Revenue Service:
- o. Provide Lee County business tax receipt number, if applicable, and expiration date:
- p. How many years has your organization been in business? Does your organization have a specialty?
- q. 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.
- r. Have you ever failed to complete any work awarded to you? If so, where, and why?

- s. 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 Response 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)

- t. Provide the following information for any subconsultants you will engage if awarded the contract.

Subcontractor Name	Address	Work to be Performed

The foregoing list of subconsultants may not be amended after the award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

Responder: _____

Forms A, B & C are available in WORD format from the Contracts AND Procurement Specialist 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 RFQ:

- Page A - 3

RFQ Form C

Responder: _____

ATTACHMENT NO. 1 TO EXHIBIT B
RFQ-25-10-AD

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)

Page A - 4

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*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.
 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, unit rate and staff positions available. The rates for the additional work will not be used for evaluation of the services required in this RFQ.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Unit Rate</u>
Add rows as necessary	

By: _____ Date: _____
 Name: _____
 Title: _____

RFQ FORM D

Responders: _____

THIS FORM MUST BE SIGNED AND SUBMITTED WITH RESPONSE TO BE DEEMED RESPONSIVE.

The undersigned guarantees the truth and accuracy of all statements, and the answers contained herein.

RESPONDER'S CERTIFICATION

I have carefully examined the Request for Qualifications referenced above ("RFQ") and any other documents accompanying or made a part of this RFQ.

I hereby propose to furnish the goods or services specified in the RFQ. I agree that my response will remain firm for a period of 120 days in order to allow the Town adequate time to evaluate the responses. I certify that all information contained in this response, which includes the TOWN required RFQ forms, is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response 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 Responder hereby authorizes the Town of Fort Myers Beach, its staff, or consultants, to contact any of the references provided in the response and specifically authorizes such references to release, either orally or in writing, any appropriate data with respect to the firm offering this response.

I further certify, under oath, that this response is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a response for the same product or service; no officer, employee or agent of the Town or any other Responder is interested in said response; and that the undersigned executed this Responder's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

If this response 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 response on a contract to provide any goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or public work, may not submit responses 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 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 _____

¹STATE 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 (Company Name), () who is personally known to me or () who has produced
_____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

¹ Rev 1-28-25

PART IV: SAMPLE PROFESSIONAL SERVICES AGREEMENT

Commented [JF1]: We'll make sure to note this is a sample and may change before final signatures

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this _____ day of _____ 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 _____ ("Consultant"), whose address is _____.

WHEREAS the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Fort Myers Beach Comprehensive Recovery and Resilience Implementation Plan, ("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;

WHEREAS, FUNDED IN PART OR IN WHOLE BY: shall be provided by a U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program. Which requires CONSULTANTS to comply with Federal Grant Requirements, 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications.

WHEREAS in accordance with the requirements of the U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program between the Town and Lee County requires completion of all work under this agreement no later than DATE.

WHEREAS approval of this agreement is in the best interest of health, safety and welfare to the residents of Fort Myers Beach.

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

1.1 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.2 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.

1.3 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.

2.2 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.

2.3 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.

2.4 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.

2.04STANDARDS 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.

2.6 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.

2.7 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.

2.8 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.

2.9 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance, or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility, or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.1 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.

3.2 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

4.1 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.

4.2 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".

4.3 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).

4.4 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. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying, or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (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.

4.5 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

5.1 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.

5.2 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.

5.3 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.

5.4 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 119.071(2) Florida Statutes: Sealed responses, proposals or replies received by the Town pursuant to a competitive solicitation are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution until such time as the Town provides notice of its intended decision or until 30 days after opening the responses, proposals, or final replies, whichever is earlier.

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, 6231 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931.

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

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement, or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 - 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 response 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 response 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.

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 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.

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.

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.

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. The 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 the Contractor's social, political or ideological interest. Contractors agree 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.

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 _____
- (12) EXHIBIT "L" entitled "CDBG-DR Special Terms and Conditions," dated _____
- (13) EXHIBIT "M" entitled "CDBG-DR Compliance Provision," dated _____
- (14) EXHIBIT "N" entitled "Funding and Term," dated _____
- (15) EXHIBIT "O" entitled " Additional Language and Requirements _____

ARTICLE 20 .00 - NOTICES AND ADDRESS OF RECORD

20.1 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

20.2 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:

(Consultant's Business Name)

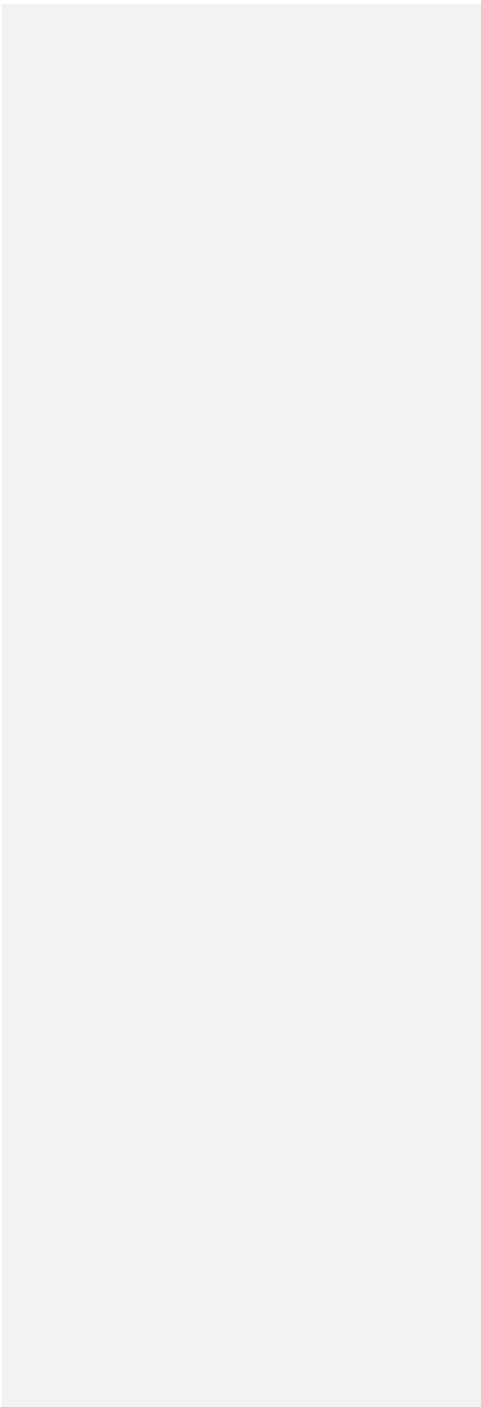
(Street/ P.O. Box)

(City) (State) (Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
Project Director



20.3 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

ATTEST:

By: _____
Town Manager

By: _____
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: _____
Printed name of organization

BY: _____
Signature

Printed name of person signing

Title (printed)

Witness Signature

Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

**Fort Myers Beach Engineering & Architectural
Services North Island Water Tower
RFQ-25-10-AD**

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.

Type of Work

To be added at time of contract

SAMPLE AGREEMENT

QUALIFICATION FOR TYPE OF WORK

Name of Firm: _____ **Date:** _____

Code: _____ **Type of Work:** _____

List the personnel permanently 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

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date: _____

**Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD**

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 (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			
TOTAL				

(Unless list is continued on next page)

EXHIBIT B (Continued)

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 _____, 20__, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated _____, 20__, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

**Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD**

Date: _____

CONSULTANTS' 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)

*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.

**Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD**

Date: _____

CONSULTANT NAME: _____

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD

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
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD

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

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD

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

The Consultant shall complete all obligations under this Agreement no later than DATE.

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. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

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
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD

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:
Fort Myers Beach Comprehensive Recovery and Resilience Implementation Plan

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:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Printed, Typed or Stamped Name

Commission/Serial No. _____

EXHIBIT "G": INSURANCE
FOR THE PROJECT KNOWN AS:
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD

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:

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; (3) Comprehensive Automobile Liability; and (4) 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 coverage 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 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:

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:

4.6 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.

4.7 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.

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:

4.8 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.

4.9 Contractual coverage applicable to this specific Agreement including any hold harmless and/or

such an indemnification agreement.

4.10 Such additional requirements as are set forth in the Agreement above.

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:

4.11 Minimum limits of \$1,000,000 per person and \$1,000,000 per accident 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.

4.12 Coverage shall include owned vehicles, hired, and leased, or non-owned vehicles.

4.13 Such additional requirements as are set forth in the Agreement above.

PROFESSIONAL LIABILITY

Coverage must include the following:

4.14 A minimum aggregate limit of \$1,000,000.00.

4.15 Such additional requirements as are set forth in the Agreement above.

4.16 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:
Fort Myers Beach Engineering & Architectural
Services Bay Oaks Community Pool
Rehabilitation
RFQ-25-10-AD**

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 indicate 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 _____
(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 287.233(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 proposal, 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 proposals or applies to proposal on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____. Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, **FLORIDA STATUTES** FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced Identification _____ Notary Public – State of _____

My Commission expires _____

(Type of Identification)

(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").

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 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: _____

(Signature) (Title) (Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced.
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signer of this Affidavit guarantees, 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:
Fort Myers Beach
Engineering & Architectural
Services Bay Oaks
Community Pool
Rehabilitation
RFQ-25-10-AD**

I, the undersigned, _____, am an
employee of _____,
_____, 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.

Paragraph on AI needs to be added here _____

Signature _____

Date _____

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138 and 787.06, FLORIDA
STATUTES**

Before me, the undersigned authority, personally appeared (Name of affiant) ,

_____ who, after being first duly sworn, deposes and says of
his or her personal knowledge the following:

1. Affiant is the (Title)_____ of (Business Name)

_____ which does business in the State of Florida, hereinafter called the "Vendor."

2. Vendor, pursuant to Section 287.138, Florida Statutes, certifies that (1) Vendor is not owned by a government of a foreign country of concern; (2) a government of a foreign country of concern does not have a "controlling interest" in Vendor, as defined by Section 287.138(1)(a), Florida Statutes; and (3) Vendor is not organized under the law of nor has its principal place of business in a foreign country of concern. For the purposes of this affidavit, foreign country of concern means 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 of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes, as amended from time to time.

3. Vendor, pursuant to Section 787.06, Florida Statutes, certifies that Vendor does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, as amended from time to time.

4. This Affidavit is executed by the Vendor in accordance with Section 287.138, Florida Statutes, for the purposes of preventing the County from entering contracts with foreign entities of concern which would provide Vendor access to an individual's personal identifying information.

5. This Affidavit is executed by the Vendor in accordance with Section 787.06, Florida Statutes.

(Date)_____

(Signature)_____

²STATE OF FLORIDA)

² Rev 1-28-25

EXHIBIT L

FORT MYERS BEACH COMPREHENSIVE RECOVERY AND RESILIENCE IMPLEMENTATION PLAN RFP-25-10-AD

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 contract or subrecipient.

1. INITIAL RISK ASSESSMENT

The Subrecipient's has provided, or will provide, the County with information about the Subrecipient 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 on 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 implantation 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. The subrecipient further agrees to comply with the requirements, requests, and results of the County's due diligence and maintains 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 participant 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. 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 5, 2024. The formal adoption of this policy by the Town Council on the specified date shall constitute fulfillment of the terms set forth in Exhibit L of this agreement.

EXHIBIT M (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.

- Benefit to Low-to-Moderate Income Persons (LMI)
- Urgent Need (UN)
- 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

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 anticipation, 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
- 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.

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- 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
 - 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, 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 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.

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

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.

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.

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- 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.

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
- 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 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

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:

Signature _____ Date _____

Print Name _____

**EXHIBIT N
FUNDING AND TERM**

CONTRACT FUNDING

This contract will be paid for in whole or in part with Community Development Block Grant – Disaster Recovery funding (CDBG-DR) from the U. S. Department of Housing and Urban Development (“HUD”) and Lee County for activities authorized under Title I of the Housing and Community Development Act of 1974 and as described in the Lee County Action Plan for CDBG-DR Funds. As such this contract is subject to the applicable terms and conditions of **Subrecipient Agreement DR10163** (the “Subrecipient Agreement”) between Lee County and the **Town of Fort Myers Beach** (the “Subrecipient”), 24 CFR 570, 2 CFR 200 (including Appendix II), applicable Federal Register guidance, the Lee County Action Plan for CDBG-DR Funds, and all other State and Federal laws, rules, regulations, and policies governing the funds provided through the Subrecipient Agreement, as now in effect and as may be amended from time to time.

The contractor and all subcontractors shall be bound by the terms of the aforementioned Subrecipient Agreement, as applicable, as well as any applicable State and Federal laws, rules, and regulations, and shall perform according to the terms and conditions of the contract and the terms and conditions of the Subrecipient Agreement.

TERM OF CONTRACT

EXHIBIT O
ADDITIONAL HUD LANGUAGE AND REQUIREMENTS

Civil Rights Requirement - 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.

HUD LANGUAGE

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 the Town of Fort Myers Beach \$1,200,000 for the Comprehensive Recovery and Resilience Implementation Plan as part of the of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds.

This contract will be paid for in whole or in part with Community Development Block Grant – Disaster Recovery funding (CDBG-DR) from the U. S. Department of Housing and Urban Development (“HUD”) and Lee County for activities authorized under Title I of the Housing and Community Development Act of 1974 and as described in the Lee County Action Plan for CDBG-DR Funds. As such this contract is subject to the applicable terms and conditions of **Subrecipient Agreement DR10163** (the “Subrecipient Agreement”) between Lee County and the **Town of Fort Myers Beach** (the “Subrecipient”), 24 CFR 570, 2 CFR 200 (including Appendix II), applicable Federal Register guidance, the Lee County Action Plan for CDBG-DR Funds, and all other State and Federal laws, rules, regulations, and policies governing the funds provided through the Subrecipient Agreement, as now in effect and as may be amended from time to time.

The contractor and all subcontractors shall be bound by the terms of the aforementioned Subrecipient Agreement, as applicable, as well as any applicable State and Federal laws, rules, and regulations, and shall perform according to the terms and conditions of the contract and the terms and conditions of the Subrecipient Agreement.

ADDITIONAL LANGUAGE

As required by the Subrecipient Agreement, the Subrecipient is required to document the contractor’s progress in performing work funded through the Agreement. The contractor shall provide information to the Subrecipient that may be necessary to satisfy this requirement. Such information may include, but is not limited to:

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 (Company Name), () who is personally known to me or ()
who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

-
- Certification regarding Debarment, Suspension, and Other Responsibility Matters for the Prime Contractor and Subcontractors.
 - Section 3 Participation Reports for the Prime Contractor and Subcontractors.
 - Information needed to complete Form HUD 2880 – Applicant / Recipient Update / Disclosure Report.
 - Information needed to complete periodic Progress Reporting.
 - Information needed to complete HUD Form 2516 - Contract and Subcontract Activity Form.
 - Information needed to complete Section 3 Quarterly Reporting Requirements.
 - Documentation, exhibits, forms, or other information needed to support reimbursement of expenses by Lee County.
 - Other information that may be required in order for the Town to fulfill the reporting requirements identified in the Subrecipient Agreement (Section VI).

Any conflict between this agreement and its Exhibits with the exception for Exhibits L, M, N and O with the terms and conditions of the Grant including Exhibits L, M, N and O shall be determined in accordance with the Grant and its referenced Exhibits.



TOWN of FORT MYERS BEACH

ADDENDUM TO PROPOSAL

RFQ-25-10-AD

Addendum No.: 1

PROJECT NAME: Bay Oaks Community Pool

Date of Issue: July 15, 2025

QUESTIONS and RESPONSES

The following inquiries were received regarding the above reference RFQ:

Q. What is the estimated project budget?

A. The project budget is \$278,375.00.

Town of Fort Myers Beach
bids@fmbgov.com
239-765-0202



ADDENDUM TO PROPOSAL

RFQ-25-10-AD

Addendum No.: 2

PROJECT NAME: Bay Oaks Community Pool

Date of Issue: July 23, 2025

QUESTIONS and RESPONSES

The following inquiries were received regarding the above reference RFQ:

Q. How can I see the facility, Bay Oaks Community Pool?

A. Can visit the facility at 2731 Oak Street, Fort Myers Beach, FL 33931 between 8am and 4pm.

Town of Fort Myers Beach
bids@fmbgov.com
239-765-0202

ORDINANCE 24-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND 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, for purposes of greater efficiency, the responsibilities of the Finance Department Director have been transferred to the Town Manager or designee; and

WHEREAS, the increase in the cost of goods and services justifies an increase in the Town Manager's authority for purchases of goods and services without further review by the Town Council; and

WHEREAS, as part of its response to implementation of an Abatement Plan to improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies; and

WHEREAS, on April 15, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to recommendations of staff and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 18th day of April, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the Fort Myers News-Press on the 18th day of April, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to update and amend the Town's procurement ordinances.

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 and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines that adoption of the following changes to Division 1 Purchasing of Goods and Services Policies and Procedures of Article V Finance are in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, and shall read as amended in attached Exhibit A.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision or ordinance, this Ordinance shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. Absent extension of this Ordinance in accordance with State law, Executive Order 22-218, and the Town Code, this Ordinance shall terminate within 30 days from its effective date and shall be of no further force or effect after such date.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted 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 6th day of May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (May 14, 2024 14:48 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:**

Becky Vose
Becky Vose (May 14, 2024 23:40 EDT)
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 14th day of May 2024.

EXHIBIT A

DIVISION 1. - PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES

Sec. 2-476. - Purpose.

The purpose of the ordinance codified in this division is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. The ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

Sec. 2-477. - Applicability.

This division applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this division and any applicable state or federal law or the town Charter, the most restrictive provisions will prevail, unless the Town is otherwise pre-empted from regulation.

Sec. 2-478. - Responsibilities for procurement of goods and services.

The Town Manager or designee finance department is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed through this department. The procedures shall include a requirement for the completion of an analysis of whether it is in the Town's best interest to purchase or lease needed equipment.

For purchases of \$500.00 or more, the finance department will certify to the Town Manager or designee that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the town council; manager or designee, and the proper purchasing procedures have been followed. The Town Manager or designee shall remain responsible for insuring that proper purchasing procedures have been followed.

Sec. 2-479. - Definitions.

"Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the town's requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Change order" means a written change to a contract after the contract has been awarded.

"Confidential information" means any information that is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

"Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, real property.

"Contract" means all types of town agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Equipment" means all property, including but not limited to, town capitalized equipment.

"Firm" or "vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or town official.

"Invitation to bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting sealed bids.

"Invitation to negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Material interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Request for proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Request for qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance of the contract.

"Responsive bidder" means a person or firm who has submitted a bid that confronts in all material respects to the requirements set forth in the invitation to bid.

"Selection advisory committee" means a committee of staff members, town members with expert knowledge and contracted professionals of the town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the town manager and/or council for approval.

"Sole source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Town official" means any town council member, the mayor any other person who is elected to fill a position with the Town of Fort Myers Beach.

Sec. 2-480. - Purchasing procedures.

(a) *Competitive sealed bidding.*

- (1) *Applicability.* Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of ~~\$25,000.00~~ \$75,000 within a fiscal year shall be awarded by competitive sealed bid.
- (2) *Invitation to bid.* For all purchases subject to competitive bidding, the Town Manager or designee ~~finance department~~, with assistance from the affected departments, will issue an invitation to bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the invitation to bid and this division, the provisions of this division will prevail.
- (3) *Addendum.* After an invitation to bid is issued and before the bid opening, the affected department may request that the Town Manager or designee ~~and/or the finance department may~~ issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid. ~~The finance department is solely responsible to issue all addenda.~~

- (4) *Public notice.* All invitations to bids must be published at least once in a newspaper of general circulation in the town for a minimum of 30 calendar days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid, and where bid forms and specifications may be obtained.
- (5) *Bid bond.* The invitation to bids may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the town; or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void; otherwise it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.
- (6) *Bid opening.*
- a. Bids will be opened publicly at the time and place designated in the invitation to bid. The amount of each bid, and such other relevant information as the Town Manager or designee ~~finance department director~~ deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. (see Exhibit A).
 - b. Bid openings must be scheduled a minimum of 30 calendar days after the date that the invitation to bid is advertised.
- (7) *Bid acceptance.* Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this division. All bids will be deemed to be held open and irrevocable for the time period set forth in the invitation to bid.
- (8) *Bid evaluation.* 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 award must be objectively measurable, such as discounts, transportation costs, and 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.
- (9) *Bid mistakes.* Mistakes discovered before the bids are opened may be modified by the bidder via written notice from the bidder specifically identifying the modification and the reason the modification is necessary. In lieu of modification, the bidder may also withdraw the bid submittal. The written notice as to modification or withdrawal must be received in the office designated in the invitation to bid prior to the time set for bid opening.
- (10) *Bid withdrawal.* After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the town if the following is established to the satisfaction of the town manager. In the town's sole judgment:
- a. The bidder acted in good faith in submitting the bid;
 - b. In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - c. The error was not the result of gross negligence or willful inattention on the part of the bidder;
 - d. The error was discovered and communicated to the town ~~finance department~~ manager or designee within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
 - e. The bidder submits documentation acceptable to the town and an explanation of how the bidding error was made.

- (11) *Cancellation of invitation to bid.* An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids:
- All bids exceed the estimated or budgeted amount.
 - The specifications contain an error which causes confusion and misunderstanding among bidders.
 - The item(s) or services are no longer needed.
 - Lack of adequate competition.
 - Notice of cancellation will be sent to all businesses solicited or submitting bids.
- (12) *Bid award.*
- All bids will be awarded by town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the town.
 - In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the finance department director, and such bid does not exceed such funds by more than ten percent, the town manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the invitation to bid.
- (13) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
- The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - The bidder who has its principal place of business in Lee County, Florida.
 - The bidder who has its principal place of business in the State of Florida.
- (14) *Selection advisory committee.*
- A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
 - All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
 - The selection advisory committee will review the ~~submittal bid and response materials provided by the finance department~~ submittal bid and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding

of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.

- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(15) *Recommendation.*

- a. The town council will carefully consider the recommendations of the town manager and selection advisory committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(16) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the products and/or professional services required in addition to considering the scope and complexity of the project.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking and continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

(17) *Town council approval.* The town manager will seek town attorney review of the negotiated contract prior to forwarding the contract to the town council for approval.

(b) *Small purchases.*

- (1) *Applicability.* Any purchase of ~~\$25,000.00~~ \$75,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements may not be artificially divided so as to constitute a small purchase under this section. Any purchase in excess of ~~\$25,000.00~~ \$75,000.00 must be approved by town council. All small purchases shall be accompanied by a quote sheet. (see Exhibit B). Change orders to existing contracts may be made in accordance with the small purchase procedures authorized in this section up to \$75,000. Any subsequent change orders shall require approval by the town council.
- (2) *Purchases over ~~\$4,000.00~~ \$10,000 and not greater than ~~\$25,000.00~~ \$75,000.* For smaller purchases of ~~\$4,000.00~~ \$10,000 and over, no less than three written quotations must be obtained, if available (e.g., not a sole source situation or change order). The award will be made by the department director and town manager, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.
- (3) *Purchases over ~~\$500.00~~ \$5,000 and not greater than ~~\$4,000.00~~ \$10,000.* For purchases greater than ~~\$500.00~~ \$5,000 but less than ~~\$4,000.00~~ \$10,000 a minimum of three verbal, telephone, facsimile or electronic quotations may be obtained, if available. The award may be made by the department director, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the town's records.
- (4) *Purchases for ~~\$500.00~~ \$5,000 and under.* For purchases of ~~\$500.00~~ \$5,000 and under, one verbal quotation is required, provided the quotation is fair and reasonable as determined by the department director and documented on the quote sheet.
- (5) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
 - a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida
 - c. The bidder who has its principal place of business in the State of Florida.

(c) *Sole source purchases.*

- (1) *Basis for sole source purchase.*
 - a. A contract may be awarded without competition when the town manager with the recommendation of the finance department director and , in conjunction with the department director determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the town manager ~~finance department~~ written justification as to why there is only one source (see Exhibit C).
 - b. The town manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the town manager. A record of sole source contracts must be maintained by the town clerk ~~finance department~~. Sole source contracts may not be automatically renewed.
 - c. At the beginning of each fiscal year, the town manager or designee ~~finance department director~~, in conjunction with the department director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.
- (2) *Town council approval.* The town manager will submit all sole source purchases of \$20,000.00 or more to the town attorney for review, and submit the contract to the town council for approval.

(d) *Emergency purchases.*

- (1) *Basis for emergency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.
- (2) *Town council approval.* The town manager will submit any emergency purchase in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.

(e) *Purchases from other governmental entities.*

- (1) *Basis for purchase.* Purchases of goods from the federal government, any state or political subdivision thereof, or any municipality are exempt from the competitive bid requirements of this division. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy provides for competitive bidding similar to the town's competitive bid process and in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any individual purchases in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(f) *Purchases of goods from contracts awarded by other governmental entities by competitive bid (aka: "piggybacking").*

- (1) *Basis for purchase.* The purchase of goods under a contract awarded by another governmental entity or cooperative purchasing entity is authorized provided the town manager or designee ~~finance department director~~ makes a written determination that time and expense factors make it financially advantageous for the town to do so. In making this determination, the town manager or designee ~~finance department director~~ will consider the number of bids so solicited by the other governmental entity or cooperative purchasing entity. There must be proof of proper procedural documentation to support the other ~~governmental agencies~~ entity's purchasing policy and, in cases of piggybacking contracts, certification that the other ~~governmental~~ entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any contract(s) awarded by the town based upon another governmental entity's procurement process in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(g) *Cooperative purchasing.*

- (1) *Basis for purchase.* The town ~~finance department~~ may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units or cooperative purchasing entities.
- (2) *Town council approval.* Cooperative purchasing agreements must be authorized pursuant to an interlocal agreement with a governmental entity or other agreement approved by town council and executed by all participating governmental units. The town manager will forward the proposed interlocal agreement to the town attorney for review and submit the interlocal agreement to the town council for approval.
- (3) The town manager may purchase goods or services through cooperative purchasing in lieu of a competitive bid as provided in this Division.

(h) *Competitive negotiation for professional services.*

- (1) *Applicability.* Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of F.S. § 287.055 (the "Consultant's Competitive Negotiation Act" or "CCNA") and within statutory thresholds.
- (2) *Request for qualification.* The department director will prepare, with the assistance of the town manager or designee ~~finance department director, and review by the town manager or designee,~~ a request for qualification for the particular project. The request will include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
- (3) *Addenda.*
 - a. After a request for qualifications (RFQ) is issued and before the submission deadline, town manager or designee ~~finance department director~~ , with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.
 - b. Any firm or individual desiring to provide professional services to the town must first be certified by the town as qualified pursuant to law and the regulations of the town. The town will make a finding that the firms or individuals to be employed is fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
- (4) *Public notice and qualification procedures.* The town clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the town to be in excess of statutory thresholds \$250,000.00, or for planning or study activities when the fee for professional services is in excess of statutory thresholds \$25,000.00, other than as permitted by the CCNA. The notice must include a general description of the project, shall indicate how interested parties may apply for consideration, and the closing date for receipt of proposals, and contain such other information as the town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the town's discretion. The submission deadline must be a minimum of 30 calendar days after the date the RFQ is first published.
- (5) *Selection advisory committee.*
 - a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: a town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.

- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the submittal bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(6) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(7) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for professional services for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to increases due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second-ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking; and, thereafter

continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

- (8) *Town council approval.* The town manager will submit the negotiated contract to the town attorney for review and the contract to the town council for approval.
 - (9) *Prohibition against contingent fees.* Each contract entered into by the town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
 - (10) *Reuse of existing plans.* There is no public notice requirement or utilization of the selection process for projects in which the town is able to reuse existing plans from a prior project. However, with plans that the town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with F.S. § 287.055(11).
 - (11) *Exception to CCNA process—Emergencies.* Under emergencies as defined by F.S. § 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this subsection (h).
 - (12) *Exception to CCNA process—Continuing contracts.* In the event that the continuing contract provisions of F.S. § 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this subsection (h).
- (i) *Request for proposal.*
- (1) *Applicability.* Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the town manager, said contracts may be negotiated by utilizing the selection advisory committee as specified in subsection (h)(3) above.
 - (2) *Request for proposal.* The department director will prepare, with the assistance of the ~~finance department director, and review by~~ the town manager or designee, a request for qualification for the particular project. The request shall include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
 - (3) *Addenda.* After a request for proposals is issued and before the submission deadline, the town manager or designee ~~the finance department~~ may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/RFQ.
 - (4) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the town in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing such goods and/or services.
 - (5) *Public notice.* The town will provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP must describe the goods and/or services

required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

(6) *Selection advisory committee.*

- a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a—town department directors or their designees~~ and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the ~~submittal~~ bid and response materials ~~provided by the finance department~~ prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(7) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(8) *Negotiation.*

- a. The town manager shall negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.

- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.
 - c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
 - d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for proposals.
- (9) *Discussions.* The town manager or the selection advisory committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.
- (10) *Award.*
- a. Proposed awards above ~~\$25,000.00~~ \$75,000.00 must be formally approved by the town council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - b. Nothing in this division may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the town manager or town attorney in representing the town, but such hiring may be subject to council approval.
- (11) *Town council approval.* The town manager will submit the request for proposal of ~~\$25,000.00~~ \$75,000.00 or more to the town attorney for review and then submit the contract to the town council for approval.
- (12) *Cancellation of request for proposals.* A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The items or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-481. - Vendor list.

Vendor list. The finance department does not maintain a "vendor list" of vendors who desire to receive invitations of bids and/or requests for proposals by mail.

Sec. 2-482. - Specifications for all solicitations.

- (a) *General.* All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs and may not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the town by architects, engineers, designers, and draftsmen.
- (b) *Brand name or equal specification.*
 - (1) *Use.* Brand name or equal specifications may be used when the department director and town manager or designee ~~finance department director~~ determines in writing that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Title does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or nature of the town's requirements makes use of a brand name or equal specification suitable; or
 - d. Use of a brand name or equal specification is in the town's best interest.
 - (2) *Designation of several brand names.* Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.
 - (3) *Required characteristics.* Unless the town manager or designee ~~finance department director~~ and the affected department director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, functional, or performance characteristics which are required.
 - (4) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation should contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
- (c) *Brand name specification.* Since use of a brand name specification is restrictive of product competition, it may be used only when the ~~finance department director~~ town manager or designee makes a written determination that only the identified brand name items will satisfy the town's needs.
- (d) *Competition.* The town manager or designee ~~finance department director~~, in conjunction with the department director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with subsection 2-480(c) (Sole source purchases).

Sec. 2-483. - Performance bond and insurance requirements.

The town manager or designee ~~finance department director~~ will require a public construction bond for all contracts listed in subsection 2-480(c) (Sole source purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the town.

Sec. 2-484. - Construction contracts and supporting documents.

- (a) *Construction contracts.* All construction contracts will be reviewed by the town attorney and be executed by the mayor and town clerk and by either the president or vice-president of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.

- (b) *Insurance.* All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.
- (c) *Public construction bond.* Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the public records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.
 - (1) *Form.* The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, _____, as Principal and _____, a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in F.S. § 255.05(1), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and Pays Moller al losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

- (2) *Waiver of bond.* Town council may waive the public construction bond requirement for project with a total contract amount of \$200,000.00 or less.
- (3) *Alternative form of security.*
 - a. In lieu of a public construction bond, a contractor may file with the town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. ch. 652, pt. II.
 - b. Any such alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the town.
- (d) *Change orders.*
 - (1) No work outside the scope of the original contract may be performed prior to approval of a change order by the town council; provided, however, that town council may delegate this authority, up to a specified amount, for contracts where council approval of all change orders would hinder or delay work progress.
 - (2) This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the department director and town manager.
 - (3) All change orders must be in writing and have town manager approval.

Sec. 2-485. - Disqualification of vendors and bidders.

- (a) *Procedure for disqualification.* After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the town manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.
- (b) *Grounds for disqualification.* Grounds for disqualification include, but are not limited to:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining;
 - (2) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (3) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the town;
 - (4) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (5) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
 - (6) Financial irresponsibility;
 - (7) Unethical conduct; disciplinary action against the person or firm's professional or contractors;
 - (8) License; or
 - (9) Findings under bid protest that the firm acted fraudulently or in bad faith.
- (c) *Notice of decision.* A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.
- (d) *Appeal.* Any person or firm who is disqualified may appeal the decision to the town council, provided a notice of appeal is filed within 30 calendar days of the date the decision to disqualify is rendered.

Sec. 2-486. - Appeals and remedies.

- (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.

Sec. 2-487. - Remedies for solicitations or awards in violation of law.

- (a) *Closing date for receipt of proposals.* If prior to the bid opening or closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the town ~~manager and town~~ attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.
- (c) *After award.* If, after an award the town manager or designee ~~finance department director~~ and the affected department director, after consultation with ~~the town manager and town~~ attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm awarded the contract has not acted fraudulently or in bad faith;
 - (2) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 - (3) The contract may be terminated, and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (4) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the town.

Sec. 2-488. - Standard of conduct for town officials and employees.

All town officials and employees shall adhere to the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes, as amended from time to

time ("Ethics Code"). In the event of a conflict between any term, condition or requirement in this Section and the Ethics Code, the Ethics Code shall be followed.

- (a) *Failure to follow proper purchasing procedures.* It is a violation of this division for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the the town manager or designee finance department director.
- (b) *Solicitation or acceptance of gifts.* No town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.
- (c) *Doing business with the town.*
 - (1) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.
 - (2) No town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the town.
- (d) *Unauthorized compensation.* No town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.
- (e) *Conflicting employment or contractual relationship.* No town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the town; provided however, that this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the town.
- (f) *Contingent fees.* No town official or employee may be retained, or retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- (g) *Confidential information.* No town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.
- (h) *Penalties.* Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:
 - (1) *In the case of a town official:*
 - a. Forfeiture of office as provided in the town Charter.
 - b. Restitution of any pecuniary benefit received because of the violation committed.
 - (2) *In the case of a town employee:*
 - a. Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
 - b. Suspension from employment for not more than 90 days without pay.
 - c. Demotion.
 - d. Reduction in salary level.
 - e. Oral or written reprimands or warnings.

- f. Any discipline imposed shall be subject to the town's personnel rules.
- (i) *Contracts voidable.* If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the town, be declared null and void or voidable.

I have read, understand and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the ~~Finance Director~~ or Town Manager.

_____	_____
Name	Date

Sec. 2-489. - Cone of silence.

- (a) *Purpose and intent.* The requirements of section, "cone of silence", as amended, are applicable to the town. It is the intent of this division to prevent potential bidders, offerors or service providers from communicating with town department heads, their staff, town council or selection and evaluation committee members during the period of time in which the cone of silence is imposed.
- (1) *Meaning.* "Cone of silence" is defined to mean a prohibition on:
- a. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the town's professional staff including, but not limited to, the town manager and his or her staff;
 - b. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the town's professional staff including, but not limited to, the town manager and his or her staff;
 - c. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the selection committee or evaluation committee;
 - d. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the selection committee or evaluation committee;
 - e. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the mayor, town council and their respective staffs; and
 - f. The town manager and the chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the town manager and, provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the town manager.
- (2) *Allowed communications.* Notwithstanding the foregoing, the cone of silence does not apply to:
- a. Communications with the town attorney and his or her staff;
 - b. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the town manager makes a written recommendation;
 - c. Communications regarding a particular RFP, RFQ or IFB between any person and the the finance department director or designee, provided the communication is limited strictly to

matters of process or procedure already contained in the corresponding solicitation document; and

- d. Communications regarding a particular proposal, quotation or bid between the the town manager or designee ~~finance department director or designee~~ and a member of the selection committee or evaluation committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) *Procedure.*

- (1) A cone of silence will be imposed upon each RFP, RFQ and IFB after the advertisement of the RFP, RFQ or IFB. At the time of imposition of the cone of silence, the town manager or designee ~~finance department director or designee~~ will provide for public notice of the cone of silence. The the town manager or designee ~~finance department director~~ will issue a written notice thereof to the affected departments, file a copy of such notice with the town clerk, with an email copy thereof to each town council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this division. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular RFP, RFQ or IFB will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.
- (2) The cone of silence terminates at the time town council votes to award the contract.
- (3) If the town manager rejects all bids or proposals submitted in response to an RFP or IFB and concurrently requests the re-issuance of an RFP or IFB, the rejected bids or proposals will remain under the cone of silence until such time the town manager issues a written recommendation of award or until the town manager withdraws the re-issued RFP or IFB.

Sec. 2-490. - Exhibits.

All exhibits referenced in this division including:

Exhibit A Bid Tally Sheet

Exhibit B Quote Sheet

Exhibit C Sole Source Purchase

Exhibit D Emergency Purchase; and

Exhibit E Cooperative Purchase Justification,

are on file with the town.

Secs. 2-491—2-505. - Reserved. 8

1. **Request:**

Meeting Date: October 6, 2025

A request to for reconsideration of a required condition in Resolution 25-294, associated with SEZ20250149 for the property located at 4750 Estero Boulevard, was timely submitted to the Town on September 24, 2025, by Brian Campbell on behalf of The Shores of Fort Myers Beach Condominium Association, Inc.

The applicant is requesting that Town Council revise the sea turtle protection condition to allow for pier construction during sea turtle nesting season, subject to specific environmental safeguards. The proposed revision would require the applicant to obtain a permit from the Florida Fish and Wildlife Conservation Commission (FWC) authorizing a Marine Turtle Permit Holder to relocate nests within a designated construction corridor necessary for the project. The corridor would be limited to the minimum width required for equipment and material transport. Construction activities would be restricted to daylight hours, with daily monitoring of nesting activity by the FWC Marine Turtle Permit Holder before work begins each day. No exterior nighttime lighting would be permitted. If nighttime work is needed, the applicant would be required to obtain additional authorization and comply with any further conditions. This request seeks to balance environmental protection with the practical needs of the construction timeline. The applicant did not attend the hearing when the special exception was approved or would have made the request at that time.

If the Town Council would like to reconsider the matter, a motion should be made to schedule the rehearing regarding the condition at issue.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

The applicant, Brian Campbell, on behalf of The Shores of Fort Myers Beach Condominium Association, Inc., is requesting a reconsideration of a condition of approval in Resolution 25-294 associated with SEZ20250149, which granted a special exception for the like-for-like replacement of two tiki huts, decking, fencing, gravel driveway, and landscaping within the Environmentally Critical (EC) zoning district, located seaward of the 1978 Coastal Construction Control Line (CCCL). The approved work is intended to be performed after sea turtle nesting season ends, on or after November 1, 2025. Section 34-652(e) of the Town's Land Development Code (LDC) permits the reconstruction of accessory structures such as tiki huts, decking, fences, and driveways in the EC district only by special exception. Accordingly, the applicant sought and was granted a special exception for this project.

The Local Planning Agency (LPA) voted 6-0 to recommend approval of SEZ20250149 with conditions for Town Council's consideration.

The applicant is now requesting that Town Council reconsider and clarify the sea turtle protection condition to allow for pier construction during nesting season, subject to specific

environmental safeguards.

The proposed revision would state: *Construction of the pier during sea turtle nesting season is permissible. The applicant shall provide a permit from the Florida Fish and Wildlife Conservation Commission (FWC) authorizing construction during sea turtle nesting season. The permit must authorize a FWC Marine Turtle Permit Holder to relocate nests within an established construction corridor necessary for the pier project during the contract period. The width of the corridor shall be the minimum necessary to allow for equipment and material transport. Construction activities shall be limited to daylight hours. Daily monitoring of sea turtle nesting activity by the FWC Marine Turtle Permit Holder must occur prior to commencing work each day. No exterior lighting at nighttime shall be permitted. If nighttime work is required by the applicant, it must be separately authorized and subject to additional conditions.* This request aims to balance project feasibility and timing with environmental compliance and sea turtle protection standards.

Attachments:

1. ns_Resolution 25-XX , SEZ 20250149 for 4750 Estero Blvd
2. NS SEZ20250149 4750 Estero Blvd- Staff report
3. Exhibit A Site Plan
4. Exhibit B List of Property owners
5. Exhibit C Completed Application and Survey
6. Exhibit D ShoresFmb1Memo9-23-25

Financial Impact:

6. Alternative Action

Deny the request for reconsideration and uphold the previously approved special exception for the like-for-like replacement of two tiki huts, decking, fence, gravel driveway, and landscaping within the Environmentally Critical (EC) zoning district.

7. Management Recommendations:

Approve the applicant's request for reconsideration and revise the sea turtle condition in Resolution 25-294, associated with SEZ20250149, to allow construction of the pier during sea turtle nesting season, subject to the revised language and environmental safeguards as proposed.

8. Recommended Approval:

Amy Baker, Town Clerk
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/26/2025
Approved - 9/26/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

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.



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

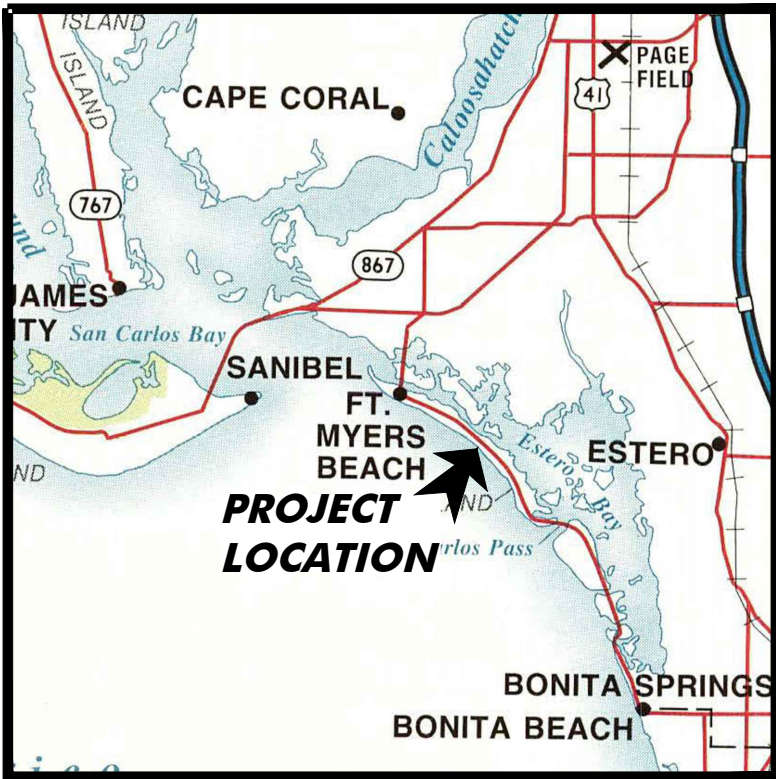
Staff finds that the special exception to replace two tiki huts, decking, fence, gravel driveway and landscaping in EC zoning district are in compliance with LDC Sec. 34-88(b). Therefore, staff recommends **approval with conditions** of SEZ20250149 for

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.

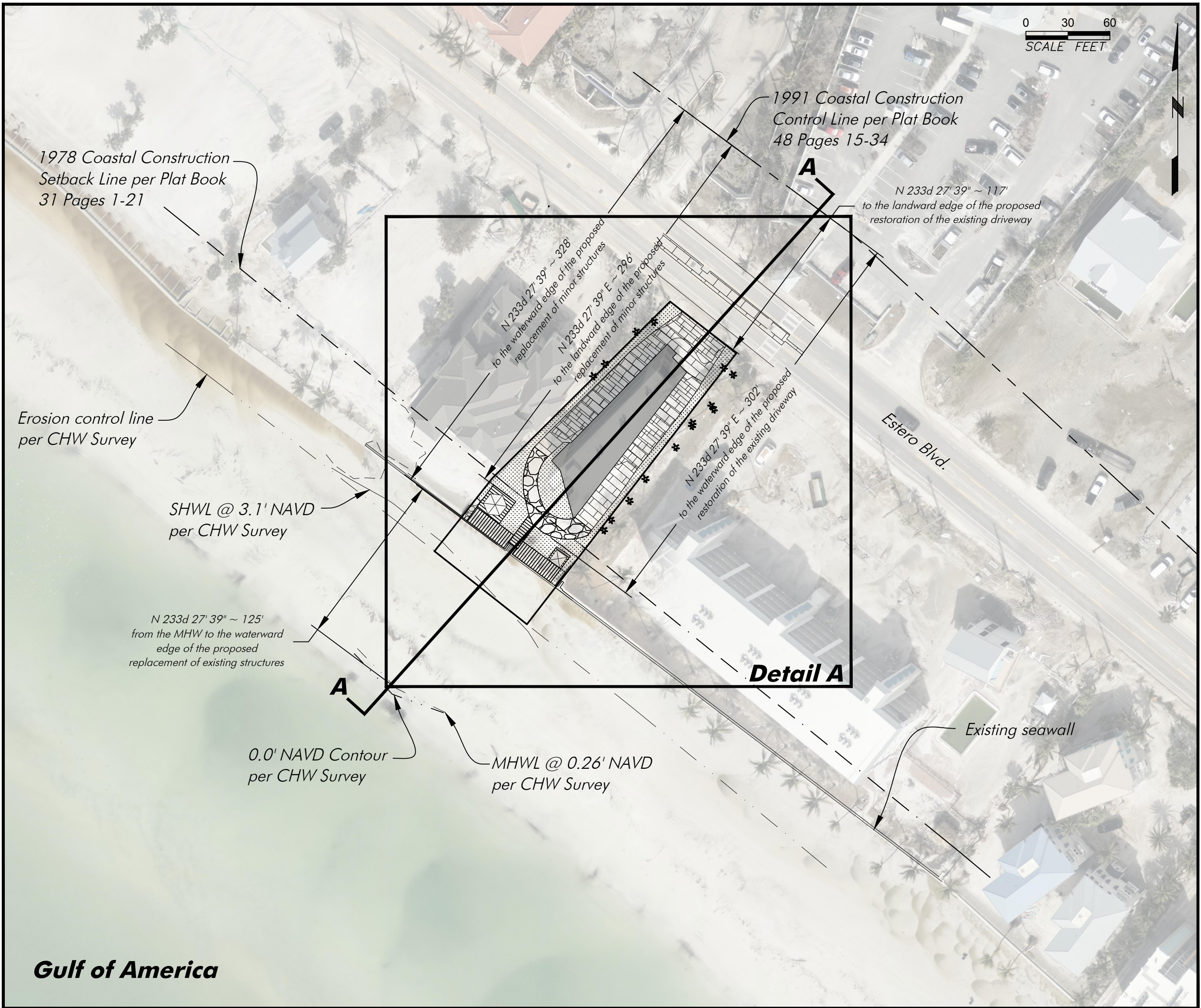


Vicinity Map
SCALE: 1" = 5 Miles



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.



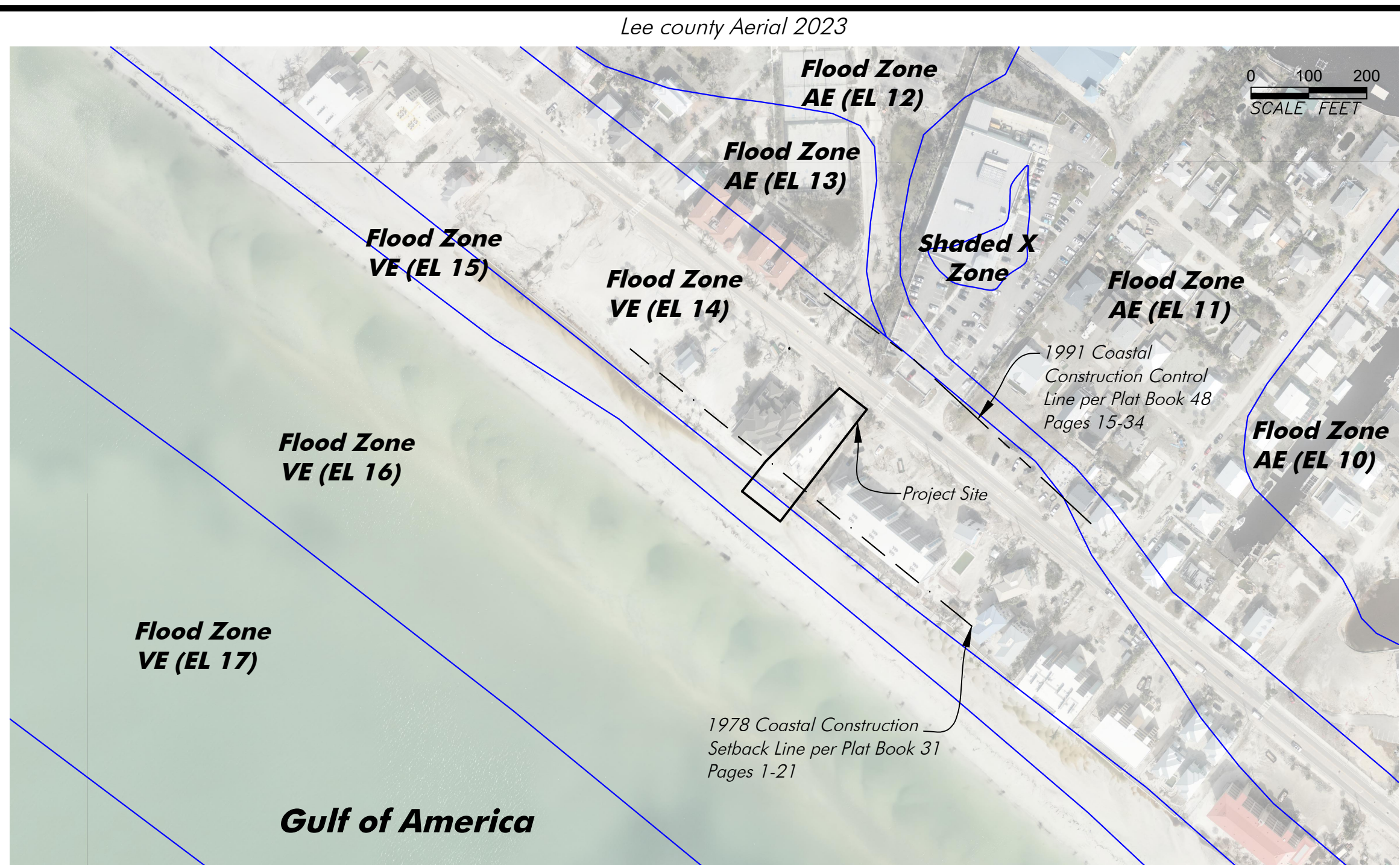
Gulf of America

Overall Site Dimension Plan
Scale 1" = 60'

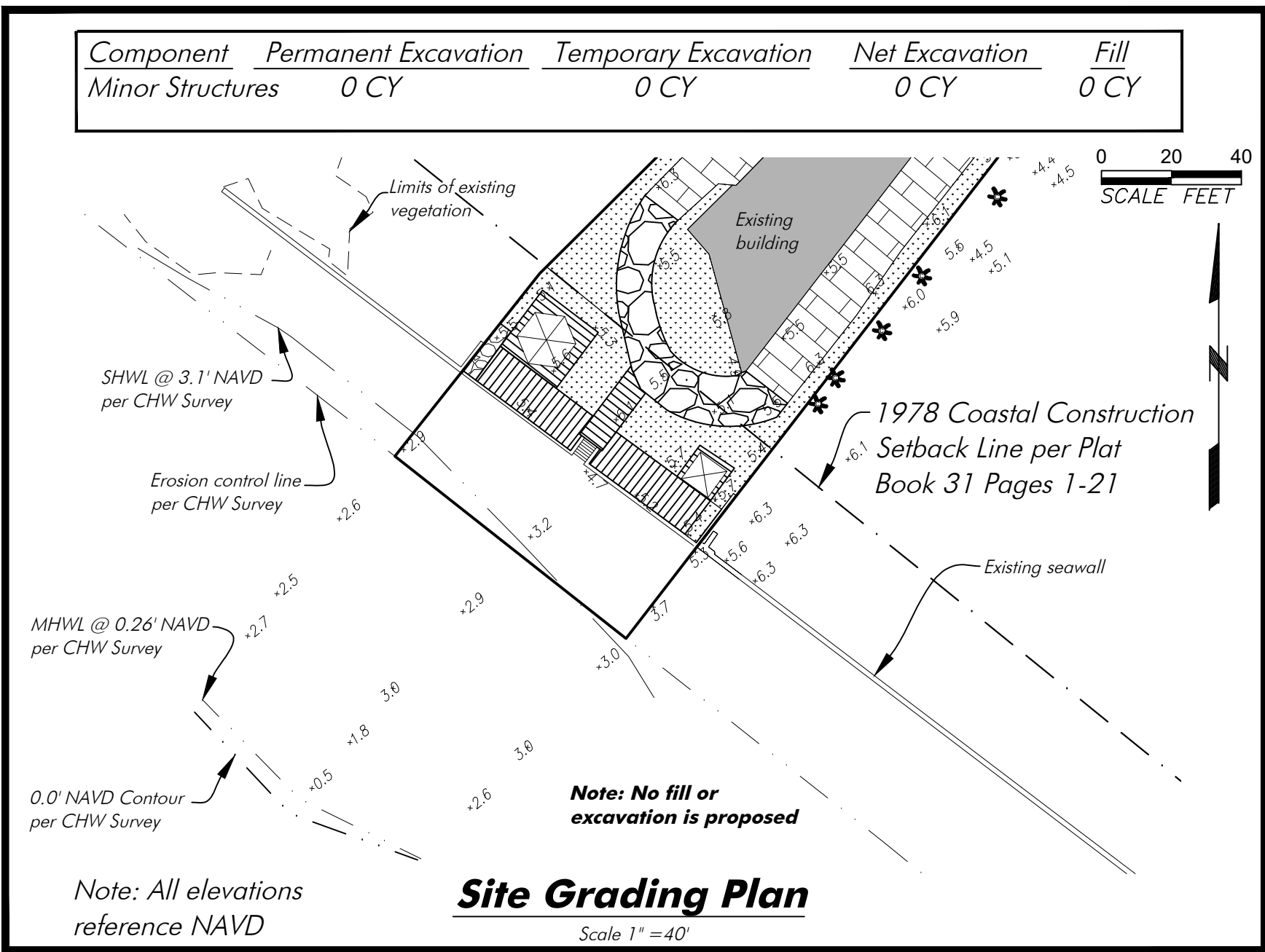


Detail A - Proposed Structures Dimension Plan
Scale 1" = 30'

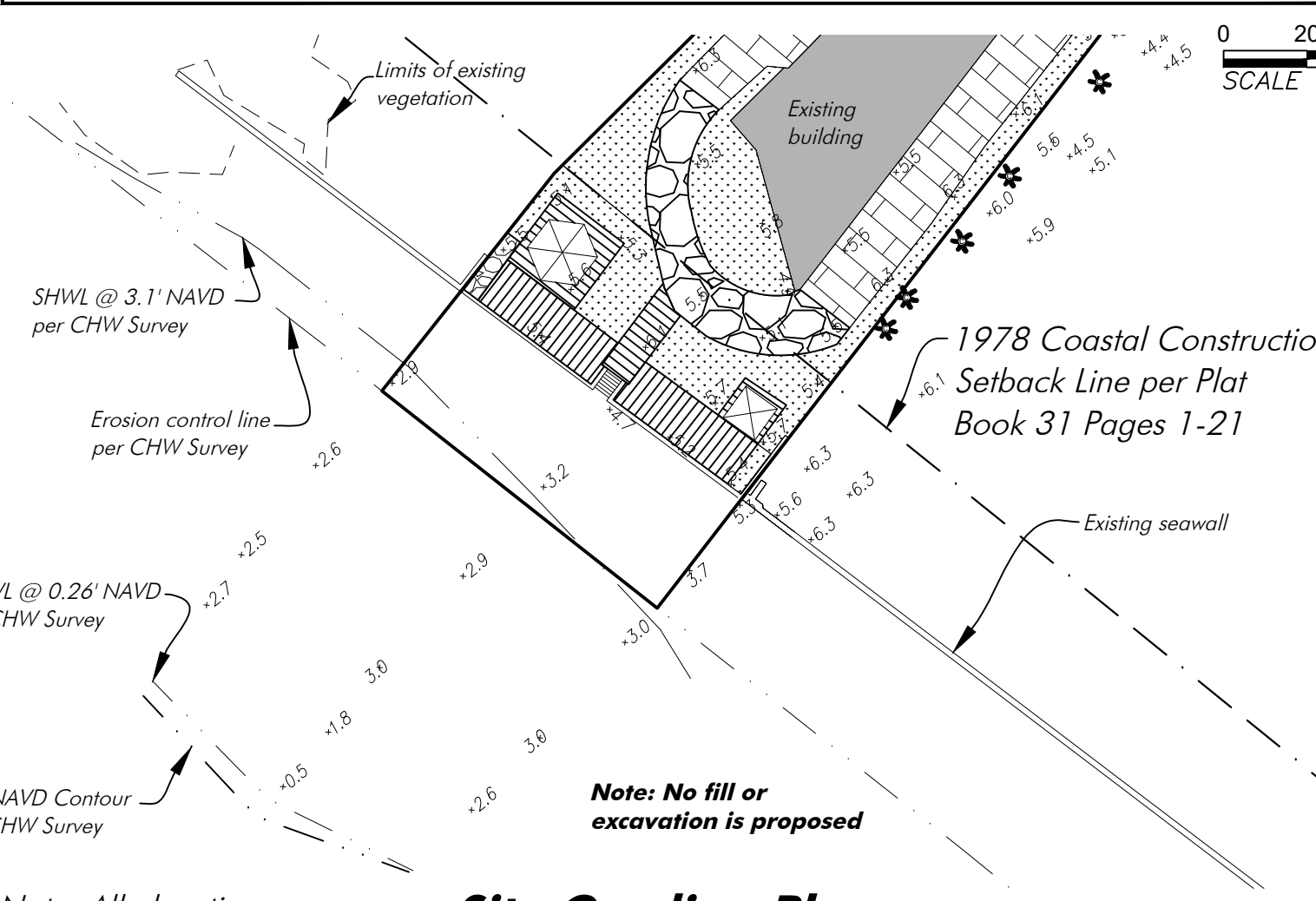
Note: Proposed landscaping to consist of:
Evergreen Shrub (*Clusia guttifera*)
Green/Silver Buttonwood (*Conocarpus erectus*)
Railroad Vine (*Ipomoea pes-caprae*)
Sea Oats (*Uniola paniculata*)
Bitter Panicum (*Panicum amarum*)
Marsh Hay (*Spartina patens*)
Saw Palmetto (*Serenoa repens*)



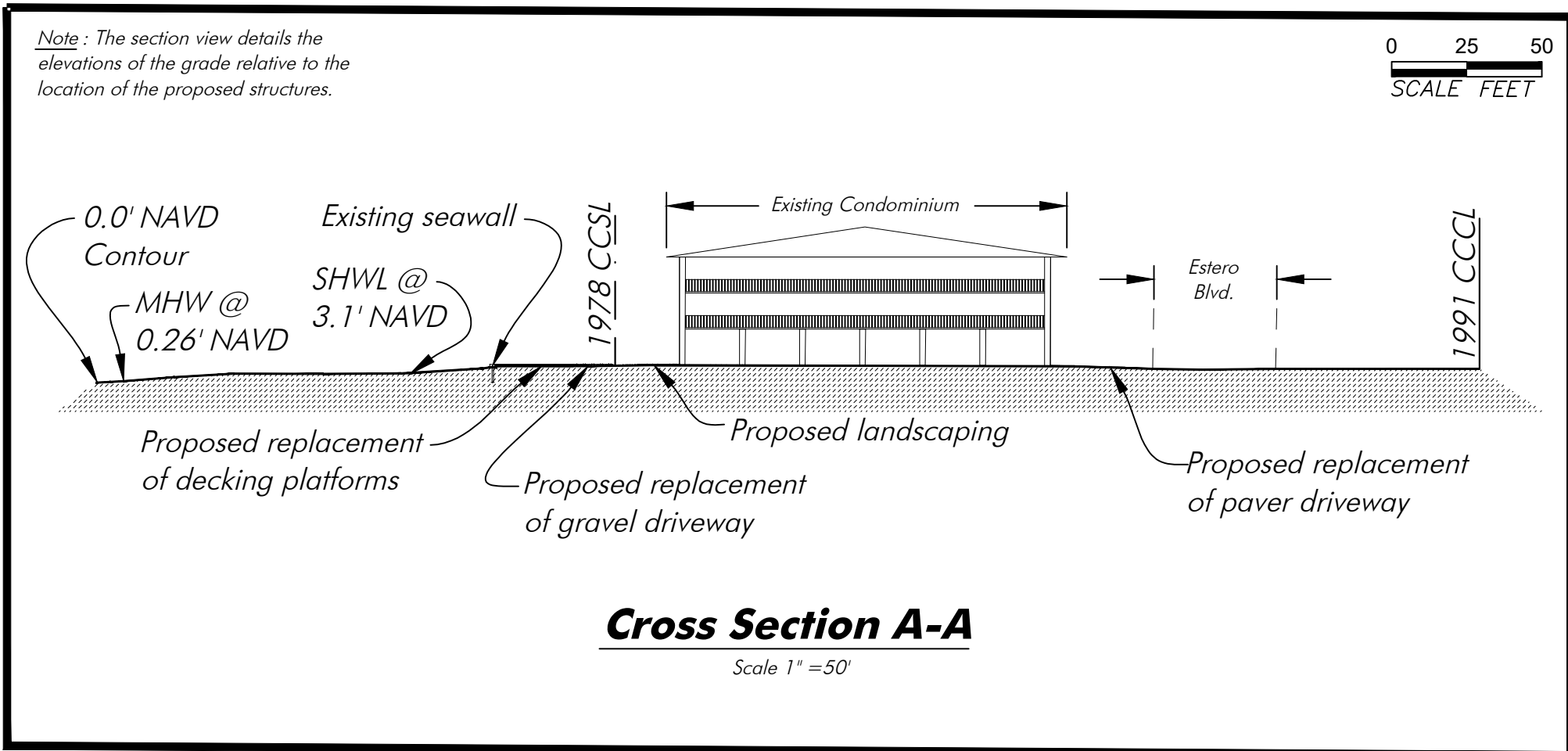
Overall Site Plan
Scale 1" = 200'



Component	Permanent Excavation	Temporary Excavation	Net Excavation	Fill
Minor Structures	0 CY	0 CY	0 CY	0 CY



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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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: 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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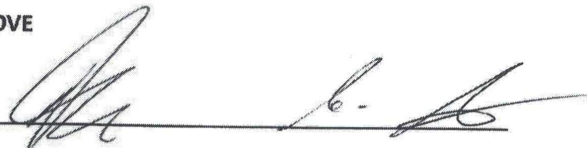
As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

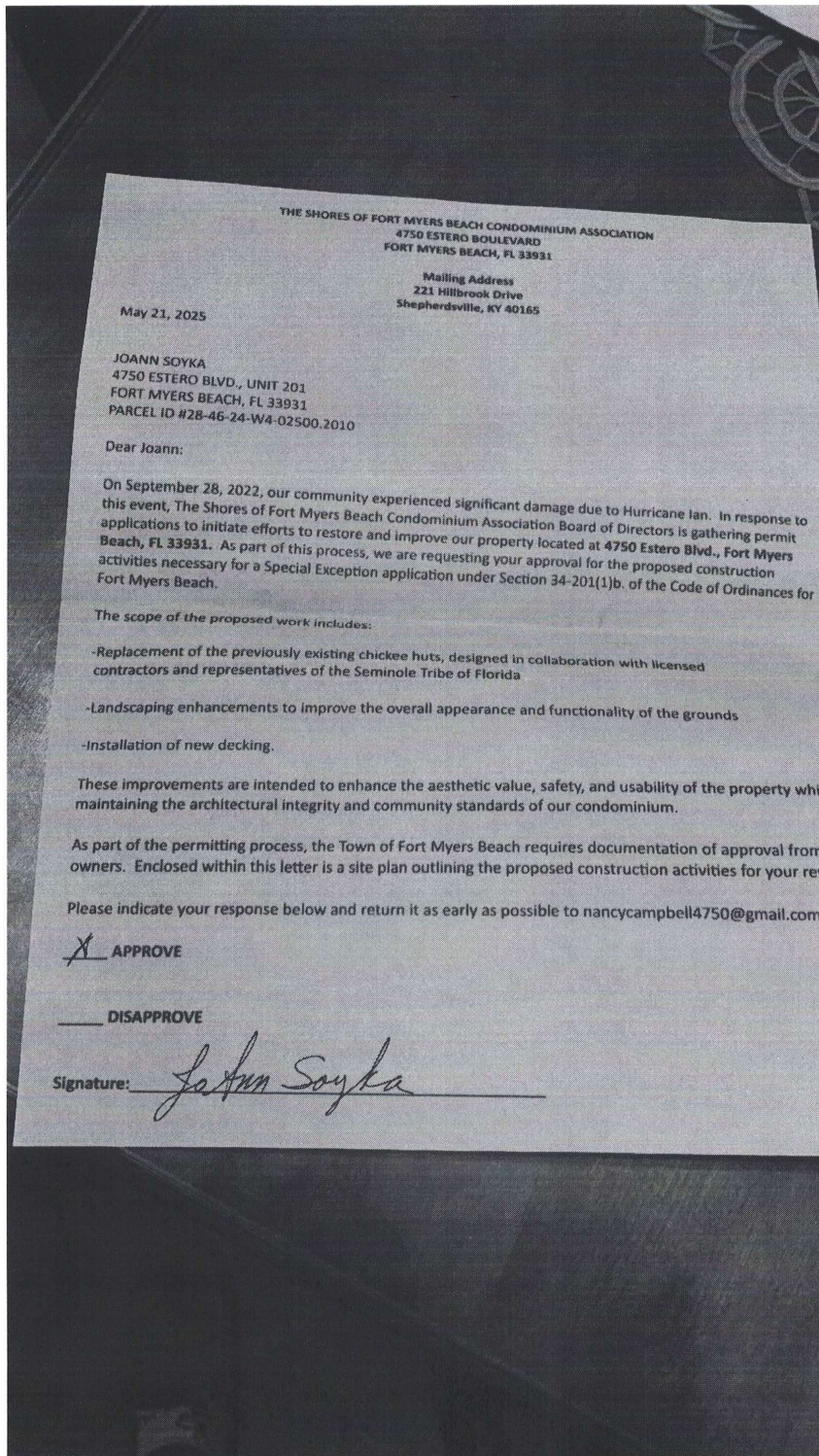
Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **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

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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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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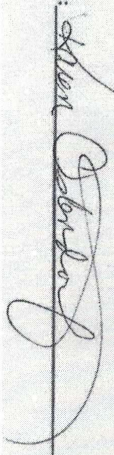
These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

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

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.

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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.

X Brian Campbell
Signature

Brian Campbell
Printed Name

STATE OF Kentucky COUNTY OF Ballou

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

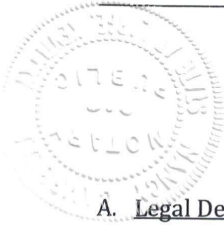
Board of Directors
Title

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
LEIPA 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.

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.

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 PLY NAIL AND DISK - "Q 6896"
- ▲ = FOUND FLOORED DEPARTMENT OF NATURAL RESOURCES (DNR) RANGE MONUMENT R 193 RESET 1986
- ▲ = SET PLY 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 FLOORED DEPARTMENT OF NATURAL RESOURCES CONCRETE MONUMENT
- (C) = CALCULATED DATA
- (D) = LEGAL DESCRIPTION DATA
- E = EASTING STATE PLANE COORDINATE (FLOORED WEST ZONE)
- (M) = FIELD MEASURED DATA
- N = NORTHING STATE PLANE COORDINATE (FLOORED WEST ZONE)
- (P) = RECORD PLAT DATA
- 555 = SPOT ELEVATION, NAVD 1988
- = WOOD UTILITY POLE
- = CONCRETE UTILITY POLE
- = GUY ANCHOR
- = ELECTRIC BOX
- = CABLE PEDESTAL
- = WATER METER
- = BACKFLOW PREVENTER
- = WATER VALVE
- = FIRE HYDRANT
- ⑤ = 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/NSRS 2011). FLORIDA STATE DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-A31 AND 12-83-A32 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 12071C05666, DATED NOVEMBER 17, 2022. 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 & KAREY, 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). ELEVATION DATA 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 25-24 AND 25-24, AND IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE 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 CORNER FOR 60.11 FEET TO THE NORTHEASTHERLY CORNER OF THE LANDS DEEDED IN DEED BOOK 274 AT PAGE 543 OF SAID PUBLIC RECORDS; THENCE SOUTHWESTERLY (S 37°46' W) FOR 226.0 FEET TO THE SOUTHWESTHERLY CORNER OF THE LANDS DEEDED IN D.B. 274 AT PAGE 543; THENCE DEFLECT RIGHT 2°00' FROM THE PRECEDING COURSE AND RUN 32.7 FEET TO THE MEAN HIGH TIDE LINE OF THE GULF OF MEXICO; THENCE SOUTHWESTERLY (S 37°46' W) FOR 10.0 FEET TO THE MEAN HIGH TIDE LINE OF THE GULF OF MEXICO; THENCE SOUTHWESTERLY (S 37°46' W) RUNNING AT RIGHT ANGLES TO THE SOUTHEASTERLY EXTENSION OF THE NORTHEASTERLY LINE OF BLOCK J WOULD BE 10.0 FEET TO THE MEAN HIGH TIDE LINE OF THE GULF OF MEXICO; THENCE SOUTHWESTERLY (S 37°46' W) SOUTHWESTERLY FROM THE WESTERLY CORNER OF SAID LOT 1, BLOCK J; THENCE NORTHEASTERLY AT RIGHT ANGLES TO SAID EXTENDED LINE FORM 79.70 FEET TO THE SOUTHWESTHERLY LINE OF SAID LOT 1, BLOCK J; THENCE DEFLECT LEFT 2°00' FROM THE PRECEDING COURSE AND RUN 10.0 FEET ALONG THE OCCUPIED LINE AS DEEDED IN DEED BOOK 166 AT PAGE 431 FOR 179.0 FEET TO THE POINT OF BEGINNING.

GRAPHIC SCALE

(IN FEET)
1 inch = 30 ft.

This map prepared by:



Marine Engineers and Environmental Consultants

Date: September 23, 2025

To: William McKannay
Town of Fort Myers Beach
6321 Estero Blvd
Fort Myers Beach, FL 33931

From: Nancy Campbell (Applicant)
Serena Cantu (Consultant)

Subject: Request for Clarification on Condition in Special Exception (SEZ20250149)

Dear Mr. McKannay,

In accordance with Section 34-93 of the Town of Fort Myers Beach Land Development Code, we respectfully request a rehearing of Special Exception No. SEZ20250149 for the Shores of Fort Myers Beach Condominium Association, located at 4750 Estero Boulevard, to clarify the condition relating to work during sea turtle nesting season.

In line with this request, we are seeking clarification of the condition in the special exception that addresses work during sea turtle nesting season. Pursuant to my email sent on September 11, 2025, Town staff had previously confirmed removal of this condition, and the matter was also discussed during the Public Hearing. The applicant has since obtained a Florida Department of Environmental Protection (FDEP) field permit authorizing the proposed work, which includes its own special condition governing activities during sea turtle nesting season. For reference, I have attached my September 11 email correspondence in support of this request.

Thank you for your time and assistance. Please let me know if you need any additional documentation from us to consider this matter.

Sincerely,

A handwritten signature in cursive script that reads "Serena Cantu".

Serena Cantu
HWA

A handwritten signature in cursive script that reads "Nancy Campbell, Sec. / Treas.".

Nancy Campbell
Shores of FMB Condo Assoc.
4750 Estero Blvd.

Serena Cantu

From: Serena Cantu
Sent: Thursday, September 11, 2025 3:59 PM
To: Georgina Cid
Cc: Jason Green; Chadd Chustz; Jason Smalley
Subject: RE: SEZ20250149 "Shores of Fort Myers Beach Condo"

Good afternoon, Georgina,

I appreciate your response. The applicant does wish to request a modification to this condition. Can you please provide me with contact information for the planning staff?

Thank you,



Serena Cantu
Environmental Specialist
O. (239) 334-6870
F. (239) 334-7810
www.hanswilson.com

KNOWLEDGE QUALITY SERVICE

From: Georgina Cid <Georgina.Cid@fmbgov.com>
Sent: Thursday, September 11, 2025 3:47 PM
To: Serena Cantu <serena@hanswilson.com>
Cc: Jason Green <jasongreen@axiscompanies.com>; Chadd Chustz <Chadd@fmbgov.com>; Jason Smalley <jsmalley@fmbgov.com>
Subject: FW: SEZ20250149 "Shores of Fort Myers Beach Condo"

Dear Serena,

Thank you for reaching out regarding the special exception approval for the property located at 4750 Estero Blvd.

As noted during the Town Council meeting, the application was approved unanimously to allow a like-for-like replacement of two tiki huts, decking, fencing, gravel driveway, and landscaping within the EC zoning district seaward of the 1978 CCCL line. This approval included the staff-recommended condition that all work be conducted **after the end of turtle nesting season, on or after November 1st.**

While we understand that the applicant has received FDEP field permit authorization and outlined best management practices for conducting work during turtle season, the Town Council's approval is conditioned upon work occurring **after** the nesting season ends. Therefore, at this time, the condition **has not been removed**, and work should not proceed prior to November 1st.

Should the applicant wish to request a modification to this condition, they may contact our planning staff for additional guidance or any further questions.

Best regards,

Georgina Cid

Community Development

Community Development

Manager

Town of Fort Myers Beach

2731 Oak St

Fort Myers Beach, FL 33931

Phone: (239) 955-3038



FMBgov.com



From: Serena Cantu <serena@hanswilson.com>

Sent: Thursday, September 11, 2025 12:08 PM

To: Judith Frankel <jfrankel@fmbgov.com>; Chadd Chustz <Chadd@fmbgov.com>

Subject: FW: SEZ20250149 "Shores of Fort Myers Beach Condo"

Good afternoon,

I am reaching out with hopes to get more information regarding the approval of the above referenced special exception application.

Unfortunately, I could not attend the Town Council meeting this morning for the above referenced project. I was able to tune into the meeting via YouTube, and I noticed that the speaker brought up the permit condition that we had removed (see the emails below). We have received state authorization to conduct the work through a FDEP field permit (attached) which contains special permit conditions relating to sea turtle nesting season. The applicant will install a chain link fence with a silt fence on the landward face of the fence with embedment into the sand or install a silt barrier with plywood to keep turtles from scaling over the trenched silt barrier as required by the FDEP field permit. These best management practices will be implemented during construction in sea turtle nesting season. The proposed work is located above the seawall on the uplands.

The applicant is eager to start the work, but it sounds like the special exception may contradict the state permit. Could you please advise if this condition has been removed from the special exception? If it cannot be removed, may the applicant move forward with the proposed work following the FDEP best management practices mentioned above? Any information you can provide will be helpful. Thank you very much and look forward to your response.

Sincerely,



Serena Cantu
Environmental Specialist
O. (239) 334-6870
F. (239) 334-7810
www.hanswilson.com

KNOWLEDGE QUALITY SERVICE

From: Chadd Chustz <Chadd@fmbgov.com>
Sent: Wednesday, August 6, 2025 6:02 PM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: Serena Cantu <serena@hanswilson.com>
Subject: RE: SEZ20250149 "Shores of Fort Myers Beach Condo"

Done.

Chadd Chustz
*Project Manager, Marine
Operations*
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL
33931
Phone: (239) 765-0202



FMBgov.com



From: Judith Frankel <jfrankel@fmbgov.com>
Sent: Wednesday, August 6, 2025 1:37 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Cc: Serena Cantu <serena@hanswilson.com>
Subject: FW: SEZ20250149 "Shores of Fort Myers Beach Condo"

Hello Chadd,

I would appreciate if you could weigh in on a condition of approval staff is recommending for a Special Exception at 4750 Estero Boulevard. Plans are here: [Department of Community Development](#)

The Special Exception is mainly for two previously existing tiki huts. The tiki huts are seaward of the 1978 CCCL but landward of an existing seawall that is not being altered or reconstructed. Staff has listed "Construction shall not occur during sea turtle season" as one of the conditions of approval. The

applicant's agent, copied here, is asking for the removal of that condition. I advised that you need to agree to the removal of that condition.

This application will be heard by the LPA on Tuesday August 12th, so it would be helpful to have your thoughts prior to that meeting. The staff report is attached. Please let me know if you have any questions.

Judith Frankel, AICP

*Principal Planner,
Community Development
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL
33931
Phone: (239) 765-0202
Direct: (239) 940-8118*



FMBgov.com



From: Serena Cantu <serena@hanswilson.com>

Sent: Wednesday, August 6, 2025 1:15 PM

To: Kendra Rosa <Kendra@fmbgov.com>

Cc: zoning.permits <zoningpermits@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>; Sakshi Sakshi <sakshi@exp.com>

Subject: RE: SEZ20250149 "Shores of Fort Myers Beach Condo"

Good afternoon Kendra,

Do you have any time this week to set up a phone call to discuss the above referenced project? I have a question regarding the conditions of approval. Please let me know, I am available until 4:30pm today.

Thank you,



**Serena Cantu
Environmental Specialist**
O. (239) 334-6870
F. (239) 334-7810
www.hanswilson.com

KNOWLEDGE QUALITY SERVICE

From: Serena Cantu

Sent: Friday, August 1, 2025 4:11 PM

To: Kendra Rosa <Kendra@fmbgov.com>; Nancy Campbell <nancycampbell4750@gmail.com>

Cc: zoning.permits <zoningpermits@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>; Sakshi Sakshi <sakshi@exp.com>

Subject: RE: SEZ20250149 "Shores of Fort Myers Beach Condo"

Good afternoon, Kendra,

I will be attending the hearing on August 12th.

I wanted to reach out regarding the conditions of approval on the attached staff report. The applicant is not replacing the electric and lights on the tiki huts and indicated that the Sea Turtle Conservancy has a plan before town hall to reinstall 8 bollards on each side of the property. Would you be able to point me in the right direction as to where I can find any plans or details about this? Thank you very much and look forward to hearing back from you.

Sincerely,



Serena Cantu
Environmental Specialist
O. (239) 334-6870
F. (239) 334-7810
www.hanswilson.com

KNOWLEDGE QUALITY SERVICE

From: Kendra Rosa <Kendra@fmbgov.com>

Sent: Friday, July 25, 2025 4:55 PM

To: Nancy Campbell <nancycampbell4750@gmail.com>; Serena Cantu <serena@hanswilson.com>

Cc: zoning.permits <zoningpermits@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>; Sakshi Sakshi <sakshi@exp.com>

Subject: SEZ20250149 "Shores of Fort Myers Beach Condo"

Good afternoon,

Please find the attached staff report for 4750 Estero Blvd. If you have any questions, please let us know.

Please be advised the LPA meeting is scheduled August 12th at 9:00am at Diamondhead Beach Resort on the second floor.

Kendra Rosa
Zoning Coordinator,
Community Development
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL





Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

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1. **Request:**

Meeting Date: October 6, 2025

Approval of a Settlement Agreement in the case styled Pareshkumar (Paresh) Patel v. Town of Fort Myers Beach, Case No. 2:24-CV-00353-SPM filed in the U.S. District Court, Middle District of Florida, Ft. Myers Division. A copy of the proposed settlement agreement is included in the agenda materials.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Mr. Patel filed an action to recover unpaid overtime under the Fair Labor Standards Act and liquidated damages due to his alleged retaliatory discharge on April 18, 2024 in federal court. The Town Attorney and Mr. Patel's have worked toward settlement of the litigation and are very close to a final settlement agreement. A copy of the final settlement agreement is included in the agenda with a recommendation from the Town Attorney to approve the settlement agreement.

Attachments:

1. Release and Settlement Agreement - signed by client - 9-29-2025

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/23/2025
Approved - 9/23/2025
Approved - 9/24/2025
Approved - 9/24/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is entered into between Plaintiff, Pareshkumar (Paresh) Patel (referred to hereinafter as "PLAINTIFF") and Defendant, Town of Fort Myers Beach (referred to hereinafter as "DEFENDANT") (together, PLAINTIFF and DEFENDANT are referred to as "the Parties").

WHEREAS, PLAINTIFF initiated an action against DEFENDANT entitled Pareshkumar (Paresh) Patel vs. Town of Fort Myers Beach, which is currently pending in the U.S. District Court, Middle District of Florida, Case No. 2:24-cv-00353; and

WHEREAS, the Parties prefer to avoid the uncertainties and expense of protracted litigation, and instead, desire to set forth in this Agreement the terms and conditions of the settlement of PLAINTIFF's claims, in exchange for the consideration described herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the parties as follows:

1. DISMISSAL WITH PREJUDICE

Upon PLAINTIFF's receipt of all of the Consideration to Plaintiff described in section 2 below, the Parties agree to file a Joint Stipulation for Dismissal with Prejudice with the Court.

2. CONSIDERATION TO PLAINTIFF

In exchange for the mutual promises exchanged herein, DEFENDANT agrees to pay PLAINTIFF and his attorneys, the total sum of fifty thousand dollars (\$50,000.00), inclusive of attorneys' fees, costs, and expenses (in aggregate A – D immediately below shall be referred to as the "Settlement Amount"), in the following manner:

A. A check in the amount of eighteen thousand dollars (\$18,000.00) made payable to WELDON & ROTHMAN, PL for attorneys' fees and court costs, for which an IRS Form 1099

shall issue to WELDON & ROTHMAN, PL. The law firm Tax ID. No. is 20-5090498.

B. A check in the amount of thirty-two thousand dollars (\$32,000.00, no withholdings) made payable to PARESHKUMAR PATEL, for alleged non-wage compensatory damages and a general release, for which an IRS Form 1099-MISC shall issue to PLAINTIFF.

C. DEFENDANT further shall be solely responsible for and pay the full mediator's fee/invoice owed to mediator, Scott Atwood, Esq., arising from the Parties' mediation in this matter.

3. PROCEDURE

The Settlement Amount shall be delivered to counsel for PLAINTIFF at Weldon & Rothman, PL, 2548 Northbrooke Plaza, Naples, Florida 34119 (Tel: 239-262-2141) within twenty (20) days of the full execution of this Agreement.

4. RELEASES

Release by PLAINTIFF. In exchange for the consideration described above, PLAINTIFF hereby releases DEFENDANT, and each and all of its respective current and former directors, officers, shareholders, partners, managers, supervisors, employees, predecessors in interest, successors in interest, assigns, representatives, attorneys, insurers and agents, both in their representative and individual capacities, and any and all related and/or parent, subsidiary, or affiliated entities (hereinafter collectively referred to as "RELEASED PARTIES"), from liability from any and all claims. Nothing in this Agreement is intended to waive or release any vested retirement benefits PLAINTIFF may have. This is a general release.

Release by DEFENDANT. In exchange for the consideration described above, DEFENDANT hereby releases PLAINTIFF from any and all claims or obligations that PLAINTIFF may have to DEFENDANT. This is a general release.

5. NON-ADMISSION OF LIABILITY

DEFENDANT is entering into this Agreement solely to avoid the cost of continued proceedings. In making this Agreement, DEFENDANT does not admit that it has done anything wrong as to PLAINTIFF.

6. SEVERABILITY

The parties agree that if any provision of this Agreement or any part of any provision of this Agreement, other than the waiver and release provision, is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other provision or part of this Agreement.

7. ENTIRE AGREEMENT

The Parties agree that this Agreement constitutes their entire and final understanding and agreement with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly, indirectly, or collaterally related to the subject matter of this Agreement. The Parties agree this Agreement was drafted jointly by their respective counsel.

8. DISPUTES

If any litigation arises regarding a breach of this Agreement and/or the interpretation or enforcement of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs and expenses.

9. AMENDMENTS

The Parties agree that this Agreement cannot be amended or modified except by a writing executed by both of the parties hereto or their respective attorneys, administrators, trustees, personal representatives, and/or successors.

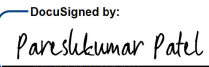
10. COUNTERPARTS

This Settlement Agreement may be executed in two or more counterparts, each of which (whether transmitted via telecopy, electronically, digitally, or otherwise) shall be deemed an original, but all of which shall be considered one and the same instrument. The parties agree that an executed facsimile, digital or electronic copy shall be deemed an original.

THE PARTIES HAVE READ, UNDERSTAND, AND FULLY CONSIDERED THIS SETTLEMENT AGREEMENT AND RELEASE AND MUTUALLY DESIRE TO ENTER INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN PLAINTIFF AND DEFENDANTS. THE PARTIES HAVE ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE BENEFITS SET FORTH THEREIN. PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION AND FULL EXPLANATION, ENTERS INTO THIS AGREEMENT.

IN RECOGNITION THEREOF, the undersigned have executed this Stipulation.

PARESHKUMAR PATEL

DocuSigned by:

4DB8EF58B4834D5...

Date

9/29/2025

TOWN OF FORT MYERS BEACH

Date

By: _____
Its: _____

1. Request:

Meeting Date: October 6, 2025

The Town Attorney is announcing her request for a Litigation Executive Session pursuant to Section 286.011(8), Florida Statutes to discuss settlement negotiations and strategy related to litigation expenditures regarding the case of the Town of Fort Myers Beach, Florida vs. White Sand Properties of Fort Myers Beach, LLC, Case No. 2025-CA-004261, 20th Judicial Circuit, Lee County, Florida. The Executive Session will begin at 3:00 p.m., on October 20, 2025 at Fort Myers Beach Town Hall, 6231 Estero Boulevard, Fort Myers Beach, FL 33931. 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 **Esquire Deposition Services** to be announced prior to the commencement of the Executive Session. The Executive Session will last approximately 1 hour.

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 Town Council may take action concerning settlement negotiations once the Litigation Executive Session is concluded and the public meeting is reopened. An announcement for a Litigation Executive Session was previously made at the September 24, 2025 Town Council public meeting. However, following the announcement at that meeting, the need to change court reporter companies was identified. The revised announcement addresses this change.

Attachments:

1. White Sand Properties Complaint 2025 - Final
2. Town Hall Board Public_Notice_Litigation_Executive_Session_White Sands 10.20.25 Final signed

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

nancy stuparich, Town Attorney
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/29/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

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 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

Vose Law Firm, LLP

324 W. Morse Blvd.

Winter Park, FL 32789

Telephone (407) 645-3735

Facsimile (407) 628-5670

bvose@voselaw.com

cdarcy@voselaw.com

mguidone@voselaw.com

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>
Town of Fort Myers Beach			
Partial Release for 1500 I Street		<i>Godwin Hannon</i> AUTHORIZED SIGNATURE	
⑈002265⑈ ⑆271171616⑆ [REDACTED]			

Security Features Included Details on Back

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

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Restricted Delivery Fee (Endorsement Required)		
Total Postage		

Sent To: **Leo Dibiasi**
Street & Apt. No.
or PO Box No. **12071 McGregor Blvd**
City, State, ZIP **Fort Myers, FL 33919**

PS Form 3800, July 2011

7014 2870 0000 6232 3267

Stamp: FORT MYERS BEACH, JUL 14 2015, FL-USPS 33931

SENDER: COMPLETE THIS SECTION

- 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.

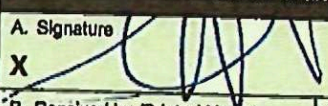
1. Article Addressed to:

Leo Dibiasi
12071 McGregor Blvd
Fort Myers, FL 33919

2. Article Number
(Transfer from service label) **7014 2870 0000 6232 3267**

PS Form 3811, July 2013 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature  ☐ Agent ☐ Addressee

X

B. Received by (Printed Name)

C. Date of Delivery **7-15-15**

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

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

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☐ 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 7530-02-000-9047 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
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail
☐ Mail Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation 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.

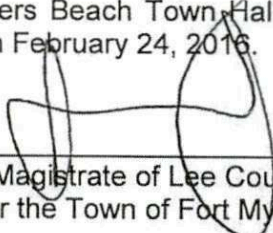
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

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.

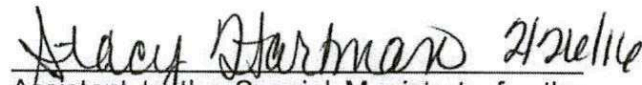
REHEARING: Either the Town or the violator may request a rehearing of the decision of the Special Magistrate. A request for rehearing will be made in writing, and will be filed with the clerk within ten (10) business days of the Special Magistrate's execution of the Order. A request for the rehearing 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

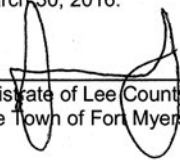
OF COMPLIANCE. RESPONDENT IS ADVISED THAT NUMEROUS PHONE CALLS MAY BE NECESSARY TO ENSURE CONTACT WITH THE CODE ENFORCEMENT OFFICER.

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

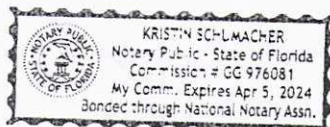
STATE OF FLORIDA
COUNTY OF LEE

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

Exhibit "H"

Page 3 of 6

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.

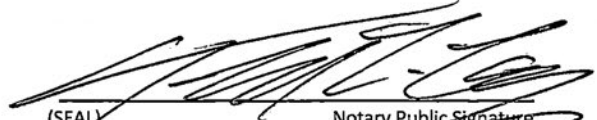
ORDERED this 12th day of February 2024, and executed this 27 day of February 2024.


Special Magistrate

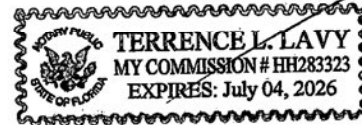
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution 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 27th 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:

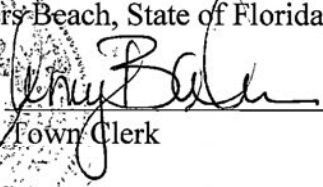
White Sand Properties of Fort Myers Beach, LLC
415 Palermo Cir.
Fort Myers Beach, FL 33931

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.

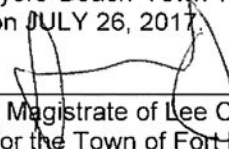
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

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	\$
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☐ 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

Case Number:	CE17-0065
Certified Mail:	7319 0160 0000 9737 8462
Regular Mail:	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

NOTICE OF CODE ENFORCEMENT HEARING-AMENDED IMPOSITION OF FINES/LIENS

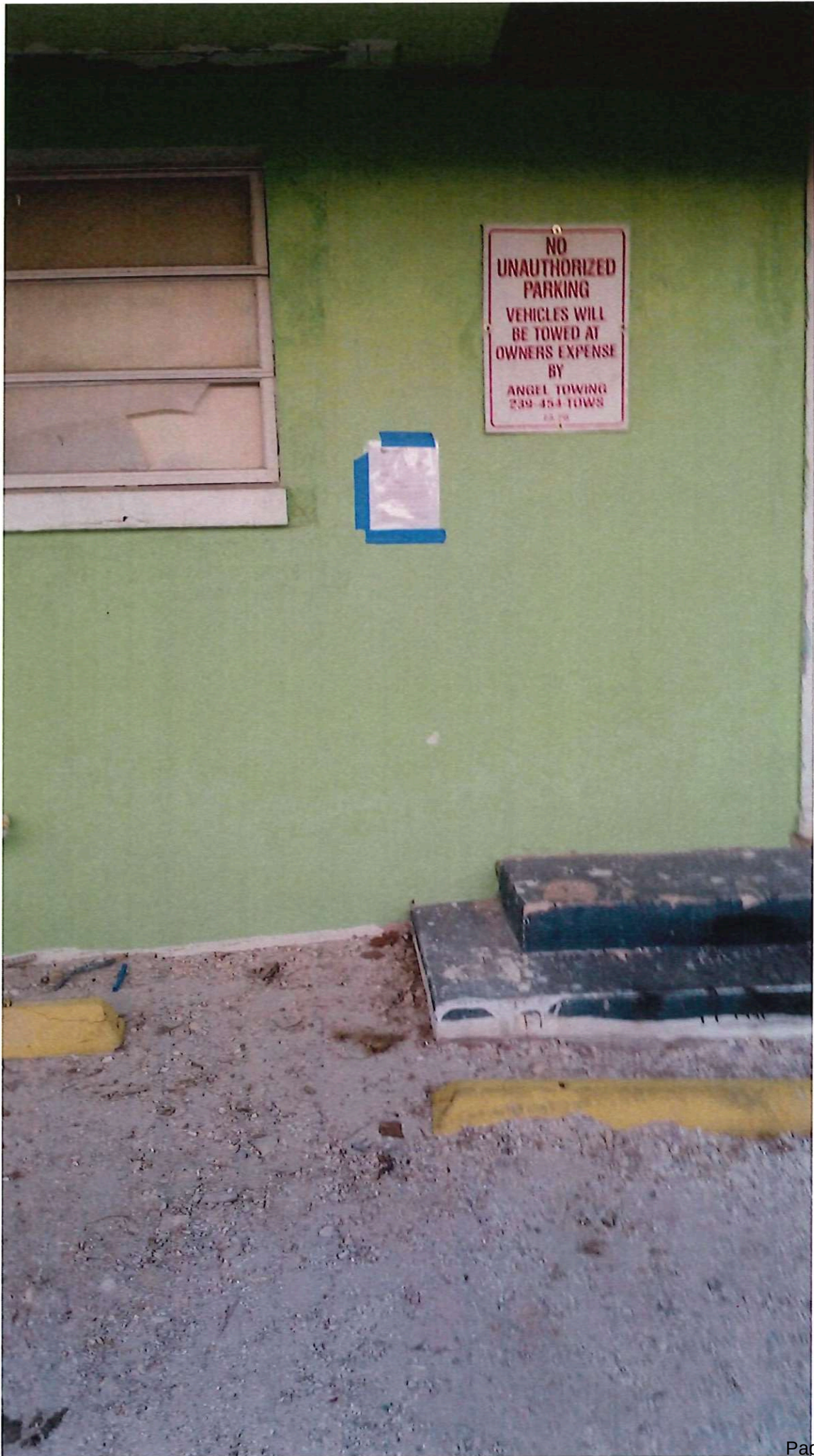
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6/20/2019 at 10:30 A.M. in the Council Chambers at Town Hall, locate at 2525 Estero Boulevard, Fort Myers Beach, Florida.

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:

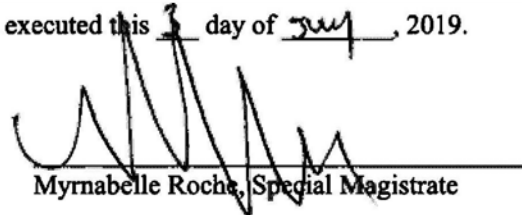
1. Respondent, by reason of the foregoing facts, was in violation of Town Code and took 310 days to comply with the Order of Enforcement.

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.

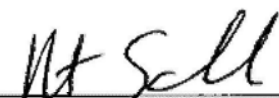
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

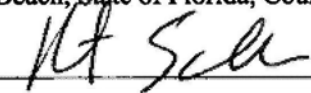
CERTIFICATE OF SERVICE

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

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

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

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

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

Ashley Shepard
Signature of Notary

Ashley Shepard
(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



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 **3:00 p.m. on October 20, 2025 at Fort Myers Beach Town Hall**, 6231 Estero Boulevard, Fort Myers Beach, FL 33931 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 Esquire Deposition Solutions.

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.

Amy Baker, Town Clerk

**Posted to: Town Hall Bulletin Board
September 25, 2025**

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, INITIATING THE CONFLICT RESOLUTION PROCEDURES PROVIDED IN CHAPTER 164, FLORIDA STATUTES, WITH THE SCHOOL BOARD OF LEE COUNTY REGARDING A MATERIAL BREACH OF THAT CERTAIN INTERLOCAL AGREEMENT DATED MAY 15, 2023 BETWEEN THE TOWN AND THE SCHOOL BOARD OF LEE COUNTY AS ADOPTED BY THE TOWN IN RESOLUTION 23-45; DIRECTING COMPLIANCE WITH THE GOVERNMENTAL CONFLICT RESOLUTION ACT IN CHAPTER 164, FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO PROVIDE NOTICE TO SCHOOL BOARD OF LEE COUNTY SUPERINTENDENT DENISE M. CARLIN OF THE INITIATION OF THE CONFLICT RESOLUTION PROCESS, INCLUDING THE DATE AND LOCATION FOR THE CONFLICT ASSESSMENT MEETING; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

nancy stuparich, Town Attorney

5. **Background:**

At the September 24th Town Council public meeting, the Town Council directed the Town Attorney to bring back options regarding enforcement of the Interlocal Agreement ("Agreement") between the Town and the School Board of Lee County. Having reviewed the Agreement and Florida law, the Town Attorney recommends proceeding under Chapter 164, Florida Statutes, known as the Governmental Conflict Resolution Act prior to authorizing litigation due to a material breach of the Agreement. The Governmental Conflict Resolution Act is a statutory process to resolve disputes between governmental entities. The process begins with the adoption of a resolution as provided in Chapter 164, Florida Statutes.

The Agreement with the School Board also requires that, prior to filing any suit, the parties must provide written notice of breach and make good faith efforts to resolve the dispute, including consideration of non-binding alternative dispute resolution.

Accordingly, the attached draft Resolution declares a conflict with the School Board and authorizes the Town Manager to provide the required notice and initiate the conflict assessment process under Chapter 164, Florida Statutes. The Town Council is asked to review and adopt the Resolution so that the Town may proceed in compliance with Florida law while preserving its rights and remedies. This approach demonstrates good faith, ensures procedural compliance, and places the Town in the strongest possible position should litigation ultimately become necessary.

Attachments:

1. 25-296 Chapter 164 Lee County School Board (1)
2. Chapter 164 Florida Statutes
3. Resolution 23-45, ILA Regarding Rebuilding FMB Elementary School Post Ian

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/29/2025
Approved - 9/29/2025
Approved - 9/30/2025
Final Approval - 9/30/2025

RESOLUTION NUMBER 25-296

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, INITIATING THE CONFLICT RESOLUTION PROCEDURES PROVIDED IN CHAPTER 164, FLORIDA STATUTES, WITH THE SCHOOL BOARD OF LEE COUNTY REGARDING A MATERIAL BREACH OF THAT CERTAIN INTERLOCAL AGREEMENT DATED MAY 15, 2023 BETWEEN THE TOWN AND THE SCHOOL BOARD OF LEE COUNTY AS ADOPTED BY THE TOWN IN RESOLUTION 23-45; DIRECTING COMPLIANCE WITH THE GOVERNMENTAL CONFLICT RESOLUTION ACT IN CHAPTER 164, FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO PROVIDE NOTICE TO SCHOOL BOARD OF LEE COUNTY SUPERINTENDENT DENISE M. CARLIN OF THE INITIATION OF THE CONFLICT RESOLUTION PROCESS, INCLUDING THE DATE AND LOCATION FOR THE CONFLICT ASSESSMENT MEETING; 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 adopted Resolution 20-45 approving an Interlocal Agreement effective as of October 7, 2020 (the “Exchange Agreement”) between the School Board of Lee County (“School Board”) and the Town for the exchange of real property located adjacent to the Town’s Bay Oaks Recreation Center and the Fort Myers Beach Elementary School, which both required renovations, subject to additional terms and conditions; and

WHEREAS, Section X of the Exchange Agreement contained a reversionary interest in favor the Town, which provides that the School Board shall use the Town’s property for educational/recreational use and in the event of failure to use the Town’s property for educational/recreational use, the Town may notify the School Board and request the reverter of its parcels back to the Town; and

WHEREAS, the Town adopted Resolution 21-35 approving an Interlocal Agreement effective as of August 16, 2021 (“Shared Use Agreement”) between School Board and the Town regarding the future continued use of the parties’ respective properties with terms and conditions related to operation and maintenance responsibilities; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall and inflicted catastrophic damage on the Town, including the Bay Oaks Recreational Facilities and the Fort Myers Beach Elementary School; and

WHEREAS, in view of the challenges related to recovery from Hurricane Ian, the parties negotiated yet another Interlocal Agreement (“Rebuild Agreement”), which the Town adopted by Resolution 23-45, setting forth the terms and conditions of a new collaboration to assist the School Board in “re-building, operating and maintaining” the Fort Myers Beach Elementary School “in a sound and fiscally responsible way”; and

WHEREAS, the Rebuild Agreement clearly stated in Section 1.1 that the purpose of the agreement was to re-build and continue operation of the Fort Myers Beach Elementary school for students from grades K-5 despite concerns raised about declining student enrollment prior to Hurricane Ian; and

WHEREAS, the respective responsibilities of both parties to achieve the purpose of the Rebuild Agreement were set forth in Sections II and III; and

WHEREAS, recent events have created a doubt in the mind of the Town Council regarding the School Board’s willingness to adhere to the terms and conditions, as well as the spirit of the Rebuild Agreement, as evidenced by actions indicating an intent to close the Fort Myers Beach Elementary School at the conclusion of fiscal year 2026-27 due to an insufficient number of students for Fort Myers Beach Elementary to financially sustain itself, as determined by the School Board in its sole discretion based on the Cost Per Student Report; and

WHEREAS, Section 164, Florida Statutes, the Governmental Conflict Resolution Act, requires governmental entities to engage in negotiation and mediation prior to the initiation of litigation to enforce rights and obligations in agreements between one another; and

WHEREAS, the Town recognizes the Rebuild Agreement itself requires written notice of breach and the pursuit of good faith efforts to resolve disputes through negotiation and non-binding alternative dispute resolution prior to litigation; and

WHEREAS, the Town Council finds it in the best interest of the public to formally initiate the statutory conflict resolution process as provided in Chapter 164, Florida Statutes and the dispute resolution as required in the Rebuild Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. That the above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That it is the intent of the Town Council to initiate the conflict resolution procedures provided in Chapter 164, Florida Statutes and n Section VIII of the Rebuild Agreement

with the School Board of Lee County, prior to initiating litigation due to the School Board's material breach of the Rebuild Agreement.

Section 3. That the Town Manager shall deliver within 5 days of the passage of this resolution, a letter and a certified copy of Resolution 25-296 to Superintendent Denise M. Carlin, who is the chief administrator of the School Board of Lee County, by certified mail, return receipt requested. The letter shall state the nature of the conflict with the School Board of Lee County, Florida, the justification for initiating the conflict resolution process, the proposed date of _____ and location for the conflict assessment meeting to be held at _____ and identification of the officials who should be present at the conflict assessment meeting. On behalf of the Town, the following individuals shall be present: Town Manager, Deputy Town Manager, Town Attorneys Vose/Stuparich, _____, _____ and _____.

Section 4. That the Town Manager shall report to the Town Council the outcome of the conflict assessment meeting with recommendations of whether a Joint Public meeting with the School Board should be held.

Section 5. That 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 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 6th day of October 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:**

Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of October 2025.

The 2025 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

[Chapter 164](#)
GOVERNMENTAL
DISPUTES

[View Entire
Chapter](#)

CHAPTER 164 GOVERNMENTAL DISPUTES

- 164.101 Short title.
- 164.102 Purpose and intent.
- 164.1031 Definitions.
- 164.1041 Duty to negotiate.
- 164.1051 Scope.
- 164.1052 Initiation of conflict resolution procedure; duty to give notice.
- 164.1053 Conflict assessment phase.
- 164.1055 Joint public meeting.
- 164.1056 Final resolution.
- 164.1057 Execution of resolution of conflict.
- 164.1058 Penalty.
- 164.1061 Time extensions.
- 164.1065 Applicability of ch. 99-279.

164.101 Short title.—Sections 164.101-164.1061 may be cited as the “Florida Governmental Conflict Resolution Act.”
History.—s. 1, ch. 87-346; s. 1, ch. 99-279.

164.102 Purpose and intent.—The purpose and intent of this act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities. It is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation.

History.—s. 2, ch. 87-346; s. 2, ch. 99-279.

164.1031 Definitions.—For purposes of this act:

- (1) “Local governmental entities” includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance.
- (2) “Regional governmental entities” includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.
- (3) “Governmental entity” includes local and regional governmental entities.
- (4) “Local government resolution” has the same meaning as provided in s. 166.041.
- (5) “Governing body” means the council, commission, or other board or body in which the general legislative powers of a local or regional governmental entity are vested.
- (6) “Designee” means a representative with full authority to negotiate on behalf of a governmental entity and to recommend settlement to the appropriate decisionmaking body or authority of the governmental entity.
- (7) “Noticed public meeting” means a public meeting in which notice is given at least 10 days prior to the meeting by publication in the newspaper of widest circulation in the jurisdictions of the primary conflicting governmental entities. Each primary conflicting governmental entity shall provide notice within its jurisdiction.

(8) “Primary conflicting governmental entities” means the governmental entity initiating the conflict resolution process provided for in this act, together with the governmental entity or entities with whom the initiating governmental entity has a conflict. The term does not include other governmental entities which may have a role in approving or implementing a particular element or aspect of any settlement of the conflict, or which may receive notice or intervene in the conflict resolution process provided for in this act.

(9) “Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a conflict between two or more parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues and exploring settlement alternatives.

History.—s. 3, ch. 99-279.

164.1041 Duty to negotiate.—

(1) If a governmental entity files suit against another governmental entity, court proceedings on the suit shall be abated, by order of the court, until the procedural options of this act have been exhausted. The governing body of a governmental entity initiating conflict resolution procedures pursuant to this act shall, by motion, request the court to issue an order abating the case pursuant to this section. All governmental entities are encouraged to use the procedures in this act to resolve conflicts that may occur at any time between governmental entities, but shall use these procedures before court proceedings, consistent with the provisions of this section. The provisions of this act do not apply to administrative proceedings pursuant to chapter 120 or any appeal from any administrative or trial court judgment or decision. Nothing in this act shall limit a governmental entity from initiating and prosecuting eminent domain, foreclosure, or other court proceedings where, as a function of the nature of the suit, other governmental entities are necessary parties, if there are no materially disputed issues with regard to such joinder. Nothing in this act shall limit a governmental entity from filing any counterclaim or cross-claim in any litigation in which it is a defendant. Nothing in this act is intended to abrogate other provisions of law which provide procedures for challenges to specific governmental actions, including, but not limited to, comprehensive plan amendments and tax assessment challenges. The provisions of this act shall not apply to conflicts between governmental entities if an alternative dispute resolution process, such as mediation or arbitration, is specifically required by general law or agreed to by contract, interlocal agreement, or other written instrument, or if the governmental entities have reached an impasse during an alternative dispute resolution process engaged in prior to the initiation of court action. Further, nothing in this act shall preclude a governmental entity from filing a suit without resort to the provisions of this act against any federal or other governmental entity not governed by state law. Nothing in this section shall be deemed to toll or waive jurisdictional time limits on specific pleadings or motions set forth in statute or court rules unless modified pursuant to s. 164.1061.

(2) If a governmental entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding. If a water management district, by three-fourths vote of its governing body, finds that an immediate danger to the natural resources, water resources, and wildlife requires immediate declaratory relief, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding. However, the court, upon motion, may review the justification for failure to comply with the provisions of this act and make a determination as to whether the provisions of this act should be complied with prior to action by the court. If the court determines that the provisions of this act should be complied with prior to court action and that following the provisions of this act will not result in the compromise of significant legal rights, the court shall abate the suit until the provisions of this act are complied with.

History.—s. 4, ch. 99-279.

164.1051 Scope.—It is not the intent of this act to limit the conflicts that may be considered under this act, except that any administrative proceeding pursuant to chapter 120 shall not be subject to this act. Pursuant to s. 164.1041, this act shall apply, at a minimum, to governmental conflicts arising from any of the following issues or processes, including, but not limited to:

- (1) Any issue relating to local comprehensive plans or plan amendments prepared pursuant to part II of chapter 163, including, but not limited to, conflicts involving levels of service for public facilities and natural resource protection.
- (2) Municipal annexation.
- (3) Service provision areas.
- (4) Allocation of resources, including water, land, or other natural resources.

(5) Siting of hazardous waste facilities, land fills, garbage collection facilities, silt disposal sites, or any other locally unwanted land uses.

(6) Governmental entity permitting processes.

(7) Siting of elementary and secondary schools.

History.—s. 5, ch. 99-279.

164.1052 Initiation of conflict resolution procedure; duty to give notice.—

(1) The governing body of a governmental entity shall initiate the conflict resolution procedures provided by this act through passage of a resolution by its members. The resolution shall state that it is the intention of the governing body to initiate the conflict resolution procedures provided by this act prior to initiating court proceedings or prosecuting action on a previously filed court proceeding to resolve the conflict and shall specify the issues of conflict and the governmental entity or entities with which the governing body has a conflict. Within 5 days after the passage of the resolution, a letter and a certified copy of the resolution shall be provided to the chief administrator of the governmental entity or entities with which the governing body has a conflict by certified mail, return receipt requested. The letter shall state, at a minimum, the conflict, other governmental entities in conflict with the initiating governmental entity, the justification for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting to be held pursuant to s. 164.1053, and suggestions regarding the officials who should be present at the conflict assessment meeting. The initiating governmental entity also shall mail a copy of the letter and resolution to any state, regional, or local governmental entities which, in the determination of the initiating governmental entity, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict, and any other governmental entity deemed appropriate by the initiating governmental entity.

(2) Within 10 days after receiving a copy of a certified letter noticing the initiation of the conflict resolution procedure, other governmental entities receiving the notice may elect to participate in the conflict resolution process, but are not entitled by virtue of that participation to control the timing or progress of the conflict resolution process, which at all times shall remain in the discretion of the primary conflicting governmental entities. However, a governmental entity which receives notice of a conflict may, by passage of its own resolution and by otherwise following the procedures set forth in subsection (1), join the conflict resolution process as a primary conflicting governmental entity. The intent of a governmental entity to join in the conflict resolution process shall be communicated to the initiating governmental entity by certified mail. The joining governmental entity also shall mail a copy of the letter to any state, regional, or local governmental entities which, in the determination of the joining governmental entity, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict, and any other governmental entity deemed appropriate by the joining governmental entity.

(3) For purposes of this act, the date of initiation of the conflict resolution procedure shall be the date of the passage of a resolution by a governmental entity.

History.—s. 6, ch. 99-279.

164.1053 Conflict assessment phase.—

(1) After the initiation of the conflict resolution procedure, and after proper notice by certified letter has been given, a conflict assessment meeting shall occur. The meeting shall be scheduled to occur within 30 days of the receipt of the letter initiating the conflict resolution procedure. Public notice shall be given for this meeting in accordance with s. 164.1031(7). The conflict assessment meeting shall be scheduled to allow the attendance by the appropriate personnel from each primary conflicting governmental entity. The chief administrator, or his or her designee, for each governmental entity that is a primary conflicting governmental entity in the conflict resolution procedure shall be present at this meeting. If the entities in conflict agree, the assistance of a facilitator may be enlisted for the conflict assessment meeting. During the conflict assessment meeting, the governmental entities shall discuss the issues pertaining to the conflict and an assessment of the conflict from the perspective of each governmental entity involved.

(2) If a tentative resolution to the conflict can be agreed upon by the representatives of the primary conflicting governmental entities at the conflict assessment meeting, the primary conflicting governmental entities may proceed with whatever steps they deem appropriate to fully resolve the conflict, including, but not limited to, the scheduling of additional meetings for informal negotiations or proposing a resolution to the governing bodies of the primary conflicting governmental entities.

(3) In the event that no tentative resolution can be agreed upon, the primary conflicting governmental entities shall schedule a joint public meeting as described in s. 164.1055, which meeting shall occur within 50 days of the receipt of the first

letter initiating the conflict resolution process from the initiating governmental entity.

(4) After the conclusion of the conflict assessment meeting, any primary conflicting governmental entity may request mediation as provided in s. 164.1055(2).

History.—s. 7, ch. 99-279.

164.1055 Joint public meeting.—

(1) Failure to resolve a conflict after following authorized procedures as specified in s. 164.1053 shall require the scheduling of a joint public meeting between the primary conflicting governmental entities. The governmental entity first initiating the conflict resolution process shall have the responsibility to schedule the joint public meeting and arrange a location. If the entities in conflict agree, the assistance of a facilitator may be enlisted to assist them in conducting the meeting. In this meeting, the governing bodies of the primary conflicting governmental entities shall:

(a) Consider the statement of issues prepared in the conflict assessment phase.

(b) Seek an agreement.

(c) Schedule additional meetings of the entities in conflict, or of their designees, to continue to seek resolution of the conflict.

(2) If no agreement is reached, the primary conflicting governmental entities shall participate in mediation, the costs of which shall be equally divided between the primary conflicting governmental entities. The primary conflicting governmental entities shall endeavor in good faith to select a mutually acceptable mediator. If the primary conflicting governmental entities are unable to mutually agree on a mediator within 14 days after the joint public meeting, the primary conflicting governmental entities shall arrange for a mediator to be selected or recommended by an independent conflict resolution organization, such as the Florida Conflict Resolution Consortium, and shall agree to accept the recommendation of that independent organization, or shall agree upon an alternate method for selection of a mediator, within 7 business days after the close of that 14-day period. Upon the selection of a mediator, the conflicting governmental entities shall schedule mediation to occur within 14 days, and shall issue a written agreement on the issues in conflict within 10 days of the conclusion of the mediation proceeding. The written agreement shall not be admissible in any court proceeding concerning the conflict, except for proceedings to award attorney's fees under s. 164.1058, where the agreement may be used to demonstrate an entity's refusal to participate in the process in good faith.

History.—s. 8, ch. 99-279.

164.1056 Final resolution.—If there is failure to resolve a conflict between governmental entities through the procedures provided by ss. 164.1053 and 164.1055, the entities participating in the dispute resolution process may avail themselves of any otherwise available legal rights.

History.—s. 9, ch. 99-279.

164.1057 Execution of resolution of conflict.—Resolution of a conflict at any phase shall require passage of an ordinance, resolution, or interlocal agreement that reflects the terms or conditions of the resolution to the conflict.

History.—s. 10, ch. 99-279.

164.1058 Penalty.—If a primary conflicting governmental entity fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in this act, the primary disputing governmental entity that failed to participate in good faith shall be required to pay the attorney's fees and costs in that proceeding of the prevailing primary conflicting governmental entity.

History.—s. 4, ch. 87-346; s. 11, ch. 99-279; s. 7, ch. 2006-218.

Note.—Former s. 164.104.

164.1061 Time extensions.—Any of the time requirements set forth in this act may be extended to a date certain by mutual agreement, in writing, of the primary conflicting governmental entities. To the extent such agreement would cause any jurisdictional time requirements to run with regard to a particular claim, the agreement shall have the effect of extending any jurisdictional time requirements with regard to that claim for the period set forth in the agreement.

History.—s. 12, ch. 99-279.

164.1065 Applicability of ch. 99-279.—This act shall take effect upon becoming a law, but shall not be construed to abrogate any otherwise applicable agreements or requirements of any contracts, interlocal agreements, or other written instruments which are in existence as of the effective date of this act. To the extent that any contractual or other agreement

provisions in existence on the effective date of this act conflict with the provisions of this act, the provisions in the written agreement shall control.
History.—s. 14, ch. 99-279.

RESOLUTION NUMBER 23-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE REBUILD, EXPANSION AND OPERATION OF FORT MYERS BEACH ELEMENTARY SCHOOL; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("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, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, On September 28, 2022, Hurricane Ian made landfall as a Category 4 Hurricane in Southwest Florida, with sustained winds of approximately 150 miles per hour. The storm inflicted a catastrophic storm surge and wind damage in Lee County causing severe damage to Fort Myers Beach Elementary School ("FMBE"); and

WHEREAS, there is a mutual desire by the Lee County School Board ("LCSB") and the Town of Fort Myers Beach ("Town") to continue the operations of FMBE in a sound and fiscally responsible way; and

WHEREAS, The LCSB and Town desire to enter into an Interlocal Agreement ("ILA") setting forth the terms and conditions of a new collaboration to assist the LCSB in re-building, operating, and maintaining FMBE; and

WHEREAS, the LCSB and Town have determined that it is in the best interest of the community to enter into the ILA to fully set forth mutually acceptable terms and conditions of this collaborative effort between the parties.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Agreement attached hereto as Exhibit "A", between the School Board and Town, regarding the rebuild, expansion and operation of Fort Myers Beach Elementary School. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement 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 adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, 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 15th day May 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (May 24, 2023 12:51 EDT)

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 EXCLUSIVELY:


John Herin, Jr. May 25, 2023 11:41 EDT

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 31 day of May 2023.

John Herin

INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF FORT MYERS BEACH
AND
THE SCHOOL BOARD OF LEE COUNTY, FLORIDA
REGARDING THE FORT MYERS BEACH ELEMENTARY SCHOOL

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this 15th day of May, 2023, by and between THE TOWN OF FORT MYERS BEACH ("Town"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and THE SCHOOL BOARD OF LEE COUNTY, FLORIDA a public body corporate and political subdivision existing under the laws of the State of Florida, its successors and assigns ("School Board"); collectively or singularly also referred to herein as "Party" or the "Parties".

WITNESSETH:

WHEREAS, the School Board and the Town serve the residents of the Town of Fort Myers Beach;

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for the joint exercise of any power, privilege, or authority that each of them could exercise separately;

WHEREAS, On September 28, 2022, Hurricane Ian made landfall as a Category 4 Hurricane in Southwest Florida, with sustained winds of approximately 150 miles per hour. The storm inflicted a catastrophic storm surge and wind damage in Lee County causing severe damage to Fort Myers Beach Elementary School ("FMBE");

WHEREAS, prior to Hurricane Ian, FMBE had experienced declining student enrollment;

WHEREAS, there is a mutual desire by the Board and the Town to continue the operations of FMBE in a sound and fiscally responsible way;

WHEREAS, the Town and School Board now intend to enter into this Agreement setting forth the terms and conditions of a new collaboration to assist the School Board in re-building, operating, and maintaining FMBE as set forth herein;

WHEREAS, the School Board and the Town previously entered into an Interlocal Agreement Relating to the Exchange of Real Property and Improvements, dated effective October 7, 2020, as amended by that certain First Amendment to Interlocal Agreement Relating to the Exchange of Real

Property and Improvements fully executed on December 21, 2020 (collectively, the "Exchange Agreement");

WHEREAS, the School Board and Town will revise the Exchange Agreement as may be necessary to serve best the needs of the Town's residents, the students of FMBE, and the users of Bay Oaks Recreational Facility;

WHEREAS, the School Board is the owner of certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("School Board Property"), upon which is located FMBE;

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "Bay Oaks Property");

WHEREAS, the School Board and Town have determined that it shall serve the public interest to enter into this Agreement to fully set forth mutually acceptable terms and conditions of this collaborative effort between the Parties; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I: PURPOSE AND EFFECTIVE DATE

1.1 The purpose of the Agreement is to set forth terms and conditions acceptable to the Parties, to accomplish the initiatives enumerated herein, including the re-build and continuing operation of FMBE for students from grades K-5.

1.2 The Recitals set forth above are incorporated into the terms of this Agreement as if fully incorporated herein.

1.3 The "Effective Date" of this Agreement shall be the date on which the latter of the School Board or the Town executes this Agreement and delivers a copy to the other Party.

SECTION II: PHASED ENROLLMENT

School Board Responsibilities:

2.1 Both Parties desire to have students enrolled as of April 2023, return to FMBE as soon as possible utilizing the historic school building located on the School Board Property ("Historic Building"). The School Board shall be responsible for renovating the Historic Building to meet the needs of the current

enrollment, approximately fifty-two (52) students, to be completed during the fall semester of 2023. The Parties recognize that the use of the Historic Building is an integral part of the overall solution to provide an educational facility for students on the island. The School Board shall provide all necessary services to meet the needs of students as set forth herein. The services shall be provided at the sole discretion of the School Board in compliance with applicable law, regulation, and policy.

2.2 Over the next several years, the Parties have a joint goal to increase enrollment to a fiscally feasible level for FMBE in accordance with Section 3 of this Agreement. The School Board shall assist with increasing enrollment and shall attempt to solicit partnerships with other entities to provide attractors to the school to include special programs. In addition, beginning in fiscal year 2024-2025, the School Board shall expand the proximity zone boundaries of FMBE to Summerlin Road and San Carlos Boulevard to allow as many students as possible to attend FMBE.

2.3 Should enrollment increase, the School Board shall provide the necessary facilities and staff to accommodate the increased student enrollment in compliance with applicable law, regulation, and policy. The Town understands that the School Board will be fiscally responsible and legally compliant in doing so. The decision is left to the School Board's sole discretion to determine what is the necessary facility and staff ratios to accommodate the increased enrollment not to exceed 150 student stations.

2.4 For fiscal years 2023-2024, 2024-2025, 2025-2026, and 2026-2027 School Board shall bear the full costs of operating and maintaining FMBE.

2.5 No later than November of 2026, the School Board and Town, through their respective designees, shall review the enrollment numbers at FMBE and begin the discussion as to the future of FMBE with the following options:

a. If FMBE's student enrollment meets the threshold that FMBE can sustain itself at the same level as the other barrier island schools, namely Pine Island Elementary School and the Sanibel School (collectively, "Barrier Island Schools") the School Board shall maintain FMBE as a school operated by the School District of Lee County. The annual cost calculation shall be based on the annual cost per student report submitted to the Department of Education ("DOE") at the end of each fiscal year. ("Cost Per Student Report")

b. Beginning in fiscal year 2027-2028, the Town may provide a financial contribution towards the maintenance and operation of FMBE if it is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report. The Town's contribution shall be reflective of the difference between FMBE's operational costs and that of other Barrier Island Schools.

c. If, at the end of fiscal year 2026-2027, FMBE is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report, or if the Town is unable

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to provide a financial contribution to cover the difference, the Town may assume the responsibility for the full operation of FMBE by turning it into a municipal charter school for fiscal year 2027-2028. The School Board will assist the Town in expediting the application process for the charter school. At the time the charter school is approved, the School Board will have no further obligation for FMBE. The charter school will be eligible for all funding that is available per federal and state law. Throughout the term of this Agreement, the Town may also collect funds for the startup operation of the charter school. Contemporaneously, the School Board and Town shall come to an agreement for either the sale or lease of the facilities for the operation of the charter school. This provision does not prohibit other charter options from being considered.

d. If, after fiscal year 2026-2027, the Town is unable to cover the cost per student difference as outlined in section b above or move forward with a charter school option as outlined in section b and c above the School Board, at its sole discretion, may close FMBE.

Town Responsibilities:

2.6 Town shall actively recruit students to FMBE to increase enrollment by engaging with their community and local businesses. Parents, PTO, community members, community leaders, and businesses will work on community outreach to inform them of FMBE.

2.7 During the term of this Agreement, the Town shall create an ad-hoc committee that shall meet, at minimum, twice a year to review the student enrollment numbers, DOE survey results, and other matters related to FMBE. There shall be one meeting in May and one in November. The ad-hoc committee shall consist of no more than 10 people and must include members of the community, to include at least one (1) parent with a student attending FMBE, one (1) representative from the Fort Myers Beach business community, one (1) Town Council representative, (5) representatives from the School Board representing operations and planning, academics, Principal of FMBE, budget and finance as well as other members of School Board leadership.

2.8 After fiscal year 2026-2027, the Town may provide a financial contribution towards the maintenance and operation of FMBE if it is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report as further provided in section 2.5 above.

2.9 At the conclusion of fiscal year 2026-2027, if there are not enough students enrolled for FMBE to financially sustain itself, as determined by the School Board in its sole discretion and based on the Cost Per Student Report, the School Board may close FMBE.

2.10 The School Board and Town will work together to educate businesses and employees about FMBE school programs and encourage employers to provide work schedules that align with school hours and the Bay Oaks after-school program.

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2.11 The Town shall provide access to aftercare programs at Bay Oaks Property. Remediation/remodeling of the Bay Oaks Property shall be completed by the fall semester of 2023. The Town agrees that Bay Oaks Property will not be used as a town hall facility, unless space permits, as determined by the Town in its sole discretion. The Bay Oaks Property and after school program will be ready to host children contemporaneously with the opening of FMBE in the fall semester of 2023.

2.12 The Town shall cooperate with the School Board to allow a portion of the Bay Oaks Property to be used as a staging area for FMBE renovation and construction projects. The Town and the School Board shall share the use of the facilities located on the Town Property and the School Board Property, respectively, subject to such terms, limitations and conditions set forth in the Exchange Agreement, which may be modified from time-to-time as mutually agreed to by the Parties.

SECTION III: PHASED TIMELINE FOR RENOVATION AND BUILD

3.1 The Parties agree to the following implementation schedule:

Phase I

a. The School Board shall be responsible for renovating the Historic Building to meet the temporary needs of the current enrollment, approximately fifty-two (52) students, by the fall semester of 2023.

b. Thereafter, by fiscal year 2024-2025, the School Board shall build additional FMBE facilities to accommodate a permanent kitchen/café.

c. Also, by fiscal year 2024-2025 and in compliance with applicable law, regulation, and policy, SREF, and building code the School Board shall improve the Historic Building with additional classroom space to accommodate the growth in student enrollment not to exceed 80 student stations.

Phase II

a. The School Board shall design and construct additional facilities in compliance with applicable law, regulation, and policy, SREF, and building code to accommodate the growth in student enrollment not to exceed 150 student stations. Said cost shall be borne by the School Board for fiscal years 2023-2024, 2024-2025, 2025-2026, 2026-2027.

b. If FMBE's student enrollment meets the threshold that FMBE can sustain itself at the same level as the other Barrier Island Schools based on the Cost Per Student Report, the School Board shall continue to operate FMBE in compliance with applicable law, regulation, and regulations policy.

3.2 The Parties agree that the School Board retains sole authority to make decisions as may be deemed necessary to adhere to the timelines and costs outlined herein, and to complete the Phase I and Phase II improvements within the time and in the manner specified herein.

3.3 The Parties agree that the School Board will procure all goods and services contemplated by this Agreement in accordance with the School Board's procurement policies and procedures.

SECTION IV: DEFAULT

If either Party fails to materially fulfill its obligations under this Agreement that Party will be in default. The other Party to the Agreement shall provide written notice of the default and an opportunity to cure the default within 60 days of receipt of said notice. If the defaulting Party fails to cure the default within said time, the other Party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either Party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Upon termination of this Agreement in accordance with this paragraph, the non-defaulting Party may exercise its reversionary interest as set forth in the Exchange Agreement.

SECTION V: NOTICE

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person and signed for or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

If to the School Board: The Superintendent of Schools
Office of the Superintendent
2855 Colonial Blvd.
Fort Myers, Florida 33966

With a Copy to: School Board Attorney and General Counsel
Office of Legal Services
2855 Colonial Blvd.
Fort Myers, Florida 33966

If to the Town: Town Manager
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, Florida 33931

With a Copy to:

Town Attorney
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, Florida 33931

The address to which any notice or demand may be given to either Party may be changed by written notice.

SECTION VI: LIABILITY AND INDEMNIFICATION

6.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, invitees, licensees, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

6.2 Subject to the limitations as set forth in Florida Statutes, §768.28 and §252.51, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost, and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the School Board, its agents, invitees, licensees, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

6.3 The Parties shall, respectively, maintain or cause to be maintained in full force and effect commercial general liability insurance on their respective parcels with a combined single limit of liability of (i) not less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury to or personal injury or death to any one person and consequential damages arising therefrom, (ii) not less than Two Million and 00/100 Dollars (\$2,000,000.00) for bodily injury to or personal injury or death of more than one person and consequential damages arising therefrom, and (iii) not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for property damage arising out of any one occurrence, and the other Party shall be an additional insured under such policy. Each Party shall always maintain worker's compensation insurance in the minimum statutory limits required by the State of Florida. Such insurance shall be procured from a good and solvent insurance company or companies licensed to do business in the State of Florida. Upon reasonable request, each Party shall provide the other with a copy of the policy of such

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insurance coverage. All insurance policies required to be carried by either Party covering their respective parcel shall, to the extent permitted by law, expressly waive any right on the part of the insurer against the other Party. The Parties agree that their policies will include such waiver clause or endorsement.

SECTION VII: MISCELLANEOUS

7.1 Term and Termination: The Parties agree that this Agreement, including all its terms, covenants, conditions, and restrictions, shall continue in force and effect for a term of four (4) years. The Parties may extend the terms of this Agreement by mutual written agreement.

7.2 Non-Discrimination: The Parties shall not unlawfully discriminate against any individual based on his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.

7.3 Unavoidable Delay: In the event that either the School Board or the Town are unable to meet the deadline for their respective obligations under this Agreement due to any circumstance beyond the control of the School Board and/or Town, including without limitation, the occurrence of a force majeure event, then the time for such performance shall be extended as required by such circumstance or the occurrence of such event. Each party shall be responsible for any additional costs arising out of the delay and affecting their respective obligations under this Agreement. The term "*Force Majeure*" shall include without limitation labor strikes (whether lawful or not), fire, tropical cyclone, adverse weather conditions, unavoidable casualties, inability to obtain labor or materials, vandalism, terrorism, civil unrest, moratoriums, financial emergencies and the like.

7.4 Enforcement of Agreement: In the event that either Party is required to enforce this Agreement by court proceedings, then the Parties agree that each Party shall pay its own attorney's fees and costs.

7.5 Entire Agreement: This Agreement embodies the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior written and/or oral understandings or agreements with respect thereto.

7.6 Modifications and Amendments: Modifications and amendments to the provisions contained in this Agreement, including deadlines and schedules, may be made only by an instrument in writing which is executed by both Parties.

7.7 Joint Preparation: This Agreement has been negotiated fully between the Parties as an arms-length transaction. Both Parties participated fully in the preparation of the Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both

Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party.

7.8 Assignment: This Agreement may not be assigned, in whole or in part, by any Party without prior written consent of the other Party, which may be granted or withheld in its sole discretion. The School Board retains sole authority to select the design professionals, contractors, or other parties for the purpose of performing any of the School Board's obligations hereunder.

7.9 Third Party Beneficiaries: This Agreement is solely for the benefit of the School Board and the Town, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the School Board and the Town any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the School Board and the Town, and their respective representatives, successors, and assigns.

7.10 Joint Defense: In the event that a third party or parties challenge the validity of this Agreement unrelated to the Parties through legal proceedings or otherwise, the Parties hereto agree to cooperate with each other in defense of this Agreement, with each such Party to bear its own attorney's fees and costs associated with such defense.

7.11 Severability: The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part of this Agreement not held to be invalid or unenforceable.

7.12 Time is of the Essence: The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder, and all "days" referenced herein, including in any of the attachments, shall be deemed "calendar days" unless otherwise specifically set forth.

7.13 Controlling Laws: This Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue for any dispute shall be in Lee County, Florida.

7.14 Authorization: The execution of this Agreement has been duly authorized by the School Board and Town. The School Board and the Town have complied with all requirements of law in connection with the execution and delivery of this Agreement and the performance of their respective obligations hereunder. The School Board and the Town have full power and authority to comply with the terms and provisions of this Agreement.

7.15 Heading for Convenience Only: The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

7.16 Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgments pages, if any; may be detached from the counterparts and attached to a single copy of this document to physically form one document.

7.17 Jury Trial Waiver: The Parties waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other for any matter whatsoever arising out of or in any way connected with this Agreement.

SECTION VIII: DISPUTE RESOLUTION

As a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

SECTION IX: PUBLIC RECORDS

The Parties recognize and agree that the School Board and Town are subject to the provisions of the Florida Records Law, under Chapter 119, Florida Statutes. The Parties shall comply with Florida's Public Records Laws and agree to keep and maintain public records in accordance with Florida law and records retention schedules. Further, the Parties will ensure records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month, and year first written above.

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

By: 

Date: 5/9/2023

Armur Persons, Chair of the Board

ATTESTED:

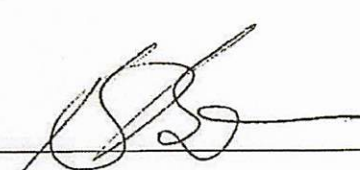
APPROVED
MAY 09 2023
SCHOOL BOARD OF
LEE COUNTY

By: 

Date: 5/9/2023

Dr. Christopher S. Bernier, Superintendent of Schools

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF THE SCHOOL BOARD OF LEE COUNTY, FLORIDA ONLY:

By: 

Kathy Dupuy-Bruno, Esq., School Board Attorney and General Counsel

TOWN OF FORT MYERS BEACH, A FLORIDA MUNICIPAL CORPORATION

By: *Dan Allers* Date: May 15, 2023
Dan Allers (Nov 2, 2023 07:29 EDT)

Dan Allers, Mayor

ATTESTED:

By: *Amy Baker* Date: May 15, 2023
AMY BAKER (Nov 2, 2023 08:57 EDT)

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF THE TOWN OF FORT MYERS BEACH ONLY:

By: *John R. Herin, Jr.*
John R. Herin, Jr. (Nov 1, 2023 16:27 EDT)

John R. Herein, Jr., Town Attorney

EXHIBIT A

(Legal Description of School Board Property)

**PARCEL "A" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM PLAT OF WINKLER SUBDIVISION RECORDED IN PLAT BOOK 8, PAGE 45 OF THE PUBLIC RECORDS OF LEE COUNTY
FLORIDA**

ALL OF WINKLER SUBDIVISION BLOCK J, LOTS 3 THROUGH 45; AND BLOCK I, LOTS 1 THROUGH 26; AND BLOCK D, LOTS 10 THROUGH 12 AND LOTS 22 THROUGH 24, LESS PARCELS DESCRIBED IN INSTRUMENT 2021000335064.

PARCELS DESCRIBED IN INSTRUMENT 2021000335064 CONSTITUTE PARCELS "X" AND "Y" DESCRIBED BELOW

**PARCEL "B" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM RESOLUTION 20-39 INSTRUMENT 2021000335062 RECORDED 10/12/2021**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF AN UN-NAMED STREET LYING BETWEEN BLOCK J AND BLOCK I, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48 OF SAID BLOCK J OF SAID WINKLER SUBDIVISION: THENCE S25° 17'00"W ALONG THE EASTERLY LINE OF LOTS 1 THROUGH 9 OF SAID BLOCK J FOR 225.00 FEET TO THE NORTHEAST

CORNER OF LOT 10 OF SAID BLOCK J; THENCE N64°43'00"W ALONG THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10, BLOCK J AND TO THE POINT OF BEGINNING; THENCE CONTINUE S25°17'00"W ALONG THE WESTERLY LINE OF SAID BLOCK J, ALSO BEING THE EASTERLY LINE OF AN UN-NAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION FOR 370.12 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 25.00 FEET: THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID BLOCK J, BEING THE EASTERLY LINE OF SAID UN-NAMED STREET AND ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 94° 17'00" FOR AN ARC LENGTH OF 41.14 FEET TO A POINT OF TANGENCY ON THE NORTHERLY LINE OF OAK STREET (50 FEET WIDE), ALSO BEING A POINT OF CUSP; THENCE N69° 00'00"W ALONG THE NORTHERLY LINE OF SAID OAK STREET FOR 141.38 FEET TO A POINT OF CUSP WITH A CURVE LYING ON THE EASTERLY LINE OF BLOCK D OF SAID SUBDIVISION, HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S21° 00'00"W: THENCE CONTINUE NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID BLOCK D AND SAID TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 85°43'00" FOR AN ARC LENGTH OF 37.40 FEET TO THE END OF SAID CURVE: THENCE N25° 17'00"E ALONG A TANGENT LINE BEING PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK J FOR 114.87 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF BLOCK I OF SAID SUBDIVISION, LYING ON A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S65° 02'10"W; THENCE CONTINUE EASTERLY AND NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID BLOCK I AND SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 129° 45'10" FOR AN ARC LENGTH OF 56.62 FEET TO A POINT OF TANGENCY: THENCE N25° 17'00"E ALONG A TANGENT LINE BEING THE EASTERLY LINE OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF SAID UN-NAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION FOR 246.59 FEET TO THE NORTHEAST CORNER OF LOT 17, BLOCK I OF SAID SUBDIVISION: THENCE S64° 43'00"E FOR 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 25,740 SQUARE FEET (0.59 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

**PARCEL "C" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM RESOLUTION 21-24 INSTRUMENT 2021000335063 RECORDED 10/12/2021**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF AN UN-NAMED STREET LYING BETWEEN BLOCK J AND BLOCK I, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48 OF SAID BLOCK J OF SAID WINKLER SUBDIVISION; THENCE S25° 17'00"W ALONG THE EASTERLY LINE OF LOTS 1 THROUGH 9 OF SAID BLOCK J FOR 225.00 FEET TO THE NORTHEAST CORNER OF LOT 10 OF SAID BLOCK J; THENCE N64° 43'00"W ALONG THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10, BLOCK J AND TO THE POINT OF BEGINNING; THENCE CONTINUE N64° 43'00"W ALONG THE NORTHWESTERLY EXTENSION OF THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 50.00 FEET TO THE NORTHEAST CORNER OF LOT 17, BLOCK I OF SAID SUBDIVISION; THENCE N25° 17'00"E ALONG THE EASTERLY LINE OF SAID BLOCK I FOR 75.00 FEET TO THE NORTHEAST CORNER OF LOT 20, OF SAID BLOCK I; THENCE S64° 43'00"E ALONG THE SOUTHEASTERLY EXTENSION OF THE NORTHERLY LINE OF LOT 20 OF SAID BLOCK I FOR 50.00 FEET TO THE NORTHWEST CORNER OF LOT 7, OF SAID BLOCK J; THENCE S25° 17'00"W ALONG THE WESTERLY LINE OF SAID BLOCK J FOR 75.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,750 SQUARE FEET (0.09 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN) BEARINGS ARE BASED ON THE WESTERLY LINE OF BAY ROAD (THE EASTERLY LINE OF SAID BLOCK J) AS BEARING S25° 17'00"W

LESS PARCEL DESCRIBED IN INSTRUMENT 2021000335064 (NORTH PARCEL)

PLUS THE REMAINDER OF BLOCK I, PLAT OF WINKLER SUBDIVISION NOT SEPERATED OUT IN THE LEGAL DESCRIPTIONS OF PARCELS "Y" AND "Z" DESCRIBED BELOW

EXHIBIT B

(Legal Description of Town Property)

**PARCEL "W" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM COUNTY DEED INSTRUMENT #2009000262584 RECORDED 9/28/2009**

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE EASTERLY MOST CORNER OF LOT #1, BLOCK "E" OF WINKLER SUBDIVISION ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 8 AT PAGE 45 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID POINT ALSO BEING THE PRINCIPAL PLACE OF BEGINNING; THENCE S 25° 17' 00" W ALONG THE EASTERLY LINE OF SAID BLOCK "E" A DISTANCE OF 301.04 FEET; THENCE S 5° 07' 24" E A DISTANCE OF 55.69 FEET TO THE NORTHEASTERLY CORNER OF LOT #9, BLOCK "D" OF SAID WINKLER SUBDIVISION; THENCE S 21° 00' 00" W ALONG THE SOUTHEASTERLY LINE OF LOTS #9 AND #25 OF SAID BLOCK "D" A DISTANCE OF 300.00 FEET; THENCE N 69° 00' 00" W ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF OAK STREET (50.00 FEET WIDE) AND THE SOUTHWESTERLY LINE OF SAID BLOCK "D" A DISTANCE OF 396.87 FEET TO THE WEST BOUNDARY OF LOT #1 OF SECTION 19 AS SHOWN ON THE PLAT OF SAID WINKLER SUBDIVISION; THENCE N 0° 18' 00" W ALONG THE SAID WEST BOUNDARY A DISTANCE OF 807.00 FEET TO THE NORTHEASTERLY BOUNDARY LINE OF SAID WINKLER SUBDIVISION; THENCE S 64° 43' 00" E ALONG SAID NORTHEASTERLY BOUNDARY LINE A DISTANCE OF 693.65 TO A POINT THAT IS N 25° 17' 00" E FROM THE PRINCIPAL PLACE OF BEGINNING; THENCE S 25° 17' 00" W A DISTANCE OF 50.00 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

SAID PARCEL IS SUBJECT TO ALL RIGHT-OF WAYS AND EASEMENTS OF RECORD.

**PARCEL "X" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM SPECIAL WARRANTY DEED #2021000335064 RECORDED 10/21/21 (SOUTH PARCEL)**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING ALL OF LOTS 10 THROUGH 24, BLOCK D, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 24, BLOCK D OF SAID WINKLER SUBDIVISION; THENCE N21° 28' 12" E ALONG THE NORTHWESTERLY LINE OF LOT 24 AND LOT 10 OF SAID BLOCK D FOR 300.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; ALSO BEING THE SOUTHERLY LINE OF SAID UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE S68° 3' 48" E ALONG THE NORTHEASTERLY LINE OF SAID BLOCK D, ALSO BEING THE SOUTHWESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION, FOR 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET; THENCE CONTINUE SOUTHEASTERLY ALONG SAID CURVE AND SAID UNNAMED STREET AND ALONG THE NORTHEASTERLY LINE OF SAID BLOCK D THROUGH A CENTRAL ANGLE OF 65° 47' 00" (CHORD BEARING S35° 38' 18" E) FOR AN ARC DISTANCE OF 114.81 FEET TO A POINT OF TANGENCY; THENCE S02° 44' 48" E, ALONG THE EASTERLY LINE OF SAID BLOCK D, ALSO BEING THE WESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT FOR 225.62 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE CONTINUE SOUTHWESTERLY ALONG SAID CURVE AND ALONG THE WESTERLY LINE OF SAID UNNAMED STREET THROUGH A CENTRAL ANGLE OF 114° 13' 00" (CHORD BEARING S54° 21' 42" W) FOR AN ARC DISTANCE OF 49.84 FEET TO A POINT OF TANGENCY ON THE NORTHERLY RIGHT OF WAY LINE OF OAK STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE N68° 3' 48" W ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK D, AND ALONG THE NORTHERLY LINE OF SAID OAK STREET FOR 235.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 61,071 SQUARE FEET (1.40 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) WITH THE WESTERLY LINE OF BAY ROAD (THE EASTERLY LINE OF SAID BLOCK J) AS BEARING N25° 45' 12" E.

**PARCEL "Y" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM SPECIAL WARRANTY DEED #2021000335064 RECORDED 10/21/21 (NORTH PARCEL)**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF BLOCK I AND A PORTION OF AN UNNAMED STREET AS SHOWN ON THE PLAT OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48, BLOCK J OF SAID WINKLER SUBDIVISION; THENCE N64° 14'48"W ALONG THE NORTHEASTERLY LINE OF LOT 1, BLOCK J, ACROSS AN UNNAMED STREET AND ALONG THE NORTHEASTERLY LINE OF LOT 26, BLOCK I OF SAID SUBDIVISION FOR 350.00 FEET TO THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION AND THE POINT OF BEGINNING; THENCE S45° 48'43"E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 2599 AT PAGE 781 WITHIN SAID BLOCK I, FOR 158.11 FEET TO THE SOUTHEASTERLY CORNER OF LOT 25 OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF AN UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE S25° 45'12"W ALONG THE EASTERLY LINE OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION, FOR 100.00 FEET TO THE SOUTHEAST CORNER OF LOT 21 OF SAID BLOCK I; THENCE S64° 14' 48 "E ALONG THE SOUTHEASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 21, ACROSS SAID UNNAMED STREET, FOR 50.00 FEET TO THE NORTHWEST CORNER OF LOT 7 OF BLOCK J OF SAID SUBDIVISION; THENCE S59°26'36"W, EXTENDING ACROSS SAID UNNAMED STREET AND ACROSS A PORTION OF SAID BLOCK I FOR 231.98 FEET; THENCE S 11°26' 52"W ACROSS SAID BLOCK I, FOR 152.53 FEET TO AN INTERSECTION WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S65° 30'22"W, ALSO BEING THE NORTHERLY LINE OF AN UNNAMED STREET AS SHOWN ON SAID PLAT; THENCE CONTINUE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT AND ALONG THE SOUTHERLY LINE OF SAID BLOCK I THROUGH A CENTRAL ANGLE OF 21° 44' 50" (CHORD BEARING N13° 37' 13"W) FOR AN ARC DISTANCE OF 9.49 FEET TO A POINT OF TANGENCY; THENCE N02° 44'48"W, ALONG THE WESTERLY LINE OF BLOCK I, ALSO BEING THE EASTERLY LINE OF AN UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT, FOR 127.34 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET; THENCE CONTINUE NORTHWESTERLY ALONG SAID CURVE AND ALONG THE WESTERLY LINE OF SAID BLOCK I THROUGH A CENTRAL ANGLE OF 65°47' 00" (CHORD BEARING N35° 38' 18"W) FOR AN ARC DISTANCE OF 172.22 FEET TO A POINT OF TANGENCY; THENCE N68° 31' 48 "W ALONG THE WESTERLY LINE OF SAID BLOCK I AND THE EASTERLY LINE OF SAID UNNAMED STREET FOR 22.44 TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE CONTINUE NORTHWESTERLY ALONG THE WESTERLY LINE OF SAID BLOCK I AND SAID UNNAMED STREET THROUGH A CENTRAL ANGLE OF 94° 17'00" (CHORD BEARING N21° 23' 18"W) FOR AN ARC DISTANCE OF 41.14 FEET TO A POINT OF TANGENCY; THENCE N25° 45' 12"E ALONG THE NORTHWESTERLY LINE OF SAID BLOCK I AND THE EASTERLY LINE OF SAID UNNAMED STREET FOR 95.36 FEET TO THE SOUTHWESTERLY MOST CORNER OF LOT 7, BLOCK I OF SAID SUBDIVISION, BEING THE SOUTHWESTERLY MOST CORNER OF SAID PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 2599 AT PAGE 781; THENCE N37° 42'07"E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL FOR 102.22 FEET; THENCE N57° 33' 01 "E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL FOR 29.41 FEET; THENCE S88° 03' 05"E ALONG THE SOUTHERLY LINE OF SAID PARCEL FOR 123.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 86,512 SQUARE FEET (1. 99 ACRES), MORE OR LESS.

**PARCEL "Z" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM COUNTY DEED #2020000249474 RECORDED 10/16/2020
THIS "PARCEL" IS COMPRISED OF 3 SEPARATE LEGAL DESCRIPTIONS, EACH A PORTION OF THE OVERALL**

PART 1:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK I OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION; THENCE N.88° 31'17"W. FOR 123.88 FEET; THENCE S.57° 04'49"W. FOR 29.41 FEET; THENCE S.37° 13'55"W. FOR 102.21 FEET TO THE SOUTHWESTERLY CORNER OF LOT 7 OF SAID BLOCK I; THENCE N.25° 17'00"E. ALONG THE WESTERLY LINE OF SAID BLOCK I FOR 150.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE NORTHERLY LINE OF SAID BLOCK I; THENCE S.64°43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK I FOR 125.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK I AS BEARING S64°43'00"E. CONTAINING 6,313 SQUARE FEET (0.14 ACRES), MORE OR LESS.

PART 2:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK I OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION; THENCE S.64° 43'00"E. ALONG THE NORTH LINE OF SAID BLOCK I FOR 125.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE EASTERLY LINE OF SAID BLOCK I; THENCE S.25° 17'00"W. ALONG THE EASTERLY LINE OF SAID BLOCK I FOR 25.00 FEET TO THE SOUTHEASTERLY CORNER OF LOT 25 OF SAID BLOCK I; THENCE N.46° 16'54"W. FOR 158.11 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK I AS BEARING S64°43'00"E. CONTAINING 3,616 SQUARE FEET (0.08 ACRES), MORE OR LESS.

PART 3:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK J OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK J OF SAID SUBDIVISION; THENCE S.64° 43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK FOR 40.00 FEET; THENCE S.25° 17'00"W. FOR 105.00 FEET; THENCE N.57° 35'30"W. FOR 40.31 FEET; THENCE N.49° 56'29"W. FOR 155.13 FEET TO THE WESTERLY LINE OF SAID BLOCK; THENCE N.25° 17'00"E. ALONG THE WESTERLY LINE OF SAID BLOCK FOR 35.44 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE NORTHERLY LINE OF SAID BLOCK; THENCE S.64° 43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK FOR 125.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK J AS BEARING S64°43'00"E. CONTAINING 16,000 SQUARE FEET (0.37 ACRES), MORE OR LESS.

EXHIBIT C

(Shared Use Schedule)

Facility: Gym

Reserve for Ft. Myers Beach Elementary students for basketball and other indoor activities during the following dates/times:

August, September, October,

November, and December **Every Wednesday from 8 am to 2 pm**

May, June **Every Wednesday from 8 am to 2 pm**

Facility: Soccer Field

Reserve for Ft. Myers Beach Elementary students for soccer and other activities on the field during the following dates/times:

January and February **Every Wednesday from 8 am to 2 pm**

1st Friday in December (Field Day) **8 am to 2 pm**

Last Full Day of each School Year - date TBD

(End of Year "Family Day") **7 am to 2 pm**

Facility: Softball Field

Reserve for Ft. Myers Beach Elementary students for softball and other activities on the field during the following dates/times:

March **Every Wednesday from 8 am to 2 pm**

Facility: Tennis Courts

Reserve for Ft. Myers Beach Elementary students for tennis and other activities on the courts during the following dates/times:

April **Every Wednesday from 8 am to 2 pm**

1. **Request:**

Meeting Date: October 6, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE AGREEMENT FOR TOWN ATTORNEY SERVICES WITH THE VOSE LAW FIRM AS REQUESTED BY LETTER FROM THE FIRM DATED JULY 8, 2025, TO INCREASE THE MONTHLY FEE FOR LEGAL SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. 25-295 Amendment to Agreement for Town Attorney Services - Vose Law Firm
2. Exhibit A - First Amendment to Agreement for Town Attorney Services
3. FMB July 8, 2025 Letter Requesting Fee Adjustment_Redacted
4. Legal Representation Agreement - Vose Law Firm - signed (1)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 9/29/2025
Approved - 9/29/2025
Approved - 9/29/2025
Approved - 9/29/2025
Final Approval - 9/29/2025

RESOLUTION NUMBER 25-295

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE AGREEMENT FOR TOWN ATTORNEY SERVICES WITH THE VOSE LAW FIRM AS REQUESTED BY LETTER FROM THE FIRM DATED JULY 8, 2025, TO INCREASE THE MONTHLY FEE FOR LEGAL SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT; 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 and the Vose Law Firm entered into an Agreement for Town Attorney Services effective August 7, 2023 (the “Agreement”), under which the Firm provides comprehensive legal services to the Town at a flat monthly fee of \$25,000; and

WHEREAS, since the inception of the Agreement, the Firm has provided extensive and exceptional legal services, including litigation and storm recovery-related representation, resulting in recoveries for the Town in excess of \$1,000,000 and the successful handling of numerous complex legal matters; and

WHEREAS, due to the increased and continuing demands upon the Town Attorney’s office, including litigation, storm-related redevelopment issues, and staffing turnover within the Town, the Firm has devoted substantial additional resources far exceeding the original scope anticipated under the Agreement; and

WHEREAS, the Town Council has determined that it is in the best interest of the Town to approve an increase in the Firm’s monthly flat fee compensation to \$37,500, in recognition of the Firm’s demonstrated value, continued increasing workload, and the quality and quantity of legal services required to meet the Town’s legal needs; and

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. That the Town Council hereby authorizes the Mayor to execute the First Amendment to the Agreement 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 6th day of October 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 October 2025.

AMENDMENT TO AGREEMENT FOR TOWN ATTORNEY SERVICES

THIS AMENDMENT to the Agreement for Town Attorney Services (the "Agreement"), dated August 8, 2023, by and between the Town of Fort Myers Beach, Florida (the "Town"), and the Vose Law Firm, LLP (the "Firm"), is made and entered into this ___ day of October, 2025.

WHEREAS, the Town and the Firm entered into the Agreement for Town Attorney Services effective August 7, 2023, under which the Firm provides comprehensive legal services to the Town at a flat monthly fee of \$25,000; and

WHEREAS, since the inception of the Agreement, the Firm has provided extensive and exceptional legal services, including litigation and storm recovery-related representation, resulting in recoveries for the Town in excess of \$1,000,000 and the successful handling of numerous complex legal matters; and

WHEREAS, due to the increased and continuing demands upon the Town Attorney's office, including litigation, storm-related redevelopment issues, and staffing turnover within the Town, the Firm has devoted substantial additional resources far exceeding the original scope anticipated under the Agreement; and

WHEREAS, the Town Council has determined that it is in the best interest of the Town to approve an increase in the Firm's monthly flat fee compensation to \$37,500, in recognition of the Firm's demonstrated value, continued workload, and the quality and quantity of legal services required to meet the Town's needs; and

WHEREAS, the Town Council considered this matter at its October 6, 2025, meeting, and authorized this Amendment to the Agreement, with the adjusted fees to be effective October 7, 2025.

NOW, THEREFORE, the Agreement is hereby amended as follows:

Section 5. (Compensation, Terms, and Conditions) of the Agreement is hereby amended as follows:

(a) Beginning October 7, 2025, the Town shall pay the Firm a flat monthly fee of \$37,500 for all services provided under the Agreement.

(b) For the month of October 2025, compensation shall be prorated as follows:

- October 1–6, 2025: \$25,000/month = \$4,838.71 (6/31 days).
- October 7–31, 2025: \$37,500/month = \$30,241.94 (25/31 days).
- Total due for October 2025 = \$35,080.65.

(c) Commencing November 1, 2025, the Town shall pay the Firm \$37,500 per month on the same terms and conditions otherwise set forth in the Agreement.

2. Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first written above.

TOWN OF FORT MYERS BEACH

By: _____
Dan Allers, Mayor

Attest: _____
Amy Baker, Town Clerk

VOSE LAW FIRM, LLP

By: _____
Nancy Stuparich, Esq.
Partner

JOSE LAW FIRM LLP
ATTORNEYS & COUNSELORS AT LAW

July 8, 2025

Mayor Allers, Vice-Mayor Atterholt and
Councilors King, Safford & Woodson
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

**Re: Proposal / Budget Request for Continued Town Attorney Services for the
Town of Fort Myers Beach, Florida**

Dear Mayor, Vice-Mayor, Councilors:

As budget season is approaching, we are asking the Town Council to revisit our fees for legal services under our existing agreement that would allow for the continuation of a long and mutually advantageous relationship between our firm and the Town of Fort Myers Beach. We are available to discuss our request with each of you individually or during an upcoming budget review meeting.

Town Attorney Budget Request

Our request is that our firm continue to provide all legal services required of the Town, including litigation, at the all-inclusive reasonable flat rate of \$37,500 per month / \$450,000 per year. That rate would appropriately compensate us for the massive amount of legal services that are necessarily required to fully serve the needs of the Town. The fees are also supported by the over \$1,000,000 our firm has recovered for the Town through litigation-related efforts (Persaud - \$250,000; Key Estero - \$188,000; and Nature View Court - \$730,000). **That is \$1,168,000 that was recovered by our firm for the Town through litigation-related work that the Town would not have without the exceptional efforts of our firm.** Our requested increase would be payable from these recovered funds.¹

¹ It should be noted that this flat fee retainer amount is equal to what our law firm is paid under our recent agreement with the City of St. Pete Beach for all-inclusive City Attorney services. Although St. Pete Beach is a slightly larger municipality, it has a more stable governmental workforce and has had many fewer storm-related issues than Fort Myers Beach. In addition, St. Pete Beach has much more comprehensive insurance coverage through PRM (Public Risk Management) that covers much of the litigation related matters that are not covered through FMIT in Fort Myers Beach. This fee reflects a \$12,500 per month increase.

The clear need for this increase is due in part to the unexpected workload increase resulting from the loss and reoccurring replacement of the Town's workforce and continued demands due to storm-related issues. Our proposed increase is reasonable and would appropriately compensate us for the massive amount of legal services that have been and will continue to be required to fully serve the needs of the Town.

When we were first hired two years ago in June, 2023, we shared with the Council that it was our firm's expectation that our firm would essentially "lose money" for the first six to 12 months of serving as Town Attorney and during that time we would be getting the Town back on an even keel after Hurricane Ian, and assisting the former Town Manager in training Town staff to function in a manner that would "keep the Town out of trouble" going forward.

We frankly did not anticipate the massive employee turnover, including private consultants, and new litigation related to redevelopment that has taken place as part of the Town's rebuilding efforts. This has taken massive amounts of attorney time that was certainly not expected either by the Town or by our firm when we were hired. For this reason, we are seeking a fee adjustment at this time.

Our Firm is Part of Your FMB Team!

Nancy Stuparich and **Becky Vose** tend to be the face of our firm in Fort Myers Beach, but many of our other attorneys work on Fort Myers Beach matters on a day-to-day basis. When representing a dynamic Town like Fort Myers Beach, it takes a multitude of attorneys to provide the needed legal services. Attached to this letter is a copy of your Vose Law Team's resumes.

You may not know the pending White Sand code enforcement matter has necessitated the services of several of our attorneys, **Paul Waters**, **Chloe Berryman**, **Becky Vose** and **Nancy Stuparich**, in federal and state court, in addition to hearings before the Town's Special Magistrate and the Town Council. A public records request associated with that case alone took several weeks working with the Town Clerk to examine requested documents for information deemed confidential during pending litigation.

Most recently, **Wade Vose**, **Becky Vose**, **Nancy Stuparich** and **Taylor Simonds** have assisted the Town with unique issues associated with recall petitions. Attorney **Stephanie Velo** prepared the response in the Himmelstein litigation that remains pending in circuit court. That case grew in complexity over time and multiple public hearings since the Town found itself in the middle of a litigious relationship between two neighbors. The Vose attorneys enjoy serving our local government clients; however, doing so requires time, which needs to be fairly compensated.

Increased Workload Demands

Your Vose Law Team has successfully handled **the multitude of recent hurricane and associated redevelopment issues that the Town has encountered as well as completion of typical Town attorney work.** Here are a just few highlights and examples of how our firm has assisted in this regard:

1. Settlement of contract disputes post-storm (example: Vetor Contracting Service, Boxx Modular).
2. Revision to the Unsafe Building Codes including changes to the ordinance, creating a process for implementation, creation of forms, training of staff, drafting of contracts for demolition contractors, drafting of the uniform method of collection for demolition costs and related contracts with the Property Appraiser and Tax Collector.
3. As directed, drafted rules for use of Home Rule Development Agreements to facilitate rebuilding and the issuance of building permits when a trust was the record owner of the property.
4. Assisted with code enforcement issues resulting from concerns raised by FEMA.
5. Negotiation of contracts with two new special magistrates.
6. Completion of the Town's purchase of the new Town Hall and adjacent land.
7. Assisted with resolution of various issues regarding the Town's status in the National Flood Insurance Program.

Since the firm was hired, more typical Town Attorney work such as employment matters, Sunshine law and public records training for local boards and committees, attendance at lengthy quasi-judicial and other public hearings associated with redevelopment efforts has also increased. Regardless, as you have experienced, our attorneys have been and remain available 24/7/365. If one or more of our attorneys are ill or on vacation, the other equally qualified attorneys of our firm are ready, willing, and able to step up and provide legal services as needed. Utilizing our firm as Town Attorney is truly the equivalent of an in-house multi-attorney legal department with paralegal support, without the expenses that would otherwise be associated with such a legal department.

Concern with Increasing Future Workload Demands

Our firm is highly proactive in minimizing our governmental clients' legal exposure. In addition, the attorneys of our firm have the highest degree of professionalism and ethics, and we always work closely with elected officials and staff in recognizing and solving problems. Not only is minimizing our clients' legal exposure best for our municipal clients, but it is absolutely necessary from our firm's standpoint since **our firm typically represents its municipalities on a fixed fee all-inclusive basis, including litigation.**

Unfortunately, working with Town staff to implement best practices has been and it appears it will continue to be very time consuming, especially in view of new hires and continued employee turnover, which has occurred over the last 2 years. The attorneys of the Vose Law Firm have realized over the past 2 years that a flat fee arrangement results in more frequent contact between the attorneys on one side, and the staff and elected officials on the other, which almost always results in less "false starts," and unintentional legal errors by government staff, but at a cost, which has been absorbed by the firm.

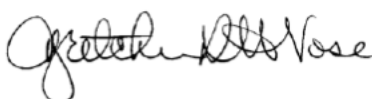
In view of the existing and anticipated future turnover of staff with new Town management, as well as the increasing polarization of the community related to redevelopment policies, future litigation would not be unexpected. Although our flat fee arrangement gives budgetary predictability to the Town, we do have concerns regarding future use of our firm's resources without a fee adjustment.

In Summary

At any time, the full resources of the Vose Law Firm are available to the Town of Fort Myers Beach for one reasonable, flat monthly payment of \$37,500. That includes access to eight (8) highly experienced and competent local government, land development, and litigation attorneys. Because of our institutional knowledge of Fort Myers Beach as well as our extensive local government and coastal land use experience, we believe that we are the ideal law firm to continue to represent the Town of Fort Myers Beach as Town Attorney at a fair rate for the quality and quantity of legal service to be provided.

Thank you in advance for your review and consideration of our request.

Sincerely,



Gretchen R. H. "Becky" Vose, Esq.
Founding Partner

GRETCHEN R. H. ("BECKY") VOSE

Founding Partner, Vose Law Firm LLP

324 West Morse Blvd.

Winter Park, Florida 32789

Telephone: (407) 645-3735

Cell: [REDACTED]

Facsimile: (407) 628-5670

Email: bvose@voselaw.com



EDUCATION AND BAR DATA

Law Degree:	J.D. with High Honors. 1973. University of Florida College of Law, Gainesville, Florida
Grade Average:	3.6 (four point system) Number 1 in Class
Undergraduate Degree:	B.A. in English with High Honors. 1970 Emory University, Atlanta, Georgia
Member/Admitted:	Florida Bar – Member in Good Standing since 1973 50 YEAR MEMBER – FLORIDA BAR Bar No. 169913 U.S. District Court, Middle District of Florida U.S. Fifth Circuit Court of Appeals U.S. Eleventh Circuit Court of Appeals U.S. Court of Appeals for Federal Circuit Orange County Bar Association
Rated:	AV by Martindale-Hubbell (highest rating awarded) Listed in Martindale-Hubbell Bar Register of Preeminent Lawyers

BAR RELATED ACTIVITIES AND HONORS

City, County & Local Government Law Section of Florida Bar
Chairperson, Women in Law Committee, Orange County Bar Association
Fee Arbitration Committee, Orange County Bar Association
Central Florida Association of Women Lawyers
Member, Eminent Domain Committees, Florida Bar and American Bar
Volunteer Guardian Ad Litem Orange Co. Legal Aid Soc. - Cited for Exceptional Service
Volunteer to Homeless Advoc. Program of Orange Co. Bar – Cited for Exceptional Service

LAW SCHOOL POSITIONS AND HONORS

Editorial Board, University of Florida Law Review

Order of the Coif
Senior Class President - University of Florida Law School
Law Center Scholarship
Chairperson of Council of Ten

PUBLICATION

Environmental Survival Kit for Real Estate Professionals (Book and disk. Purchased in the 1990's by the Florida Board of Realtors to be used for continuing education purposes.)

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

Assistant City Attorney, Orlando, Florida
Managing Partner/Chairperson, Real Estate Department, Shutts & Bowen Orlando office
Founding Partner, Vose Law Firm, LLP
City Attorney, City of Cocoa Beach
City Attorney, City of Anna Maria
City Attorney, City of Daytona Beach Shores
City Attorney, City of Brooksville
City Attorney, City of Naples
City Attorney, City of Winter Garden
City Attorney, City of Edgewood
City Attorney, City of St. Cloud
City Attorney, City of Eagle Lake
City Attorney, City of Longwood
City Attorney, City of Windermere
City Attorney, City of Deltona
Town Attorney, Town of Fort Myers Beach
Town Attorney, Town of Oakland
General Counsel for North Lake County Hospital Board of Trustees
Attorney for City of Orlando Code Enforcement Board
Special Counsel to City of Orlando as to Eminent Domain matters
Special Counsel to Cities of Ocoee and Casselberry
Special Counsel to Orange County Sheriff's Office
City Prosecutor for City of Orlando
Special Counsel to Orange County as to Code Enforcement Foreclosures
Special Counsel to Orange County as to Environmental Claims
Special Litigation Counsel to Orange County Property Appraiser
General Counsel for Green Swamp Land Authority
Counsel to Orange County Fire and Life Safety Code Board of Adjustments and Appeals
Special Counsel to Orange County as to §1983 Civil Rights Litigation
Eminent Domain Mediation Services for: FDOT; Florida Turnpike Authority; Seminole, Orange, Hillsborough, Lake and Polk Counties
Certified Circuit Court Mediator
Nominated for Appointment to Fifth District Court of Appeal

Biographical Sketch - Gretchen R. H. "Becky" Vose

Becky Vose graduated first in her law school class at the University of Florida College of Law, in 1973. While a law student, she was Senior Class President, Chairperson of the Council of Ten, on the editorial board of the University of Florida Law Review, and recipient for three years of a Law Center Scholarship. Upon graduation, she was tapped for membership in Order of the Coif.

In 1973, Becky was admitted to the Florida Bar and began her legal career as an Assistant City Attorney for Orlando. Thereafter she formed the law firm that is the predecessor to the Vose Law Firm. In 1981, she was recruited by Shutts & Bowen to open a branch office in Orlando and served as its managing partner. She was honored by being nominated by the Judicial Nominating Commission for a seat on the Fifth District Court of Appeal.

Over her 50 years of local government representation, Becky Vose has held the position of City Attorney for twelve (12) cities – Daytona Beach Shores, Anna Maria, Brooksville, Winter Garden, Edgewood, Longwood, Windermere, Oakland, Eagle Lake, St. Cloud, Deltona, and Co-City Attorney of Cocoa Beach. She also has done major work for Orange County government as to matters ranging from complex environmental litigation and the defense of §1983 Civil Rights claims. She also represented the Orange County Property Appraiser (OCPA) in a multi-year complex intellectual property lawsuit about the software utilized by the Property Appraiser's office. She also held the positions of General Counsel to the North Lake County Hospital Board of Trustees and the Green Swamp Land Authority.

Becky has taught at numerous continuing legal education seminars to other attorneys and has regularly presented seminars and instructional sessions for employees and officials of governmental clients. Ms. Vose is rated A-V Preeminent, which is the highest rating given by Martindale-Hubbell, and she has also been listed in the Martindale-Hubbell Bar Register of Preeminent Lawyers.

WADE CHRISTOPHER VOSE

Managing Partner, Vose Law Firm LLP
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Winter Park, Florida 32789
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Cell: [REDACTED]
Facsimile: (407) 628-5670
Email: wvose@voselaw.com



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EDUCATION AND BAR DATA

Legal	University of Florida College of Law Gainesville, FL J.D. with Honors, May 2003 Book Awards: Environmental Law Intellectual Property Law Family Law Recipient of the Levin College of Law Leonard Scholarship
Undergraduate	University of Florida Gainesville, FL B.A. in Political Science, with Honors, May 2000 National Merit Scholar / Florida Academic Scholar Omicron Delta Kappa Leadership Honorary
Preparatory	Bishop Moore Catholic High School Orlando, FL Graduated with Highest Honors, May 1996 Student Body President & Valedictorian
Admitted	Florida Bar – Admitted & Member in Good Standing since 2003 Bar No. 685021 U.S. District Court, Middle District of Florida U.S. District Court, Northern District of Florida U.S. District Court, Southern District of Florida Orange County Bar Association City, County, and Local Government Law Section – Florida Bar Environmental & Land Use Law Section – Florida Bar
Certification	Board Certified in City, County and Local Government Law

PROFESSIONAL EXPERIENCE

Vose Law Firm LLP (Winter Park, FL)

Managing Partner - As managing partner of an AV-rated statewide local government law firm serving as City Attorney for ten cities and County Attorney for one county, in addition to extensive specialized representation for local governments statewide, responsible for overseeing every segment of the local government representation process, including representation of local government commissions, councils, and boards, client counseling of elected officials, city and county managers/administrators, department heads, staff, and appointed officials, evaluation of claims and defenses, development of litigation strategies, preparation of ordinances, resolutions, development agreements, pleadings, discovery, motions, and memoranda, and argument before trial and appellate courts. January 2004 to present.

City of South Daytona, Florida (South Daytona, FL)

City Attorney - Wade Vose serves as City Attorney to the City of South Daytona, a residential and business-friendly city bordering the Halifax River. Responsible for providing legal advice to City Council and other City boards at public meetings as needed, advising all city departments, drafting city ordinances and resolutions, and conducting litigation on behalf of the City. November 2020 to present.

Village of Indiantown, Florida (Indiantown, FL)

Village Attorney - As Village Attorney to Florida's newest municipality, just formed at the end of 2017, responsible for providing legal advice to the Village Council, Village Manager, Village boards and staff as the Village charts its own course, drafting ordinances, resolutions, and agreements, handling real estate transactions, and conducting litigation on behalf of the Village. September 2018 to present.

City of Rockledge, Florida (Rockledge, FL)

City Attorney - Wade Vose serves as City Attorney to the City of Rockledge, Brevard County's oldest city, located along the picturesque Indian River. Responsible for providing legal advice to City Council and other City boards at public meetings as needed, advising all city departments, drafting city ordinances and resolutions, and conducting litigation on behalf of the City. December 2024 to present.

City of Cocoa Beach, Florida (Cocoa Beach, FL)

City Attorney - Vose Law Firm, Becky Vose, and Wade Vose jointly serve as City Attorney to the City of Cocoa Beach, the famous beach community on Florida's Space Coast. Responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments, drafting

city ordinances and resolutions, and conducting litigation on behalf of the City. July 2017 to present.

City of Bunnell, Florida (Bunnell, FL)

City Attorney – As City Attorney for this Flagler County city that serves as county seat and is the second largest city geographically in Florida (after Jacksonville), responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments including planning, finance, police, grants, and public works, drafting city ordinances and resolutions, handling real estate transactions, and conducting litigation on behalf of the City. October 2013 to present.

City of Anna Maria, Florida (Anna Maria, FL)

City Attorney – Vose Law Firm, Becky Vose, and Wade Vose jointly serve as City Attorney to the City of Anna Maria, an idyllic coastal city on Anna Maria Island in the Gulf of Mexico. Responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments, drafting city ordinances and resolutions, and conducting litigation on behalf of the City. March 2015 to present.

City of Satellite Beach, Florida (Satellite Beach, FL)

Special Magistrate – As the first Code Enforcement Special Magistrate for the City of Satellite Beach, a coastal city located near Patrick Air Force Base in Brevard County, responsible for serving as an impartial magistrate to adjudicate violations of the City of Satellite Beach code of ordinances. February 2017 to present.

Okeechobee County Board of County Commissioners (Okeechobee, FL)

County Attorney – As County Attorney for the only county strategically located in both Florida's Treasure Coast and Florida's Heartland, responsible for protecting the legal interests of Okeechobee County by providing comprehensive and quality legal services to the Board of County Commissioners, the County Administrator, and Department Heads, providing legal advice to the Board of County Commissioners and other county boards at public meetings, drafting county ordinances and resolutions, drafting and reviewing county contracts, and conducting litigation on behalf of the County. November 2019 to March 2025.

2024 Orange County Charter Review Commission (Orlando, FL)

General Counsel – As General Counsel to the commission empowered by the Orange County Charter to conduct a comprehensive study of all phases of county government and place proposed charter amendments on the ballot for voter approval, responsible for advising the 2024 Orange County Charter Review Commission ("CRC") as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments,

representation of CRC at public meetings, preparation of charter amendment and ballot language, and preparation of CRC final report. April 2023 to November 2024.

2024 Pinellas County Charter Review Commission (Clearwater, FL)

General Counsel – As General Counsel to the commission empowered by the Pinellas County Charter to review, on behalf of the citizens of Pinellas County, the operation of county government in order to recommend amendments to the Pinellas County Charter, responsible for advising the 2024 Pinellas County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. September 2023 to November 2024.

2016 Orange County Charter Review Commission (Orlando, FL)

General Counsel – As General Counsel to the commission empowered by the Orange County Charter to conduct a comprehensive study of all phases of county government and place proposed charter amendments on the ballot for voter approval, responsible for advising the 2016 Orange County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, preparation of charter amendment and ballot language, and preparation of CRC final report. March 2015 to November 2016.

2016 Pinellas County Charter Review Commission (Clearwater, FL)

General Counsel – As General Counsel to the commission empowered by the Pinellas County Charter to review, on behalf of the citizens of Pinellas County, the operation of county government in order to recommend amendments to the Pinellas County Charter, responsible for advising the 2016 Pinellas County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. September 2015 to November 2016.

2016 Brevard County Charter Review Commission (Viera, FL)

General Counsel – As General Counsel to the commission empowered by the Brevard County Charter to review and propose amendments to the Brevard County Charter, responsible for advising the 2016 Brevard County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. October 2015 to November 2016.

2020 Alachua County Charter Review Commission (Gainesville, FL)

General Counsel – As General Counsel to the commission empowered by the Alachua County Charter to review and propose amendments to the Alachua County Charter, responsible for advising the 2020 Alachua County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. October 2019 to November 2020.

2018 Clay County Charter Review Commission (Green Cove Springs, FL)

General Counsel – As General Counsel to the commission empowered by the Clay County Charter to review and propose amendments to the Clay County Charter, responsible for advising the 2018 Clay County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. December 2017 to July 2018.

2012 Orange County Charter Review Commission (Orlando, FL)

General Counsel – As General Counsel to the commission empowered by the Orange County Charter to conduct a comprehensive study of all phases of county government and place proposed charter amendments on the ballot for voter approval, responsible for advising the 2012 Orange County Charter Review Commission (“CRC”) as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, preparation of charter amendment and ballot language, and preparation of CRC final report. August 2011 to November 2012.

Pinellas County, Florida (Clearwater, FL)

Counsel, County Attorney Oversight Committee – The County Attorney Oversight Committee is a unique collegial body created pursuant to Section 4.02 of the Pinellas County Charter, consisting of the seven members of the Pinellas County Commission, plus the five Pinellas County constitutional officers (Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court), organized to select, terminate, and annually review, the Pinellas County Attorney. As Counsel to the Committee, responsible for providing outside and impartial legal advice throughout its process of selection, termination, and annual review of the Pinellas County Attorney. February 2017 to present.

Counsel, County Redistricting Board – The County Redistricting Board is a board created pursuant to Section 3.04 of the Pinellas County Charter, appointed by the Board of County Commissioners after each decennial census to develop and

propose county redistricting plans to the BOCC. As Counsel to the Board, responsible for providing outside and impartial legal advice throughout its redistricting proposal development process, including application of the Pinellas County Charter's unique CRB criteria modeled on the Florida Constitution's Fair Districts standards. August 2021 to December 2021.

Town of Pierson, Florida (Pierson, FL)

Town Attorney – As Town Attorney for the Town of Pierson, a small Volusia County town known as the “Fern Capital of the World,” responsible for providing legal advice to the Town Council and other Town boards at public meetings, advising all Town staff, drafting ordinances and resolutions, and conducting litigation on behalf of the Town. June 2015 to present.

City of Deltona, Florida (Deltona, FL)

Chief Assistant City Attorney – Vose Law Firm and its Founding Partner, Becky Vose, served for over half a decade as City Attorney to the City of Deltona, an 87,000 resident community in Volusia County. As Chief Assistant City Attorney, responsible for providing legal advice to City Commission and other City boards at public meetings, as necessary, drafting of city ordinances and ordinance amendments, and litigation on behalf of the City. June 2011 to February 2017.

Eighth Judicial Circuit State Attorney's Office (Gainesville, FL)

Certified Legal Intern – Responsible for prosecution of criminal cases as the sole Certified Legal Intern in the Bradford County, Florida office of the Eighth Circuit State Attorney's Office. January 2003 to May 2003.

Ninth Judicial Circuit of Florida (Orlando, FL)

Judicial Law Clerk - Clerked for Circuit Judge Walter Komanski. Responsible for conducting legal research, drafting legal memoranda, final judgments and other judicial orders, and assisting the judge throughout a variety of trials and hearings. May 2001 to August 2001.

PROFESSIONAL ACTIVITIES, AWARDS, AND COMMUNITY INVOLVEMENT

Orange County Government

Authority Member – Orange County Industrial Development Authority (2014 to 2016) – Serve as one of five governing members of an industrial development authority responsible for issuing industrial development revenue bonds for the purpose of financing the costs of industrial or manufacturing plants, research and development parks, agricultural processing or storage facilities, warehousing or distribution facilities, headquarters facilities, tourism facilities, educational facilities, commercial projects in enterprise zones, and health care facilities.

Chairman – Neighborhood Grants Advisory Board (Chairman – Oct. 2008 to Oct. 2009, Vice Chairman – Oct. 2007 to Oct. 2008, Member – Aug. 2006 to May 2011) –

Responsible for approving criteria for neighborhood grant programs, overseeing the application review process, approval of recommended grant recipients, hearing appeals from grant applications, and monitoring progress of grant recipients.

Board Member – Orange Blossom Trail Development Board (August 2007 to Oct. 2010) – Responsible for promoting the economic, social, and aesthetic revitalization of the south Orange Blossom Trail area.

Orlando Business Journal

Forty Under 40, Class of 2009 – Recipient of the Orlando Business Journal's prestigious Forty Under 40 Award, spotlighting forty of the Central Florida region's top young business and civic leaders who demonstrate consistent, outstanding professional achievement and a commitment to community service.

"Reader's Choice – Best Law Firm, 2009 & 2010" – Voted by the readers of the Orlando Business Journal.

Winter Park Chamber of Commerce

Member, Government Affairs Committee – Member of the Winter Park Chamber committee responsible for advocacy on behalf of the Winter Park business community at the local and state level and educating Chamber membership about current affairs effecting the Winter Park business community.

BusinessForce - Orlando Regional Chamber of Commerce

Alumnus, Class 1 – Central Florida Political Leadership Institute – Member of the exclusive 25-person inaugural class of Business Force's Political Leadership Institute, a program designed to identify and equip Central Florida's next generation of elected leaders before they formally choose to run for a specific public office.

Rotary Club of Winter Park

Member of Board of Directors (July 2011 to June 2012)

Leadership Winter Park

Class Member, Class 20 (September 2009 to August 2010)

Leadership Orlando

Alumnus, Class 72 (March 2007 to October 2007)

Leadership Apopka

Alumnus, Class 1 (January 2008 to November 2008)

Orange County Bar Association

Committee Member – Young Lawyers Oath of Admissions Committee (June 2004 to September 2005)

Tiger Bay Club of Central Florida

Member (January 2005 to present)

Apopka Area Chamber of Commerce

Businessman of the Year 2008-2009

Chairman – Apopka Area Political Alliance (Apopka Chamber PAC) (August 2008 to February 2012)

Chairman – Issues & Government Affairs Committee (August 2007 to August 2009)

Member of Board of Directors (June 2007 to February 2012)

Biographical Sketch - Wade C. Vose

Wade Vose is the managing partner of the Vose Law Firm. He is Board Certified by the Florida Bar in the area of City, County, and Local Government Law, and rated AV Preeminent by Martindale-Hubbell. He is a native Floridian and proud “double Gator” having graduated with Honors from the University of Florida College of Law.

Wade serves as the City Attorney for the City of South Daytona, City Attorney for the City of Rockledge, Co-City Attorney for the City of Cocoa Beach, Village Attorney for the Village of Indiantown (Florida’s newest municipality), and Special Magistrate for the City of Satellite Beach. Throughout his career, Wade has also served as County Attorney for Okeechobee County, City Attorney for the City of Bunnell, Town Attorney for the Town of Pierson, Chief Assistant City Attorney for the City of Deltona, Counsel to the Pinellas County Redistricting Board, Counsel to the Seminole County Tax Collector’s Office, Counsel to the Seminole County Supervisor of Elections’ Office, and General Counsel to a total of eight (8) County Charter Review Commissions in five (5) different charter counties (Orange – 2011-2012, 2015-2016, 2023-2024; Pinellas – 2015-2016, 2023-2024; Brevard – 2015-2016; Clay – 2018; Alachua – 2019-2020), in addition to a range of other specialized representation statewide.

Wade lives in Maitland with his wife and three daughters.

NANCY ANN M. STUPARICH

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Telephone: (407) 645-3735
Facsimile: (407) 628-5670
Email: nstuparich@voselaw.com

EDUCATION AND BAR DATA

Florida State University, B.A., cum laude, 1982. (Government/International Affairs)
University of Florida, J.D., 1985 (Law)
Florida State University, MPA & MSP, 1997 (Public Administration/Urban Planning)

Admitted: Florida Bar – Member in Good Standing (No. 646342)
U.S. District Court, Middle District of Florida

PROFESSIONAL EXPERIENCE & POSITIONS HELD

Public Sector:

City Attorney – City of Naples, FL Responsibilities included management of the Vose Law Firm's representation of the City of Naples. Primary duties include attendance and providing legal support to the mayor and city council members, appointed members of city boards including but not limited to the Planning Advisory Board, the Design Review Board, Code Enforcement Board, etc., Charter Officers (City Manager and City Clerk) as well as city staff. Additional responsibilities include supervision and coordination with other members of the Vose Law firm performing legal services.

Assistant City/Town Attorney for the cities of Fort Myers Beach, Anna Maria, Bunnell, Cocoa Beach, Oakland, Brooksville Florida. Responsibilities include providing support to Vose Law Firm attorneys serving as primary City Attorney in these cities. Duties and responsibilities vary and can include attending public meetings, drafting ordinances, resolutions, policies, agreements, collective bargaining negotiations and other legal documents, representing the city in circuit/county court and quasi-judicial hearings.

Deputy County Attorney for Okeechobee County Duties and responsibilities can vary and include review of contract documents, ordinances, policies, attendance at Planning Board meetings, Code Enforcement Special Magistrate hearings, Construction Industry

Licensing Board public hearings, Canvassing Board public meetings, representing the County in county court hearings.

City Attorney, Dade City, Florida. Responsibilities included providing legal counsel to the City of Dade City Commission, its Charter Officers, and Police Chief. Duties and responsibilities included attending public meetings, drafting ordinances, resolutions, policies, agreements and other legal documents, purchase and sale of real estate, monitoring pending insurance claims; working with outside counsel; and other duties as needed.

Special Magistrate, City of Davenport, Florida. Preside as the special magistrate for review of code enforcement cases presented by the City of Davenport Code Enforcement Officer.

County Attorney, DeSoto County, Florida. Responsibilities included independently providing legal services to the DeSoto County Board of County Commissioners; drafting written and providing oral legal opinions; participation in public hearings and workshops of the BCC, Planning Board, Code Enforcement Special Magistrate; drafting ordinances, resolutions and negotiation of contracts; defending the county in litigation matters; working with outside legal counsel and staff; and other duties as needed.

Assistant County Attorney, Escambia County, Florida. Responsibilities included representing the county on general county government matters at workshops, public hearings and in court; drafting ordinances, resolutions and contracts; negotiating and completing the purchase, sale and disposition of county real estate assets; serving as the attorney to the Board of Adjustment, Planning Board and the Escambia County Canvassing Board; responding to questions from staff and County Commissioners regarding local government issues; and other projects as assigned by the County Attorney. Awarded recognition as "Employee of the Month" for work and coordination of a tri-party agreement bringing minor league hockey to the county.

Assistant General Counsel, Florida League of Cities. Responsibilities included legislative lobbying; serving as a liaison to the Governor's Property Rights Study Commission II; legal research concerning municipal issues; preparing appellate briefs; preparing the Florida Municipal Attorneys Newsletter; assisting and document drafting for the purchase of Sittig Hall; serving as staff to the Juvenile Justice/Criminal Policy Committee; responding to correspondence and questions from member city officials; and other duties as assigned.

Director Growth Management, Escambia County, Florida. Responsibilities included directing and managing the Escambia County Department of Growth Management, which consisted of the Divisions of Development Services (development order approval), Long-Range Planning (county-wide growth management planning) and Technical

Services (management functions); presentations to the Board of County Commissioners and other public groups; and other duties as assigned by the County Administrator.

Of Counsel, Weiss, Serota, Helfman, Pastoriza, Cole, & Boniske, P.L. Responsibilities included providing legal services to various municipalities regarding land use and local government matters; representing quasi-judicial boards; drafting ordinances and resolutions; researching municipal codes, and other duties as assigned.

Staff Attorney, Second District Court of Appeal. Responsibilities included preparing legal memoranda; reviewing appellate briefs and pleadings; presenting oral argument waived cases to panels of three appellate judges; and assisting in drafting & proofing appellate opinions for the Honorable Judge John Scheb (deceased).

Trial Court Law Clerk, 10th Judicial Circuit. Responsibilities included reviewing civil complaints and pleadings; preparing legal memoranda and providing assistance to several circuit civil judges on complex litigation; and other duties as assigned.

Public Sector Appointments (Former):

Member of the City of Clermont Community Redevelopment Board
Member of the Northwest Florida Water Management District Board
Member of the City of Pensacola Planning Commission

Private Sector Representation (Former):

General Counsel, Maruti Fleet Management, Inc. Responsibilities included management of pending insurance claims with adjusters, mediation and settlement of pending litigation, contract review, and personnel issues.

Risk Manager, Florida Lawyers Mutual Insurance Company. Responsibilities included developing and delivering risk management services to insured attorneys to avoid potential legal malpractice claims; presentation of continuing legal education seminars to attorneys; drafting a risk management newsletter and digital risk alerts.

Associate, Freeman, Haber, Rojas & Stanham, LLP. Responsibilities included closing real estate transactions involving primarily foreign clients; drafting corporate documents, agreements and real estate documents; review of title and land use issues; review of commercial leases; supervision of paralegals; and legal research.

Underwriting Counsel, Attorneys Title Insurance Fund, Inc. Responsibilities included identifying and resolving title defects; teaching attorneys and paralegals real estate closing procedures using ATIDS and DoubleTime software program; publication of legal articles for THE FUND CONCEPT; speaking and participating as a panelist at the Fund's Annual Assembly and Affiliate Assembly; and other duties as assigned.

Title Attorney. Lawyers Title Insurance Corporation. Responsibilities included coordinating and closing commercial real estate transactions; reviewing and preparing real estate documents in conjunction with the issuance of title insurance; responding to underwriting questions; and other duties as assigned.

PROFESSIONAL, COMMUNITY AFFILIATIONS, PUBLICATIONS & ACTIVITIES:

CURRENT: Certified as a Labor Relations Professional by the Florida Public Employers Labor Association; Designated a FRA-Redevelopment Professional by the Florida Redevelopment Association; member of the City, County & Local Government Section of The Florida Bar; member of the Environmental and Land Use Section of The Florida Bar; member of the Animal Law Section of The Florida Bar. FORMER: Appointed member of the 18th Judicial Circuit Unauthorized Practice of Law Committee "B"; member of Impact Lake County; member of the South Lake Chamber of Commerce Economic and Policy Committee; Florida Land Use & Environmental Dispute Resolution Special Magistrate for Lake County, Florida, graduate of the City of Oviedo Citizens Police Academy, member of the Executive Council of the City, County and Local Government Section of The Florida Bar; member of the LOMAS Advisory Board; The Florida Bar Convention Committee; former member of The Florida Bar Senior Committee, The Florida Bar Diversity Committee and other local bar associations; Certified Circuit Court Mediator (24865R); participant in the Hillsborough County Guardian Ad Litem Program; co-chair of the International Energy Conference, Rio de Janeiro, Brazil; member of Leadership Miami; member of the American Planning Association; chair of the Organizing Committee for the Quietwater Thunder Formula One/Two Power Boat Grand Prix Race-Pensacola Sports Association; graduate Leadership Pensacola; adjunct professor for real estate at University of West Florida, Legal Administration Program; member, Junior League of Pensacola; sustainer in Miami Junior League; graduate, City of Pensacola Citizens Police Academy; graduate, Escambia County Sheriff's Citizens Law Enforcement Academy; member of Five Flags Rotary International; member of Panhandle Tiger Bay Club; member Escambia and Santa Rosa County Bar Association; member of Pensacola Runners Association, race director, 1997 Downtown Christmas 5K Run & inaugural 1998 PRA Downtown Christmas Parade Dash; co-author of "Private Property Rights: Regulating the Regulators" published in The Florida Bar Journal, January 1996; Tallahassee Women Lawyers Board Member.

PERSONAL:

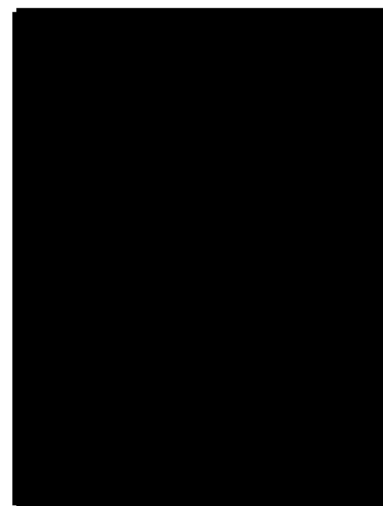
Native Floridian from Tampa, Florida current residence in Clermont, Florida (aka "Choice of Champions"); enjoys travel; runner/triathlete who completed a marathon in all 50 states and participated in several Ironman races (Florida, Brazil, Louisville, Texas, Kalamar), finisher of the Great Floridian Triathlon (Clermont, Florida).

PAUL R. WATERS

Partner, Vose Law Firm, LLP



Email: paul@voselaw.com



EDUCATION AND BAR DATA

Law Degree: **Florida Coastal School of Law**
Jacksonville, Florida
Juris Doctor, May 2004

Undergraduate Degree: **University of Central Florida**
Orlando, Florida
B.A. in Legal Studies, May 1998
Dean's List

Member/Admitted: **Florida Bar – Admitted and member in good standing – Bar No. 817651**
Texas Bar – Inactive – Bar No. 24102728

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

City of Bunnell, Florida (Bunnell, FL) - Present

City Attorney – As City Attorney to this Flagler County city that serves as county seat and is the second largest city geographically in Florida (after Jacksonville), responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments including planning, finance, police, grants, and public works, drafting city ordinances and resolutions, handling real estate transactions, and conducting litigation on behalf of the City.

Assistant City/Town/Village Attorney (Various Municipalities) - Present

Provides effective legal services and counseling to the cities of Daytona Beach Shores, South Daytona, Cocoa Beach, Anna Maria, and Brooksville; the Village of Indiantown, and the Town of Oakland with a client-centered approach. Duties include drafting ordinances, resolutions, policies, agreements, legal memoranda, and other legal documents; representing municipalities throughout all phases of litigation, including developing and executing litigation strategies, drafting motions, pleadings, and written discovery, as well as preparing municipal staff and law enforcement officers for hearings; and advising boards on substantive and procedural legal issues during public hearings and workshops.

Okeechobee County (Okeechobee, FL)

Assistant County Attorney – Executes comprehensive and quality legal strategies and services for the Board of County Commissioners. Duties include preparing legal documents, including ordinances, resolutions, and contracts, and advising and representing County staff.

Vilano Management and Postal Fleet Services (St. Augustine)**Corporate Counsel (2020 – 2022)**

- Advise other senior leaders on legal issues involved with operating a \$300M per year transportation company.
- Oversee regulatory compliance and respond to investigations from the Department of Labor that arise from 2,000 employees
- Oversee regulatory compliance and respond to investigations from the Department of Transportation involved with operating a fleet of over 1,500 tractor trailers
- Perform contract negotiations and draft vendor agreements, sub-contracts, real estate leases, employee leasing agreements, and equipment leasing agreements
- Handle personnel matters including disciplinary actions, lay-offs, non-disclosure agreements, draft personnel manuals, and oversee employee health & wellness plans
- Supervise litigation involving alleged wrongful termination (discrimination and retaliation), wage and hour disputes, breach of contract and insurance claims for trucking accidents

Florida Department of Business and Professional Regulation (Tallahassee)**Deputy Secretary of Professional Regulation (August 2017 – January 2019)**

- Agency head in charge of six divisions and 20 professional boards
- Managed the regulation of over 900,000 professionals
- Responsible for the activities of over 450 employees
- Presented before legislative committees and conduct bill analysis

Executive Director, Florida State Boxing Commission (July 2014 – August 2017)

- Coordinated all professional boxing and mixed martial arts events throughout Florida
- Managed over 60 Commission staff and event officials
- Led project to re-write administrative rules governing combat sports
- Supervised sanctioning of reality television series “The Ultimate Fighter”

Deputy General Counsel (June 2013 – August 2014)

- Managed over 50 attorneys and office staff
- Supervised prosecution of 2,500 cases annually before agency’s professional boards
- Acted as legal advisor to General Counsel and senior managers

- Served as informal hearing officer
- Conducted bill analysis, handled legislative requests and responded to media inquiries

Chief Attorney (Oct. 2010 - June 2013)

- Managed over 15 attorneys and office staff
- Supervised prosecution of over 1,000 cases annually
- Conducted hearings before Construction Industry Licensing Board

Staff Attorney (Oct. 2008 - Oct. 2010)

- Prosecuted construction contractors for violations of Florida statutes and administrative rules

**Finlay Property Development, Construction and Property Management (Jacksonville)
Assistant Corporate Counsel (2005 - 2008)**

- Supervised due diligence for tax-credit, construction and perm loan closings
- Litigated cases involving breach of contract, liens and construction defects
- Conducted residential closings for in-house title company (Best American Title)

Biographical Sketch – Paul R. Waters

Paul Waters is a partner with the Vose Law Firm. He serves as City Attorney for the City of Bunnell, and as an assistant city/county attorney for each of the firm's other local government clients. Since joining the firm in 2022, Mr. Waters has handled most of the firm's appeals, including a recent victory after oral argument before the Sixth District Court of Appeals that upheld the validity of the City of Naples' fertilizer ordinance. This ruling paves the way for other local governments to maintain clean water free from harmful pollutants that cause algae blooms, fish kills and pose human health risks. In addition, Mr. Waters successfully defended a petition for writ of certiorari challenging a city's decision to deny a development permit application. He also litigates other permit denial cases and code enforcement lien foreclosures.

Mr. Waters has a wealth of government legal representation experience, having held various supervisory legal and executive positions within the Florida Department of Business and Professional Regulation (DBPR) over an eleven-year period. He served as Deputy Secretary, which is the Agency's most senior position in charge of regulating almost one million licensees and 20 of the State's largest regulatory boards, many that directly impact local governments, including the Construction Industry Licensing Board, the Building Code Commission, the Building Code Administrators Board, and the Real Estate Commission just to name a few.

As Deputy Secretary, Mr. Waters often testified before legislative committees and met daily with legislators and senior gubernatorial staff to resolve complex policy and legal

issues. In addition, Mr. Waters served as Deputy General Counsel, which is the lead attorney in charge of seventy prosecuting attorneys and support staff which prosecuted thousands of cases annually before the Agency's boards and the Division of Administrative Hearings. He also served as the Executive Director of the Florida Athletic Commission, which oversaw all professional boxing and MMA events held in the State, many of which were major televised events including the sanctioning of the reality television show "The Ultimate Fighter."

Finally, Mr. Waters served as the Agency's informal hearing officer for a contentious casino license denial case. The case made its way to the Florida Supreme Court, which upheld Mr. Waters' decision and legal analysis.

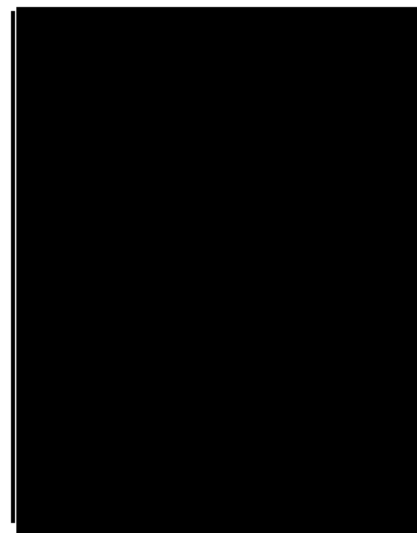
After leaving DBPR and prior to working for the firm, Mr. Waters served three years as General Counsel for a national transportation company, which was the second largest government contractor for the United States Post Office. In that role, he oversaw regulatory compliance with federal and state departments of labor and departments of transportation arising from over 2,000 employees and 1,500 tractor trailers. Mr. Waters settled lawsuits involving wrongful termination for alleged discrimination, alleged retaliatory firings of whistleblowers, and allegations of hostile work environment. He was instrumental in the dismissal of a Department of Justice investigation involving alleged unpaid fringe benefits and wages. Finally, Mr. Waters managed outside insurance attorneys defending the company in truck accident lawsuits, some of which involved fatalities.

After graduating the University of Central Florida with a Bachelor of Arts (BA) degree in Legal Studies from the University of Central Florida, Mr. Waters served as an environmental and zoning code enforcement officer for Volusia County where he enforced one of Florida's first sea turtle lighting ordinances that "darkened" almost 36 miles of Volusia's beachfront, a very controversial program at the time. It was that experience of presenting cases before Volusia County's Code Enforcement Board that led Mr. Waters to attend law school at the Florida Coastal School of law, where he received the degree of Juris Doctor.

Mr. Waters is licensed in Florida and Texas (inactive), and he is a member of the Middle District of Florida's Federal Court Bar. He is also a member of the Volusia County Bar Association. While not working, Mr. Waters enjoys spending time outdoors with his wife and 16-year-old son surfing, fishing, and jogging.

GARRETT M. OLSEN

Attorney, Vose Law Firm, LLP
324 West Morse Blvd.
Winter Park, Florida 32789
Telephone: (407) 645-3735
Email: golsen@voselaw.com



EDUCATION AND BAR DATA

Law Degree: **Florida State University College of Law**
Tallahassee, Florida
J.D., cum laude
Certificate in Environmental, Natural Resources, & Land Use
Law, with *honors*
Dean's List

Undergraduate Degree: **University of South Florida**
Tampa, Florida
B.A. in Economics and Philosophy, *cum laude*
Dean's List

Member/Admitted: Florida Bar – Admitted and member in good standing – Bar
No. 1025600

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

Sun 'N Lake of Sebring Improvement District - Present

General Counsel – As General Counsel to an independent special district with a population of 9,000, responsible for providing legal advice to the district Board of Supervisors and other district boards at public meetings as needed, advising all district departments, drafting district and reviewing district resolutions and agreements, handling real estate transactions, and conducting litigation on behalf of the district.

Barefoot Bay Recreation District - Present

General Counsel – As General Counsel to the largest Ch. 418 recreation district in Florida, located in southern Brevard County, responsible for providing legal advice to the district Board of Trustees and other district boards at public meetings as needed, advising all district departments, drafting district and reviewing district resolutions and agreements, handling real estate transactions, and conducting litigation on behalf of the district.

Assistant City/Town/Village Attorney (Various Municipalities) - Present

Provides effective legal services and counseling to the cities of Daytona Beach Shores, South Daytona, Bunnell, Cocoa Beach, Anna Maria, and Brooksville; the Village of Indiantown, and the Town of Oakland with a client-centered approach. Duties include drafting ordinances, resolutions, policies, agreements, legal memoranda, and other legal documents; representing municipalities throughout all phases of litigation, including developing and executing litigation strategies, drafting motions, pleadings, and written discovery, as well as preparing municipal staff and law enforcement officers for hearings; and advising boards on substantive and procedural legal issues during public hearings and workshops.

Okeechobee County (Okeechobee, FL)

Assistant County Attorney – Executes comprehensive and quality legal strategies and services for the Board of County Commissioners. Duties include regular representation of the Okeechobee County Construction Industry Licensing Board and the Okeechobee County Planning Board at public hearings; preparing legal documents, including ordinances, resolutions, and contracts; advising and representing the County's building officials regarding the enforcement of the Florida Building Code and the International Property Maintenance Code; assisting in prosecuting code enforcement violations and related appeals; and representing the County in all related appellate litigation.

Cole, Scott & Kissane, P.A. (Orlando, FL)

Associate Attorney/ Law Clerk – Represented businesses and individuals in construction and commercial litigation matters. Practice included defending and asserting construction defect claims, including actions for breach of contract, contractual indemnity and defense, and other commercial claims. Drafted legal memoranda, motions, pleadings, and targeted written discovery to further client objectives. Negotiated and secured settlements on behalf of clients. Deposed expert witnesses in large, complex litigation cases. Led pre-trial process in construction defect case resulting in settlement for under targeted amount. Practiced under supervised practice program while studying for the Florida Bar from May 2020 to November 2020.

City of Tallahassee

City Attorney's Office (Tallahassee, FL) Law Clerk – Provided high-quality research memoranda on a range of legal issues. Drafted pleadings, motions, and written discovery. Attended deposition preparation meetings and observed hearings in federal court. Managed small-claims cases from factual intake phase to initiate litigation. Drafted advisory opinions for city leadership on federal and state constitutional issues. Assisted in developing and executing litigation strategies. Assisted in drafting contracts.

Cobb Cole, P.A. (Daytona Beach, FL)

Summer Associate – Provided high-quality, effective legal services and research for clients over two summers. Executed legal strategies through drafting legal memoranda, motions, pleadings, and written discovery in state and federal court. Attended hearings, mediations, and assisted in settlement negotiations. Drafted contracts. Assisted in preparing development agreement with Florida county for mixed-use project. Interacted with clients regularly and attended client meetings.

RECENT REPRESENTATIVE EXPERIENCE

- Represented Okeechobee County and the Okeechobee County Sheriff's Office in a civil action under 828.073, Fla. Stat., to take custody of neglected horses and dogs while securing \$60,000.00 judgement in County's favor.
- Represented the City of South Daytona in Florida's Fifth District Court of Appeal involving second-tier certiorari review of code enforcement fine reduction hearing concerning a nearly half-million dollar fine.
- Represented the City of Daytona Beach Shores in civil action under 828.073, Fla. Stat., to take custody of neglected dogs while securing judgment for all costs in City's favor.
- Represented the Okeechobee County Building Official on direct appeal of Construction Industry Licensing Board Decision to uphold the condemnation of buildings.
- Advised the City of Bunnell during a public meeting of legal requirements to adopt tentative millage and budget under Florida law.

BAR AND COMMUNITY RELATED ACTIVITIES

City, County & Local Government Law Section of Florida Bar
Environmental and Land Use Law Section of Florida Bar
Young Lawyers Division of the Florida Bar

PERSONAL

A native of Central Florida, Garrett is an Attorney for the Vose Law Firm and is an integral part of the firm's local government practice. Garrett regularly advises municipalities and counties on a range of legal issues, including representing numerous city and county boards during public hearings and related litigation.

Garrett received his Bachelor of Arts in Economics and Philosophy from the University of South Florida in Tampa, Florida. He then went on to earn a Juris Doctor and Certificate in Environmental, Natural Resources, & Land Use Law from the Florida State University College of Law. During his time at Florida State, Garrett focused primarily on litigation, land use, and related environmental courses. Garrett built on this area of focus as a summer associate with one of Central Florida's most respected law firms during both of

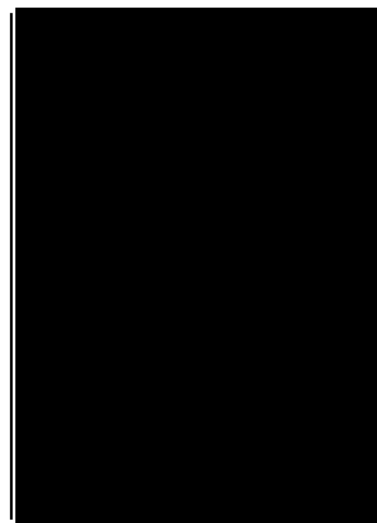
his law school summers. However, it was not until Garrett worked as a law clerk for the City of Tallahassee that he became inspired to apply his love for litigation and land use law to a local government practice.

Following a litigation practice at one of Florida's largest civil litigation firms, Garrett found his home at the Vose Law Firm. Garrett now counsels local government clients in numerous areas, including representation in trial and appellate litigation, advising boards on substantive and procedural issues during public hearings and workshops, and training staff with an eye to avoiding litigation in the first place. Garrett enjoys the fast-paced, collaborative nature of local government representation and strives to deliver outstanding client-centered legal services to the firm's clients.

When he is not rooting on his South Florida Bulls or Florida State Seminoles, Garrett enjoys cooking, enjoying the outdoors at a golf course or on the water, and spending time with his friends and family.

STEPHANIE M. VELO

Attorney, Vose Law Firm, LLP
324 West Morse Blvd.
Winter Park, Florida 32789
Telephone: (407) 645-3735
Facsimile: (407) 628-5670
Email: svelo@voselaw.com



EDUCATION AND BAR DATA

Law Degree: **University of Florida College of Law**
Gainesville, Florida
J.D. with Honors
Certificate in Real Estate and Land Use Law

Undergraduate Degree: **University of Hawaii**
Honolulu, Hawaii
B.A. in English and Spanish
Sigma Delta Pi National Collegiate Hispanic Honor Society

Member/Admitted: Florida Bar – Member in Good Standing – Bar No. 1025182

LAW SCHOOL POSITIONS, ACTIVITIES, AND HONORS

Environmental and Land Use Law J.D. Fellowship
University of Florida Levin College of Law President's Scholarship
Book Award in Florida Administrative Law
Teaching Assistant for Conservation Real Estate and Legal Writing
Study Abroad, University of Costa Rica, International Environmental Law
Journal of Technology Law and Policy

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

Town Attorney – Town of Oakland, Florida. Present.
Provide comprehensive legal services to the Town of Oakland, a growing municipality in northwest Orange County. Attend all town meetings and provide the majority of legal services for the municipality.

Assistant City/Village Attorney (Various Municipalities) Present
Responsible for providing legal services to the cities of Anna Maria, Cocoa Beach, South Daytona, and Brooksville; and the Village of Indiantown. Duties include all legal work including, but not limited to, the drafting of ordinances, resolutions, polices, agreements, legal memoranda, and other legal documents; representation

of municipalities in litigation and other legal disputes; participation in public hearings and workshops of the governing body; and providing written and oral legal opinions to municipal staff and public officials.

Monroe County (Key West, FL) Present

Special Counsel as to Code Enforcement Foreclosure – Duties include drafting pleadings and motions, evaluating the County’s code enforcement liens, conducting legal research, and appearing at hearings on behalf of Monroe County.

Okeechobee County (Okeechobee, FL)

Deputy County Attorney – Duties include assisting the County Attorney with providing comprehensive and quality legal services to the Board of County Commissioners; drafting and review of documents, including ordinances, resolutions, policies, and contracts; and attendance at public hearings before the Code Enforcement Special Magistrate and Construction Industry Licensing Board.

Salter Feiber, P.A. (Gainesville, FL)

Law Clerk – Responsible for conducting legal research; drafting legal memoranda; reviewing real estate contracts, land surveys, title reports, and real property encumbrances; and assisting supervising attorneys with the drafting of pleadings and motions, as well as contracts, easements and other transactional documents.

Florida Division of Administrative Hearings (Tallahassee, FL)

Judicial Law Clerk – Clerked for Administrative Law Judge Cathy Sellers. Responsible for conducting legal research, drafting legal memoranda and final orders, reviewing evidence and proposed orders, and assisting the Administrative Law Judge through hearings conducted pursuant to Chapter 120, Florida Statutes.

Alachua Conservation Trust (Alachua, FL)

Legal Intern – Responsible for conducting legal research; reviewing title reports; drafting conservation easements, option contracts, and legal memoranda; and preparing conservation easement baseline documentation reports prior to closing.

BAR AND COMMUNITY RELATED ACTIVITIES

Florida Bar Section and Division Memberships:

City, County & Local Government Law Section of Florida Bar
Environmental and Land Use Law Section of Florida Bar
Real Property, Probate, and Trust Law (“RPPTL”) Section of Florida Bar
Young Lawyers Division of the Florida Bar

Real Property Litigation Committee (“RPPTL” Section)

Volunteer Assistant – Assisted Committee Chair and Legislative Co-Liaison with evaluating proposed legislation affecting real property transactions and litigation.

Prepared and gave presentations at Section/Committee meetings in order to educate Section members and evaluate their support for the proposed legislation.

LANGUAGE ABILITIES

Spanish – Conversational. While studying abroad in law school, analyzed Costa Rican environmental resource management law in order to develop recommendations for the management and conservation of the Tempisque Watershed and Parque Nacional Palo Verde, a national park designated to be a wetland of international importance under the Ramsar Convention and listed in the Montreux.

CHLOE E. BERRYMAN

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Email: cberryman@voselaw.com

EDUCATION AND BAR DATA

Law Degree: **University of Florida Levin College of Law**
Gainesville, Florida
J.D., *cum laude*
Top 10% of Class
Dean's List and President's Honor Roll

Undergraduate Degree: **University of Central Florida**
Orlando, Florida
B.S. in Psychology, *cum laude*
Burnett Honors College
Honors in the Major
Minor in Crime, Law, and Deviance
Certificate in Behavioral Forensics
Psi Chi Honors Society

Member/Admitted: Florida Bar – Member in Good Standing – Bar No. 1032129

LAW SCHOOL POSITIONS, ACTIVITIES, AND HONORS

Order of the Coif
University of Florida Levin College of Law President's Scholarship
Book Award in Appellate Advocacy
Teaching Assistant for Legal Writing and Appellate Advocacy
Florida Law Review, Managing Editor
Vice President of the Criminal Law Association

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

Assistant City/Village Attorney (Various Municipalities) Present

Responsible for providing legal services to the cities of Anna Maria, Brooksville, Bunnell, Cocoa Beach, Daytona Beach Shores, and South Daytona; the Village of Indiantown; and the Town of Fort Myers Beach. Duties include all legal work including, but not limited to, drafting ordinances, resolutions, policies, agreements,

legal memoranda, and other legal documents; representation of municipalities across all stages of litigation, including appellate litigation and other legal disputes; participation in public hearings and workshops of the governing body; providing written and oral legal opinions to municipal staff and public officials; and advising boards on substantive and procedural legal issues during public hearings and workshops. Guides and represents municipalities through union-related issues heard by the Public Employees Relation Commission (PERC).

Okeechobee County (Okeechobee, FL)

Deputy County Attorney – Provides comprehensive and quality legal services to the Board of County Commissioners. Duties include preparation and review of legal documents, including ordinances, resolutions, policies, and contracts; attendance at public hearings before the Code Enforcement Special Magistrate; and assisting in prosecuting code enforcement violations.

Counsel to the Okeechobee County Canvassing Board – Provides legal services, including written and oral legal opinions, to the Okeechobee County Canvassing Board and attends public meetings.

2024 Orange County Charter Review Commission (Orlando, FL)

Deputy General Counsel – Conducted research and prepared written legal opinions to assist the General Counsel in advising the 2024 Orange County Charter Review Commission (“CRC”) as to the legality and constitutionality of CRC actions and proposed charter amendments. Compiled, analyzed, and summarized data from historical documents, special laws, and local government charters throughout Florida.

2024 Pinellas County Charter Review Commission (Clearwater, FL)

Deputy General Counsel – Conducted research and prepared written legal opinions to assist the General Counsel in advising the 2024 Pinellas County Charter Review Commission (“CRC”) as to the legality and constitutionality of CRC actions and proposed charter amendments. Compiled, analyzed, and summarized data from historical documents, special laws, and local government charters throughout Florida.

Rohe Law, P.A. (Tavares, FL)

Summer Associate/Associate Attorney – Represented clients at various stages of family law litigation. Represented clients at fact-intensive hearings, including temporary relief hearings concerning alimony, timesharing, and child support. Drafted pleadings, motions, stipulations, proposed orders, and discovery requests and responses. Negotiated on behalf of clients at settlement conferences and mediations. Drafted settlement agreements to creatively resolve cases involving complex legal and factual issues. Second chaired dissolution of marriage trial

involving minor children with psychological experts. Researched complex issues concerning a variety of areas of law including family law, constitutional law, real property, trusts, and corporations. Drafted clear and organized memoranda analyzing research findings.

Intimate Partner Violence Assistance Clinic (Gainesville, FL)

Certified Legal Intern – Provided legal assistance to indigent survivors of domestic violence. Interviewed clients and developed safety plans tailored to each client's needs. Drafted pleadings and represented clients in court proceedings.

University of Florida, Levin College of Law (Gainesville, FL)

Research Assistant – Researched and analyzed complex legal and psychological issues, including the applicability of the insanity defense to police officers with Post-Traumatic Stress Disorder. Drafted detailed memoranda on findings.

Office of the State Attorney, Eighth Judicial Circuit (Gainesville, FL)

Summer Intern – Researched and analyzed case and statutory law to assist attorneys in prosecuting criminal felony cases. Analyzed and summarized evidence in preparation for litigation.

BAR AND COMMUNITY RELATED ACTIVITIES

City, County & Local Government Law Section of Florida Bar
Environmental and Land Use Law Section of Florida Bar
Young Lawyers Division of the Florida Bar

PROFESSIONAL PUBLICATIONS

Chloe E. Berryman, Note, *Holding Social Media Providers Liable for Acts of Domestic Terrorism*, 72 FLA. L. REV. 1329 (2020).

Chloe Berryman, Christopher J. Ferguson, & Charles Negy, *Social Media Use and Mental Health Among Young Adults*, 89 PSYCHIATRIC Q. 307 (2018).

TAYLOR R. SIMONDS

Attorney, Vose Law Firm, LLP
324 West Morse Blvd.
Winter Park, Florida 32789
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Facsimile: (407) 628-5670
Email: tsimonds@voselaw.com

EDUCATION AND BAR DATA

Law Degree: **Stetson University College of Law**
Gulfport, Florida
J.D., *cum laude*
Top 25% of Class
Dean's List

Undergraduate Degree: **University of Central Florida**
Orlando, Florida
B.S. in Marketing
Dean's List

Member/Admitted: Florida Bar – Member in Good Standing – Bar No. 1050253

LAW SCHOOL POSITIONS, ACTIVITIES, AND HONORS

William C. Vis Int'l Commercial Arbitration Moot Team, Student Coach & Team Captain
Dispute Resolution Board
Research Assistant for Law Through the Lens of Poetry
Teaching Assistant for International Sales Law & Arbitration
Stetson Ambassadors, Deputy Chair of Program Development
Stephanie A. Vaughan Excellence in Advocacy Award

PROFESSIONAL POSITIONS HELD

Akerman, LLP (Orlando, FL)

Summer Associate/Associate Attorney – Managed docket of complex commercial litigation matters, including high-profile art fraud, business litigation disputes valued in excess of seven figures, negotiation of settlement, and judgment enforcement proceedings. Engaged in motion practice and advocacy in various litigation arenas, including commercial tenant/landlord litigation, franchise law, business contract disputes, insurance disputes, and personal injury. Researched complex legal issues and applied legal arguments in multiple national jurisdictions.

Doyle Conflict Resolution (Naples, FL)

Law Clerk – Acted in advisory capacity to arbitrator in granting awards by analyzing, reviewing, and presenting determinations of fact and law. Drafted non-binding arbitration court orders with attention to strict deadlines.

The Law Offices of Hoyt & Bryan, LLC (Oviedo, FL)

Law Clerk – Implemented and trained office in new digital system for tracking probate processes. Edited and wrote new content for partners' line of estate planning client-advising books. Researched relevant case law and legal developments in areas of Elder Law, Pet Law, and Wills, Trusts & Estates including for presentation at the 2021 Annual Florida Bar Convention and 2021 Western CPE Conference.

BAR AND COMMUNITY RELATED ACTIVITIES

Young Lawyers Division of the Florida Bar

Entertainment, Arts & Sports Law Section of the Florida Bar

PUBLICATIONS

COLLATERAL DAMAGE: A Novel; Parliament House (2019); ISBN: 987-0578457321

AN INFINITE PULL (2024); ISBN: 979-8218358532

AGREEMENT FOR TOWN ATTORNEY SERVICES

This Agreement for Town Attorney Services (the "Agreement") is entered into by and between the Town of Fort Myers Beach, Florida, a municipal corporation, with its principal place of business at 2525 Estero Boulevard Fort Myers Beach, FL 33931 (the "Town") and the Vose Law Firm, LLP, with offices located at 872 7th Avenue South, Naples, Florida 34102, and 324 W. Morse Blvd., Winter Park, Florida 32789, (the "Firm"). For and in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged by all parties, the parties do hereby agree as follows:

WHEREAS the Town sought Requests for Proposals by RFQ 23-16-TC from qualified firms and individuals to provide services to the Town as the Town Attorney and the Firm was selected to provide those services based upon the Firm's substantive knowledge of governmental law; and

WHEREAS the Town agrees to employ the services of the Firm as Town Attorney and the Firm agrees to provide such services as Town Attorney all as further specified herein; and

WHEREAS the Town and Firm desire to engage in a stable and flexible contractual relationship whereby the Town can obtain skilled and effective legal services while achieving pricing efficiencies for its legal representation and the Firm is available and able to provide skilled and effective legal services as Town Attorney as required by the Town Charter, as well as additional authorized legal representation as needed or directed by the Town.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The forgoing recitals are true and correct and incorporated into this Agreement herein as if set forth in full.

2. **Selection of Firm.** The Firm will provide legal representation as the Town Attorney to the Town as required by the Town Charter of Fort Myers Beach (the "Town Charter") as well as additional authorized legal representation as needed or directed by the Town. For purposes of this Agreement, the primary attorney to serve on behalf of the Firm as Town Attorney shall be Gretchen R. H. "Becky" Vose, with Nancy Stuparich and Wade Vose providing such other services as needed (the "Designated Attorneys"). Other members of the firm shall be available to provide services on an as needed basis. The Designated Attorneys from the Firm shall provide services on behalf of the Firm to the Town as Town Attorney pursuant to and in accordance with

the Town Charter, the Code of Ordinances, as well as additional authorized legal representation as needed or directed by the Town.

3. **Professional Legal Representation.** The Firm shall provide such services customarily associated with the Town Attorney including, but not limited to those services contained on Exhibit “A” to this Agreement. Additionally, the Firm shall provide such other services as are needed in the interests of the Town or such other services as may be directed or requested by the Town Council or Town Manager. Excluded from such services shall be matters relating to municipal financing, including services as bond or disclosure counsel and matters for which legal services to the Town are provided pursuant to liability and/or insurance policies of the Town. The “proposal for General Legal Representation for Town of Fort Myers Beach, Florida by Vose Law Firm, LLP” submitted by the Firm in response to RFQ 23-16-TC shall be incorporated by reference as part of this Agreement.

4. **Duration and Termination.** This Agreement is effective as of August 7, 2023. The Firm, through the Designated Attorneys, shall provide Town Attorney Legal Representation as required by this Agreement, and such services may not be assigned or substituted without the written consent of the Town. This Agreement shall continue until such time as either the Town or the Town Attorney chooses to terminate such contractual relationship. The Town Attorney shall give no less than sixty (60) days’ notice of resignation.

5. **Compensation, Terms, and Conditions.** For legal services provided hereinafter, the Town shall pay the Firm the amount of \$25,000 per month as set forth below.

- (a) The parties acknowledge that a separate Interim Agreement for Legal Services was entered into for the provision of legal services by the Firm during the period of June 27, 2023, through August 7, 2023.
- (b) Following the end of the Interim Agreement for Legal Services on August 7, 2023, this Agreement shall become effective. For the period of August 7, 2023, through August 31, 2023, the Town shall pay the Firm the amount of \$19,350.00 which represents the pro rata amount of the monthly compensation (77.4% of \$25,000.00) for the period that this Agreement is in effect during the month of August 2023.
- (c) Beginning September 1, 2023, the Town shall pay the Firm the amount of \$25,000 per month.
- (d) The \$25,000 per month payment shall constitute the total of all fees for legal services and costs due under this Agreement. There will be no additional billing for any ancillary legal services, research expenses (such as Westlaw/Lexis fees),

copying charges, travel or miscellaneous expenses, (phone, fax, courier, etc.) and no other costs or expenses, (other than pre-approved out of pocket costs, such as court filing fees and court reporter fees, would be billed to the Town at cost, with no mark-up or multiplier). There will also be no other expenses or fees charged, regardless of the time needed or complexity involved in any legal matter.

- (e) All monthly payments shall be paid to the Firm within thirty (30) days of the beginning of the month period for which the payment is due. For example, the payment to the Firm for services provided by the Firm for the month of September 2023 shall be paid at or prior to September 30, 2023.
- (f) The Firm shall not seek an increase in the amount of compensation under this Agreement for a period of two (2) years after the effective date of this Agreement.

6. **Administration.** For ease and convenience of administration and to the extent not in conflict with the Town Council or Town Charter, the Town hereby designates the Town Manager to provide policy direction and instructions to the Designated Attorneys in the administration of the duties and professional legal service set forth herein, and to manage and administer the terms and provision of this Agreement on behalf of the Town; provided, however, the Town Council shall have ultimate authority over the Firm and the Designated Attorneys as to the representation of the Town.

7. **Insurance.** The Firm shall maintain in full force and effect professional liability insurance in an amount not less than \$1,000,000 per claim and shall, upon the request of the Town, provide evidence of such coverage.

8. **Notices.** All notices under this Agreement shall be in writing and shall be provided as follows:

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Attention: Town Manager

Vose Law Firm, LLP
872 7th Avenue South,
Naples, Florida 34102,
Attention: Becky Vose

With copy to:

Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, Florida 32789
Attention: Becky Vose

9. **Adherence to Laws.** The Firm shall adhere to all federal, state, and local laws, rules, and regulations, including rules regulating the Florida Bar, and applicable Town ordinances and policies in the performance of services pursuant to this Agreement.

10. **Appointment.** Pursuant to the Town Charter, the Town hereby appoints the Firm, utilizing the Designated Attorneys, as Town Attorney for the Town of Fort Myers Beach, Florida. The Town Manager is directed and authorized to use and consult with the Firm for Town Attorney Legal Representation and Special Legal Services when and if authorized as more specifically set forth in Exhibit A.

11. **Conflict of Interest.** By executing this Agreement, the Firm covenants it has no public or private interest, direct or indirect, in conflict with the Town, and shall not acquire directly or indirectly any such interest which shall conflict in any manner with the performance of Firm's services as to any obligations under this Agreement.

12. **Public Records.** The Parties acknowledge and agree that the statement and provisions below are required by Florida Statute to be included in this contract for services. The inclusion of this statement and provisions below shall not be construed to imply that the Firm has been delegated any governmental decision-making authority, governmental responsibility or governmental function, or that Firm is acting on behalf of the Town as provided under Section 119.011(2), Florida Statutes, or that the statement or provisions are otherwise applicable to Firm.

IF FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT TOWN OF FORT MYERS BEACH AT: TOWN CLERK, TOWN OF FORT MYERS BEACH, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FL. 33931, (239) 765-0202, EXT. 1400.

The Firm will comply with public records law, and agrees to:

- (a) Keep and maintain public records required by the Town to perform the services.

- (b) Upon request from the Town's custodian of public records, provide the Town 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.
- (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 this Agreement if Firm does not transfer the records to the Town.
- (d) Upon completion of the Agreement, transfer at no cost to the Town, all public records in possession of Firm or keep and maintain public records required by the Town to perform the service. If Firm transfers all public records to the Town upon completion of the Agreement, Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Firm keeps and maintains public records upon completion of the Agreement, Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

Failure of the Firm to comply with Chapter 119, Florida Statutes, and/or the provisions set forth above, where applicable, shall be grounds for immediate unilateral termination of this Agreement by the Town.

13. **Powers Conferred on Attorney.** The Firm, through Designated Attorneys, has the authority to file any papers necessary and proper in any action which it is authorized pursuant to the terms of this Agreement to prosecute or defend on behalf of the Town and the right and authority to do any and all things necessary and proper to protect the interests of the Town. Any attorney employed by the Firm may provide legal support services or representation under this Agreement.

14. **Town Attorney Client.** Only the Town of Fort Myers Beach, Florida, acting by and through its Town Council, as a collegial body, shall be considered the Firm's client under this Agreement.

15. **General Terms and Conditions.**

- (a) This agreement is the sole agreement covering the Firm's representation of Town and supersedes any prior agreements or understandings, whether written or oral. Any modification of this agreement must be in writing, signed by both parties. If

any part of this Agreement shall for any reason be found unenforceable, the parties agree that all other portions shall nevertheless remain valid and enforceable. It is understood that Firm does not guarantee the accomplishment of any result but agrees to use its best efforts to achieve a favorable result on the Town's behalf. The Town understands that all expressions about the outcome of any matter are only opinions.

- (b) The laws of the State of Florida will govern the interpretation of this Agreement, including all rules or codes of ethics which may apply to the provision of services by the Firm. Further, by executing this Agreement, the parties agree that the County or Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida shall have jurisdiction over the parties to this Agreement and shall be the only venue for any dispute concerning this Agreement or the services rendered herein to the exclusion of all other venues including Federal Court.
- (c) The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- (d) This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an agreement in writing signed by the parties.
- (e) If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- (g) The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.
- (h) This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

WAIVER OF JURY TRIAL: TOWN AND FIRM HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION

ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this Agreement for Town Attorney Services to be executed this 8th day of August, 2023.

ATTEST:

TOWN OF FORT MYERS BEACH

Amy Baker

Amy Baker, Town Clerk

Dan Allers

Dan Allers, Mayor

Vose Law Firm, LLP

By: Becky Vose
[Becky Vose \(Aug 8, 2023 17:37 EDT\)](#)

Its: _____

**EXHIBIT “A” –
TOWN ATTORNEY LEGAL
REPRESENTATION AGREEMENT TERMS**

1. The Firm will provide legal services as Town Attorney consistent with the Town Charter.
2. The Town Attorney services described herein are to be provided in concert with the Town Council, designated officials, and staff of the Town, including the Town Manager, Department and Division Directors. Such legal services shall include but not be limited to the following:
 - (a) Attend and participate in agenda review staff meetings, prepare for, and attend Town Council meetings, workshops, and attorney-client sessions, when deemed necessary, or any other special meetings convened by the Town Council.
 - (b) Attend and participate in Local Planning Agency meetings and Special Magistrate Hearings.
 - (c) Prepare, review and approve as to form and legal sufficiency all ordinances, resolutions and contracts presented to the Town Council.
 - (d) Participate in standing weekly conference calls at a time mutually agreed to by Town Manager, Town Attorney and, if applicable, Town staff to identify and discuss outstanding legal issues, share information associated with services to be provided by the Firm, and address the means to serve the Town's legal needs.
 - (e) Provide legal advice to the Town Council members and participate in individual meetings and conference calls to provide advice regarding Town Council agenda items or ethics inquiries.
 - (f) Maintain on-site office hours of no less than 8 hours per week.
 - (g) Provide legal advice to the Town Manager and Town staff and participate in meetings and conference calls with the Town Manager and Town staff, when necessary to identify and discuss outstanding legal issues.
 - (h) Represent the Town in any administrative and/or court proceedings, including appellate matters, as directed by the Town Council.
 - (i) Monitor and report on the progress of legal services overseen or represented by outside legal counsel.
 - (j) Provide training to staff, Town Council, and boards and committees on the Sunshine Law and Public Records Law as well as ethics, discrimination and harassment issues.
 - (k) Such other legal services as directed to the Firm by the Town Council or Town Manager.

Signature: Dan Allers
Dan Allers (Aug 8, 2023 14:08 EDT)
Email: allersd@fmbgov.com

Signature: Amy Baker
AMY BAKER (Aug 8, 2023 14:04 EDT)
Email: AMY@FMBGOV.COM

Legal Representation Agreement - Vose Law Firm

Final Audit Report

2023-08-08

Created:	2023-08-08
By:	AMY BAKER (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3oBUBfGy03mLjVgEuLh7VayHs2ft4nAB

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-  Document created by AMY BAKER (AMY@FMBGOV.COM)
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-  Document emailed to Becky Vose (bvose@voselaw.com) for signature
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