



Fort Myers Beach Town Council

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

Agenda

Monday, October 20, 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. Cultural and Environmental Learning Center Advisory Board (CELCAB)
Appointment of Members to the FY26 Cultural and Environmental Learning Center Advisory Board
 - B. Marine & Environmental Resources Task Force (MERTF) Report
- VIII. APPROVAL OF MINUTES**
 - A. Town Council - October 6, 2025
- IX. CONSENT AGENDA**
- X. ITEMS REMOVED FROM CONSENT AGENDA**
- XI. PUBLIC HEARINGS**
 - A. Ordinance 25-24, Impact Fee Study and Land Development Code Text Amendment to Article IV Impact Fees
This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 25-24. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 17, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA ADOPTING AN IMPACT FEE STUDY DATED AUGUST 25, 2025 AND PREPARED BY AXIS INFRASTRUCTURE AND DP GUTHRIE LLC; AMENDING ARTICLE IV ENTITLED "IMPACT FEES" IN CHAPTER 2

ENTITLED ADMINISTRATION OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) INCORPORATE UPDATED INFORMATION CONTAINED IN THE REFERENCED IMPACT FEE STUDY, 2) REDUCE THE NUMBER OF IMPACT FEE CATEGORIES AND SPECIFIC USES, 3) CHANGE THE METHOD OF CALCULATION OF FEES FOR SINGLE FAMILY HOMES FROM PER DWELLING TO SQUARE FOOTAGE RANGE TO REFLECT THE TYPICAL IMPACT OF LARGER HOMES, 4) REDUCE THE AMOUNT OF FEES BASED ON UPDATED POPULATION AND PROJECT EXPECTATIONS, AND 5) PROVIDING FOR AN UPDATE EVERY FOUR (4) YEARS PAYABLE FROM COLLECTED IMPACT FEES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

- A. Special Event - Lanters of the Island Procession a/k/a Illumination Parade
What's Up FMB, Inc is asking for approval for Lanterns of the Island procession (Illumination Parade) to be held on November 15, 2025
- B. 25-300, Charter Review Commission Role of Alternates
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, PROVIDING DIRECTION TO THE TOWN OF FORT MYERS BEACH CHARTER REVIEW COMMISSION REGARDING THE ROLE OF ALTERNATES TO THE COMMISSION WHO WERE APPOINTED BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.
- C. Resolution 25-301, Axis Infrastructure STA #1 FY25-26 Services
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #1 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2025-26 FISCAL YEAR EFFECTIVE OCTOBER 1, 2025; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- D. Resolution 25-302, STA #14 Coastal Engineering Consultants
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #14 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR ADDITIONAL CONSTRUCTION PHASE SERVICES, RE-SURVEYS, AND SHOREBIRD MONITORING ASSOCIATED WITH THE ESTERO ISLAND SHORELINE PROTECTION PROJECT, AND PERMIT REQUIRED POST CONSTRUCTION WINTER BIRD MONITORING, FUNDING SUPPORT, STAKEHOLDER COORDINATION, AND PROJECT ADMINISTRATION

SERVICES FOR A COST OF \$161,720.00; AND PROVIDING AN EFFECTIVE DATE.

- E. RESOLUTION 25-303; ITB-25-02-EN, Change Order #1 to Dune Planting project.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #1 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION INCREASING THE CONTRACT PRICE TO \$95,720.00 TO CONSTRUCT THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Resolution 25-304; Ongoing Miscellaneous Professional Services, RFQ-25-06-AD

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING 7 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) ADG ARCHITECTURE LLC, 2) BOWMAN CONSULTING GROUP 3) CW3 ENGINEERING 4) LJA ENGINEERING, 5) TETRA TECH, 6) TRAFFIC & MOBILITY CONSULTANTS, AND 7) WESTON & SAMPSON ENGINEERING; 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.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

- A. Any action to be taken from the Litigation Executive Session
3:00 PM - Litigation Executive Session pursuant to Section 286.011(8), Florida Statutes Request Announced on October 6, 2025 in the case of 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.
a. **Conflict of Interest - Council Member Scott Safford**
b. **Any action to be taken at the public meeting following the Executive Session related to settlement, strategy or litigation costs**

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 20, 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** in the Cultural and Environmental Learning Center Advisory.

The Town Clerk's Office has received a total of (6) six 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. McKeown, Carolyn M.
4. Vaughan, Ellen
5. Werner, Rebecca
6. 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
William McKannay, Town Manager

Created/Initiated - 10/14/2025
Approved - 10/14/2025
Approved - 10/14/2025
Final Approval - 10/15/2025



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: 09/03/25

Name: De La Torre Salas

Last

Natalie

First

A

Middle initial

Telephone Number: (239) 223-6865

Email Address: ndelatorresalas@fau.edu

Home Address: 1224 Highland St N Unit B St. Petersburg, FL 33701

Mailing Address: N/A

(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

September 01, 2025

Amy Baker, Clerk
Town of Ft Myers Beach
6231 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Ms. Baker,

Please find attached my application for reappointment to the CELCAB by the Ft Myers Beach Town Council.

Thank you kindly for your assistance in this matter.

Best,



Carolyn M. McKeown

mckeown44@gmail.com

706-202-4564

Enclosures:

- Application
- Comments to Council

Town of Fort Myers Beach

SEP 5 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: September 01, 2025

Name: McKeown Carolyn M.
Last First Middle initial

Telephone Number: 706-202-4564

Email Address: mckeown44@gmail.com

Home Address: 2532 Estero Blvd. Apt. 605, Fort Myers Beach, FL

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?

N/A

Why are you seeking appointment to this board or committee?

I wish to continue with some goals and support for the Mound House.

Community Involvement:

- 1) I have volunteered for a number of needs on island - always ready to help.
- 2) Serve as V.P. for my Condo Association - Pelican Watch Board of Directors

Interests / Activities:

- Arts -
- Reading
- biking
- travel -
- 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 Charles M. McKeown

Date

9-01-2025

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

Carolyn M. McKeown
2532 Estero Boulevard, Apt 605
Fort Myers Beach, Florida 33931
September 1, 2025

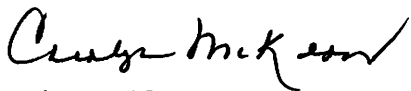
Comments to Council:

My initial interest in serving on the Cultural and Environmental Learning Center Advisory Board (CELCAB) was followed by my husband's sudden death (Patrick McKeown) in December of 2024. Pat was a CELCAB member at that time. I had worked with him developing the book he wrote for the Mound House and, hence, had general knowledge of and about the Mound House. By serving the remainder of his term, I have become even more interested and invested in serving to support the mission of the Mound House and Newton Park.

My ambition is to continue to serve and support the Mound House through and beyond any "post-Hurricane Ian state" recovery and needed modification. Also, I stand to support the effort of enabling the museum to reach the status of an accredited museum, thereby assuring its place in history to preserve and perpetuate the history of the Mound House and community of Fort Myers Beach. Newton Park has also added an important dimension of early Fort Myers Beach history.

I am asking for the opportunity to continue to serve as a CELCAB member for the upcoming two-year term. Rather than repeat personal information again, I have also attached my personal information that I provided in February 2025, for your review, if needed.

Thank you for your consideration.



Carolyn McKeown

mckeown44@gmail.com

706-202-4564

Carolyn M. McKeown
2532 Estero Boulevard, Apt 605
Fort Myers Beach, Florida 33931
September 1, 2025

Comments to Council:

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I am asking for the opportunity to continue to serve as a CELCAB member for the upcoming two-year term. Rather than repeat personal information again, I have also attached my personal information that I provided in February 2025, for your review, if needed.

Thank you for your consideration.

Carolyn McKeown
mckeown44@gmail.com
706-202-4564

**Carolyn M. McKeown
2532 Estero Blvd, Apt 605
Fort Myers Beach, FL 33931**

My background includes a Bachelor's degree in Nursing and post certification. Before retiring, I worked for the last 20 years in a public behavioral health system focusing on chronic Schizophrenics and community care/relapse prevention. I also developed and ran the research division of the Center, accommodating research for other indications for already existing drugs.

For the last 8 of those 20 years, I coordinated the Medical Dept and managed programs for a 10 county region. I also served on the State of Georgia, Department of Human Resources Institutional Review Board from 1997 until retiring in 2003.

Patrick McKeown was my husband of 57 years before his death on December 5, 2024. I now wish to honor him by at least serving the remainder of his term. This includes a continuation of his support to perpetuate a meaningful relationship between the Mound House and the Ft Myers Beach community, alike.

Our family includes two adult children, a daughter who is a university professor and a son who is a law enforcement agent. Pat and I lived on the island most of each year since 2003.

For more information:

mckeown44@gmail.com

706-202-4564



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? CELCAB

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 P. Vaughan*

Date 09/12/25

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 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: rwnerner239@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.

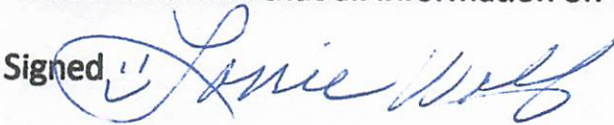
Do you qualify for Special Exemptions per § 119.071, F.S.

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:**

Town Council - October 6, 2025

Meeting Date: October 20, 2025

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Draft TC Minutes 10.06.25

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 10/10/2025
Final Approval - 10/14/2025



Fort Myers Beach Town Council

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

Minutes

Monday, October 6, 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

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

The motion carried unanimously.

V. PUBLIC COMMENT

Michelle Cherney, resident, requested reappointment to BORCAB (Bay Oaks Recreational Campus Advisory Board). She relayed feedback from residents: keep the gym open on weekends and evenings, revert to the original pickleball layout, still no pool, install sun protection on the outside gym, explore ways to procure funds and examine the fees. She suggested that all advisory committees report to the town council on a quarterly basis. She described bringing back the Friends of Bay Oaks.

Joy Sullivan, resident, requested reappointment to BORCAB and described her involvement within the community.

Jane Plummer, resident, requested reappointment to the LPA (Local Planning Agency) and reviewed her years of involvement. She asked that they reappoint members from the current board because they were very qualified.

Anita Cereceda, a resident, requested reappointment to the LPA and described the qualities and experience of the current LPA members. She noted that members had compassion for the residents and asked the town council to consider reappointing them.

Patrick Vanasse, a resident, supported the resolution regarding the school board and felt that the school board had breached the contract, failed to meet its

obligations and did not negotiate in good faith.

DeWitt Willis did not have an issue with the Beach Baptist project but questioned the setbacks.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt addressed the resolution regarding the school district and asked the Lee County Superintendent of Public Schools if it was necessary. He described how the town acted in good faith and noted that the revenue generated would more than cover the costs of rebuilding the school.

Council Members Woodson and Safford agreed with the vice mayor. No items from other members.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Town Clerk Baker announced that an all-committee Sunshine Law and public records training will be held in council chambers on October 22, 2025, from 10:00 a.m. until noon.

A. Local Planning Agency (LPA)

Appointment of Members to the FY26 Local Planning Agency

There are three vacancies and four applicants: James Boan, Anita Cereceda, Jane Plummer and Ed Schoonover. Based on the selection tally, Ed Schoonover received the lowest raking and therefore; was not appointed.

Council Member King moved to certify and appoint, seconded by Mayor Allers. The motion carried unanimously by roll call vote.

B. Anchorage Advisory Committee (AAC)

Appointment of Members to the FY26 Anchorage Advisory Committee

There are three vacancies and two applicants: Chris Riedel King and Ed Schoonover were appointed.

Council Member King moved to certify and appoint, seconded by Mayor Allers. The motion carried unanimously by roll call vote.

C. Audit Committee

Appointment of Members to the FY26 Audit Committee

There are three vacancies and two applicants: Barbara Puffer and Marianne Sheely were appointed.

Council Member King moved to certify and appoint, seconded by Mayor Allers. The motion carried unanimously by roll call vote.

D. Bay Oaks Recreational Campus Advisory Board (BORCAB)

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

There are five vacancies and five applicants: Michelle Cherney, Barbara Hill, Rick Loughrey, Anne Neaf and Joy Sullivan were appointed.

Council Member King moved to certify and appoint, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

E. Cultural and Environmental Learning Center Advisory Board (CELCAB)
Appointment of Members to the FY26 Cultural and Environmental Learning Center Advisory Board

There are four vacancies and five applicants: Francis Davey, Natalie De La Torre Salas, Ellen Vaughan, Rebecca Werner and Lorrie Wolf. Based on the selection tally, Frances Davey received the lowest ranking and; therefore, was not appointed.

Council Member King moved to certify and appoint, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

F. Marine and Environmental Resources Task Force (MERTF)
Appointment of Members to the FY26 Marine and Environmental Resources Task Force

There are three vacancies and two applicants: William Althoff and Dave Nusbaum were appointed.

Council Member King moved to certify and appoint, seconded by Council Member Safford.

The motion carried unanimously.

G. Public Safety Committee (PSC)
Appointment of members to the FY26 Public Safety Committee

There are four vacancies and one applicant: Ron Benak was appointed.

Council Member King moved to certify and appoint, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

Council Member King moved to grant waivers to allow Anita Cereceda, Michelle Cherney, Barbara Hill, and Ed Schoonover to serve on more than one committee, seconded by Council Member Safford.

The motion carried unanimously.

VIII. APPROVAL OF MINUTES

A. Town Council - September 24, 2025

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

The motion carried unanimously by roll call vote.

B. Town Council Budget Hearings — September 24, 2025

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

The motion carried unanimously by roll call vote.

IX. CONSENT AGENDA

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

The motion carried unanimously by roll call vote.

- 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.

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

The motion carried unanimously by roll call vote.

- 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.

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

The motion carried unanimously by roll call vote.

- 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.

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

The motion carried unanimously by roll call vote.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk

Baker confirmed that all agenda items were properly noticed. She swore in those providing testimony.

A. 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.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the blue sheet. Robert Codie, Assistant County Manager, Ehab Guiguis, Construction Management Director, Mack Young, Director of Lee County Parks and Recreation, Chris Gamache, with Stantec Engineering, represented Lee County. Vice Mayor Atterholt asked who made the determination to rebuild the pier. Manager Codie replied that it was always going to be rebuilt and the board of county commissioners, along with the leadership, decided to rebuild the pier. No public comment.

Mayor Allers moved to approve the resolution and remove condition four in the staff report to work during turtle season, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

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.**

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The property owner confirmed receipt of the agenda and backup materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. Director Young of Parks and Recreation noted that there was a location for the arches.

No public comment.

Council Member King moved to approve the resolution with condition three in the staff report to work during turtle season removed, seconded by Council Member Safford.

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed, although council members were familiar with the property. The applicant confirmed receipt of the agenda and backup materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. Staff recommended approval.

Dave Nusbaum, President of Island Winds Condominium Association, described the history of the tiki hut and noted it was part of the fabric of the condo. If approved, construction would begin after turtle season ends on November 1, 1015.

No public comment.

Council Member King moved to approve the resolution and to authorize staff to allow them to work outside turtle season, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda and backup materials.

Community Development Planner Jason Green reviewed the background of the request as stated on the blue sheet. Staff recommended approval with conditions.

Scott Fier, owner, requested that the permitting fees be changed to standard residential fees instead of commercial rates. Town Attorney Stuparich replied that he could apply for the change later.

No public comment.

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

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Ex parte communications: Vice Mayor Atterholt, Council Member King and Mayor Allers have had conversations with the applicants over the last three years, met with various people and were familiar with the property. There were no current conversations disclosed. The applicant confirmed receipt of the agenda and backup materials.

Jonathan Thomas stated his expertise was in real estate development. Jennifer Sopen noted she was an expert in land planning and general site planning.

Neale Montgomery is an attorney in land use planning.

Vice Mayor Atterholt moved to accept all three as experts in their fields, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

Mr. Thomas clarified the relationship between all the entities and the property owner. There was a pending sales contract that would close by the end of the year, provided the zoning was approved. The church would be closed, and SJ Collins/Fort Myers BBC would complete the project.

Planner Green reviewed the background of the request as stated on the blue sheet. Following the LPA meeting, a recommendation was made to move forward with just the developer's agreement, which would cover the entire property and grant control over both parcels in the future. Staff recommended approval with conditions. Planner Green indicated that the five-foot side setbacks only affected the internal lots in the self-contained subdivision.

Ms. Montgomery reviewed how they got to the development agreement. The following changes were made to the residential zoning district after the LPA meeting: eliminate a bed and breakfast, a community residential home, home care and daily rentals.

Mr. Thomas described their work in Florida.

Ms. Sopen utilized PowerPoint for her presentation. Slides included: Prior to Hurricane Ian, Proposed Site Plan, Landscaping - Church Parcel, Landscaping - Single Family Parcel, Developer Agreement - Prohibited Uses, Development Regulations, Single Family Development Regulation Deviations, Deviations and Conclusion.

Ms. Sopen stated that they worked closely with the fire department and drainage was addressed.

Council Member King asked whether the applicant would come into compliance regarding their code violation. Mr. Thomas replied that he had been told the trailers would be removed. Director Yozzo stated that the trailers had to be removed by October 19, 2025.

Mr. Thomas described how he became involved in the project. He noted that another local church may take over operations.

Ms. Sopen explained the deviation separation reduction from 125 to 25 feet and indicated that it was for a local roadway and relatively standard in most codes.

Council Member Safford asked whether they could reduce the landscape

buffer and add separation between the houses. Ms. Sapen felt the landscape buffer was more important than internal setbacks. Council Member Safford suggested adding language regarding the church holding public meetings with the neighborhood to maintain open lines of communication. Mr. Thomas stated that specific language was added to prevent some issues that occurred in the past.

Mayor Allers suggested that they meet with the Fort Myers Beach Fire Department regarding the five-foot setbacks between homes.

Public comment:

Laurie Webster, resident, described what the church members went through after Hurricane Ian. She said the congregation was told the trailers would be moved after the next service. She supported the plan and noted they needed hope.

Public comment closed.

Vice Mayor Atterholt moved to approve the ordinance and move it to a second reading, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance. Planner Green noted that this amendment was to change the process and was similar to the variance process change. Town Attorney Stuparich added that this proposal expands the opportunity to fast-track certain proposals. Council members agreed with streamlining other processes as well.

Public comment:

Dave Nusbaum, resident, thought it was fantastic and would expedite

rebuilding. He endorsed the ordinance.
Public comment closed.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Environmental Projects Manager,

Chadd Chustz, noted the funding request addressed erosion from Milton. He was unsure whether the request would be granted but recommended that the town council request the funds.

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

The motion carried unanimously by roll call vote.

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

Brianna Gates from Faithful Weddings requested approval for the open container waiver for a post-wedding beach party in front of Crescent Park.

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

The motion carried unanimously by roll call vote.

D. RFQ-25-10-AD Rejection and Cancellation

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.

Director Kropacek indicated that the selection committee advised that the bid from one firm was not acceptable. The town council will need to formally reject the bid to move forward. Director Kropacek was exploring avenues with the county.

Mayor Allers moved to approve the rejection, cancel RFQ25-10-AD and direct staff to go out to rebid, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the request. Town Attorney Stuparich noted the requested action was to schedule the rehearing.

Serena Cantu is an environmental consultant with Hans Wilson and Associates. She noted they had a field permit from the FDEP (Florida Department of Environmental Protection) authorizing them to begin work. She asked if it could be heard at the next town council meeting. She did not think they needed a marine turtle permit from the FWC (Fish & Wildlife Conservation Commission) because the work was landward of the vertical seawall. There were no sea turtle nests in the area.

Manager Chustz indicated that it was up to FWC to decide whether a permit was needed.

Mayor Allers moved to approve the request for a rehearing at the earliest possible meeting, seconded by Council Member King.

The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager McKannay reminded the council and public that on Friday at 2:00 p.m. at St. Leo the Great in Bonita Springs, there will be a public unveiling of the plans for rebuilding the parish on the island. He thanked the HR staff for setting up the mammogram bus for staff. He thanked the Woman's Club for scheduling their meeting in the town hall. Approximately 50 emergency temporary placement permit applications were received and staff were working through them. Town Manager McKannay approved eight applications and twelve were denied or sent back for further information.

An applicant was left off the CELCAB vote and the town council was asked to reconsider their earlier vote.

Vice Mayor Atterholt moved to reconsider the earlier vote and reschedule the CELCAB appointment to October 20, 2025, seconded by Council Member

Woodson.

The motion carried unanimously by roll call vote.

Vice Mayor Atterholt asked whether they could give the town manager direction to start a conversation with the owners of Key Estero and Sea Grape Plaza to see if an agreement could be reached. Town Attorney Stuparich did not object but asked that attorneys be present. She noted they were waiting for the court to render a decision on their appeal. Town council members agreed and Town Manager McKannay will contact them.

Community Services Director Jeff Hauge indicated that the dirt piles on the town hall property will be removed as soon as possible.

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.

Town Attorney Stuparich noted that a copy of the proposed settlement agreement was included in the agenda materials. She summarized the settlement and stated that, by entering into the settlement agreement, there was no admission of guilt or liability on the part of the town. Town Attorney Becky Voss explained the litigation risk to the town if they did not settle. She indicated that it was a very complex case that would take a lot of time and that the town would be responsible for the attorney's fees if they did not enter into the settlement.

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

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

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.

Town Attorney Stuparich read the announcement with a change in the court reporter company. She added that they received a copy of the answer and counterclaim from White Sands Properties of Fort Myers Beach LLC on Friday and will likely discuss it at the session.

Town council members consented to October 20, 2025, at 3:00 p.m.

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.

Town Attorney Stuparich read the title of the resolution. The resolution contained changes by the Ad Hoc Committee. Vice Mayor Atterholt suggested holding the meeting in the town hall chamber. Council members agreed. Council Member Woodson suggested that Vice Mayor Atterholt, Mayor Allers, Town Attorney Stuparich, Deputy Town Manager Kohler and anyone else who needs to be involved attend the meeting. The meeting was scheduled for November 5, 2025, at 1:00 p.m. Town Attorney Vose explained the process and her experience as a certified circuit court mediator. Town Attorney Stuparich stated that Mayor Allers and Vice Mayor Atterholt will attend the meeting.

Mayor Allers moved to approve the resolution, as amended, with dates, times and attendees, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

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.

Town Attorney Stuparich read the title of the resolution. Vice Mayor Atterholt

praised the team and highlighted their success, dedication, professionalism, demeanor, attention to detail, strategy and their whole approach to service. He was thankful the town made the change. Mayor Allers stated there was a night-and-day difference between the Voss law firm and the previous firm. Council Member Woodson described the difference between the two firms and she was in full support. Council Member Safford thanked the firm and felt it was money well spent. Council Member King agreed, thanked them and supported the increase.

Town Attorney Stuparich said they loved being with the town and it was enlightening to see the town's transformation. Town Attorney Voss stated that they were wonderful to work with and that she could not ask for a better town council. The staff was wonderful and they enjoyed working with them.

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

The motion carried unanimously by roll call vote.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King noted that the Friends of Little Estero Island created an award to give to the monthly MERTF award winners. They requested permission to use the Fort Myers Beach logo. Council members consented.

Mayor Allers clarified his no vote on the settlement agreement. He stated that it was no reflection on the staff.

No items from other members.

XVII. ADJOURNMENT

Council Member King moved to adjourn the meeting. There was no objection. Mayor Allers adjourned the meeting at 1:06 p.m.

1. **Request:**

Meeting Date: October 20, 2025

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 25-24. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for November 17, 2025 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA ADOPTING AN IMPACT FEE STUDY DATED AUGUST 25, 2025 AND PREPARED BY AXIS INFRASTRUCTURE AND DP GUTHRIE LLC; AMENDING ARTICLE IV ENTITLED "IMPACT FEES" IN CHAPTER 2 ENTITLED ADMINISTRATION OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) INCORPORATE UPDATED INFORMATION CONTAINED IN THE REFERENCED IMPACT FEE STUDY, 2) REDUCE THE NUMBER OF IMPACT FEE CATEGORIES AND SPECIFIC USES, 3) CHANGE THE METHOD OF CALCULATION OF FEES FOR SINGLE FAMILY HOMES FROM PER DWELLING TO SQUARE FOOTAGE RANGE TO REFLECT THE TYPICAL IMPACT OF LARGER HOMES, 4) REDUCE THE AMOUNT OF FEES BASED ON UPDATED POPULATION AND PROJECT EXPECTATIONS, AND 5) PROVIDING FOR AN UPDATE EVERY FOUR (4) YEARS PAYABLE FROM COLLECTED IMPACT FEES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town is required by State Law to update their Impact Fees

What the action accomplishes:

Provides an update to the Impact Fees and and maintains compliance with State Law

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance to amend the Land
Development Code Article IV
Impact Fees

4. **Submitter of Information:**

5. **Background:**

The Town of Fort Myers Beach has engaged Axis Infrastructure, along with its subconsultant DP Guthrie LLC, to conduct an updated impact fee analysis. This study will revise the current impact fee methodology and reduce certain fees associated with their collection.

Recent studies completed by or on behalf of the Town—including the R2P2 report—have provided valuable data and project insights related to future capacity improvements needed to support anticipated growth.

Going forward, the Town will review and update impact fees on a four-year cycle. This Ordinance adopts the Impact Fee Study and provides an amendment to Article IV of the Town's Land Development Code related to Impact Fees.

At the Town LPA hearing on October 14th, 2025, the LPA conducted a public hearing, including taking testimony from the public, and discussed the options before them related to the impact fees. The LPA members expressed concerns about the proposed reduction in fees and how that relates to future development project impacts on the beach. There was a lengthy discussion about how impact fees are specific to being used for capital projects that benefit new

development and must be related to increasing capacity of the Town's infrastructure serving that population.

The LPA voted 7-0 to recommend approval to the Town Council, but directed staff to provide the Town Council with several items to assist their consideration of this request. The primary focus included the following:

- 1) Amend the LDC Section 2-312 Exemptions to increase the time allowance before an exemption expires. This would benefit properties that lost structures during natural disasters and are still in recovery mode.
- 2) Provide the Town Council with a breakdown of the changes to the fees. A summary of those reductions by category is included in the report and will be updated and provided to the Town Council.

Attachments:

1. Final TC Ord 25-24, Impact Fee Study and LDC Text Amendment Article IV JG
2. Exhibit A Impact Fees Ordinance Text Amendment Article IV TC JG
3. Exhibit B Impact Fee Study with Figures
4. Ord 25-24 Business Impact Statement Impact Fees Ordinance

Financial Impact:

Modifies the impact fee rates by reducing categories of collection, reduces overall fees by category, and provides an update consistent with State Law.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/14/2025
Approved - 10/15/2025
Approved - 10/15/2025
Approved - 10/15/2025
Approved - 10/15/2025
Final Approval - 10/15/2025

ORDINANCE 25-24

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA ADOPTING AN IMPACT FEE STUDY DATED AUGUST 25, 2025 AND PREPARED BY AXIS INFRASTRUCTURE AND DP GUTHRIE LLC; AMENDING ARTICLE IV ENTITLED “IMPACT FEES” IN CHAPTER 2 ENTITLED ADMINISTRATION OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) INCORPORATE UPDATED INFORMATION CONTAINED IN THE REFERENCED IMPACT FEE STUDY, 2) REDUCE THE NUMBER OF IMPACT FEE CATEGORIES AND SPECIFIC USES, 3) CHANGE THE METHOD OF CALCULATION OF FEES FOR SINGLE FAMILY HOMES FROM PER DWELLING TO SQUARE FOOTAGE RANGE TO REFLECT THE TYPICAL IMPACT OF LARGER HOMES, 4) REDUCE THE AMOUNT OF FEES BASED ON UPDATED POPULATION AND PROJECT EXPECTATIONS, AND 5) PROVIDING FOR AN UPDATE EVERY FOUR (4) YEARS PAYABLE FROM COLLECTED IMPACT FEES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER’S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and 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, pursuant to its home rule powers and pursuant to Section 163.31801, Florida Statutes, and judicially created law, the Town of Fort Myers Beach may impose impact fees to ensure that new development pays for its proportional share of capital facilities required by such new development; and

WHEREAS, the Town Council of the Town of Fort Myers Beach has studied the necessity for updating and amending its existing impact fee ordinance and has retained DP Guthrie LLC, a professional consulting firm and subcontractor to Axis Infrastructure, to provide updates on development projections and land use assumptions based on most recent and localized demographics, as required by the Florida Impact Fee Act as well as to document projected need for additional facilities and a fee for administrative costs, consistent with the Florida Impact Fee Act (“the Study”).

WHEREAS, the Study was limited in scope to only address a comprehensive update of non-utility development impact fees, i.e. regional parks, community parks, and transportation infrastructure; and

WHEREAS, the Study is dated August 25, 2025 and has been presented to, and reviewed by, the Town staff, the Local Planning Agency, and the Town Council, who have determined 1) that the parks and recreation, and roads and mobility impact fees bear a reasonable relationship to the burden imposed upon the Town to provide parks and recreation, and roads and mobility facilities to new Town residents; (2) that parks and recreation, and roads and mobility impact fee revenues will provide a direct benefit to such new Town residents reasonably related to the fees assessed; (3) that an essential nexus exists between projected new development and the need for additional parks and recreation, and roads and mobility facilities, to be funded with parks and recreation, and roads and mobility impact fees and the benefits that accrue to new development paying the fees; and (4) that the amount of the fee collected is proportional to the impact; and

WHEREAS, the existing costs of real property for use in parks and recreation, and roads and mobility facilities development, and the costs of various facilities and equipment have been used by the Town's consultant in developing a development impact cost per building square feet and land use type as set forth in the Study; and

WHEREAS, the action by the Town Council to amend its existing impact fee ordinance as set forth herein is reasonable and prudent to ensure sound growth management, which have been taken for the benefit of the citizens of the Town, both present and future; and

WHEREAS, the Town is projected to grow in functional population and further economically develop in the future; and

WHEREAS, this Ordinance updates the existing administrative framework to ensure that the benefit of capital improvements funded by impact fees will accrue proportionately to new development paying the fees; and

WHEREAS, Section 163.3202(3), *Florida Statutes*, encourages the use of innovative land use regulations and impact fees by local governments to manage growth and to provide the necessary public facilities and for the imposition by local governments of impact fees on development to fund the capital cost of facilities necessitated by such development; and

WHEREAS, requiring future growth to contribute its fair share of the costs necessary to fund required capital improvements and additions is an integral and vital part of the regulatory plan of growth management in the Town and is a practice consistent with sound and generally accepted growth management, fiscal and public administration practices and principles; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2025; and

WHEREAS, at the October 14th, 2025 public hearing the LPA gave full and complete consideration of the recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-232 of the Town Land

Development Code; and

WHEREAS, at the October 14th, 2025 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the Fort Myers Beach Land Development Code (“LDC”) and voted 7 to 0 to recommend approval to the Town Council; and

WHEREAS, on October 20th, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council public hearing on the 3rd day of November 2025; and

WHEREAS, at the November 3rd, 2025 public hearing, the Town Council gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-232

WHEREAS, a Business Impact Estimate has been prepared and published on the Town’s website; and

WHEREAS, adoption of this Ordinance is in the best interest of the residents of the Town of Fort Myers Beach.

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

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

Section 2. Article IV entitled “Impact Fees” in Chapter 2 entitled “Administration” of the Town of Fort Myers Beach Land Development Code is hereby amended as provided in Exhibit A.

Section 3. 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 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. This Ordinance will take effect within 90 days upon adoption by the Town Council. On the effective date of this Ordinance, the Town will suspend collection of impact fees for regional parks, community parks, and transportation. Any fund balance in the respective impact fee accounts will be spent as soon as possible, consistent with the previous impact fee study and the Florida Impact Fee Act.

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

.

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

DULY PASSED AND ADOPTED on this ____ day of _____ 2025
FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Vose Law Firm, LLP, Town Attorney

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

Attachments: Exhibit A Impact Fees Ordinance LDC Text Amendment Article IV
Exhibit B Impact Fee Study

Sec. 2-301. Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII of the Constitution of the state, ~~F.S. ch. 166 and F.S. §§ 163.3201, 163.3202 and 380.06(16)~~ F.S. ch. 163.31801, also cited as the Florida Impact Fee Act.

Sec. 2-302. Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-303. Intent and purpose of article.

- (a) This article is intended to implement and be consistent with the Fort Myers Beach Comprehensive Plan.
- (b) The purpose of this article is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures for transportation, regional parks, community parks, and fire protection, as contemplated by the Fort Myers Beach Comprehensive Plan.
- (c) This article also reflects the required payment of school impact fees in accordance with Lee County Ordinances ~~No. 01-21, which became effective on December 1, 2001~~ and Fort Myers Beach Fire District impact fee Ordinances, as may be amended.

Sec. 2-304. Definitions and rules of construction.

- (a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, all transportation terms shall have the same meaning as in the Fort Myers Beach Comprehensive Plan, and in ch. 34 and ch. 10 of this LDC, unless otherwise indicated.
- (b) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section and in the latest edition of the Institute of Transportation Engineers (ITE) Manuals, except where the context clearly indicates a different meaning:

Assisted living facility has the same meaning given it in ch. 34 of this LDC.

Building official means the same officer as appointed by the town manager through § 6-44 of this LDC.

Building permit means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term shall specifically include certificates of occupancy and occupancy permits, as those permits are defined or required by this code.

Building with mixed uses means a building which contains more than one principal use, as that term is defined in ch. 34 of this LDC.

Capital improvement for community or regional parks means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community or regional park, buildings and equipment. Off-site improvements may also include sidewalks and bikeways which connect to the park facility. Capital improvements do not include maintenance and operations.

Capital improvement for fire protection includes land acquisition and related expenses, site improvements, off-site improvements associated with new or expanded facilities, buildings, and equipment, including

communications equipment, with an average useful life of at least three years, but excludes maintenance and operations.

Capital improvement for transportation means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting, and construction of all the necessary features for transportation construction projects, including but not limited to:

- (1) Construction of new or improved through or turn lanes;
- (2) Construction of curbs, medians, sidewalks, bicycle paths, and shoulders in conjunction with roadway construction;
- (3) Construction of new pedestrian or bicycle facilities;
- (4) Construction of new bridges;
- (5) Construction of new drainage facilities in conjunction with other transportation construction;
- (6) Purchase and installation of traffic signalization (including both new installations and upgrading signalization);
- (7) Relocating utilities to accommodate new transportation construction; and
- (8) On-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular and pedestrian capacity of the existing street network. Site-related road improvements as defined herein are not a capital improvement for transportation under this definition.

(9) Lighting associated with multimodal and mobility.

Community park means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. Community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools, and school parks. The term "community park" specifically includes school sites and publicly owned parks that are available for use by the surrounding neighborhoods.

Dwelling unit has the same meaning given it in ch. 34 of this LDC.

Fast-food restaurant has the same meaning given it in ch. 34 of this LDC.

Feepayer means a person applying to the town for the issuance of a building permit for a type of land development activity listed in the impact fee schedule in § 2-306 of this LDC, regardless of whether the person owns the land to be developed.

Fire district means the Fort Myers Beach Fire Control District, a special district which is authorized to provide fire protection and rescue service.

Fire protection means the prevention and extinguishment of fires, the protection of life and property from fire, and the enforcement of municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires, when enforcement duties are performed by firefighters, as defined in F.S. § 633.30, or by fire safety inspectors, as defined in F.S. § 633.021(8), and such other persons who may be employed by a fire district. The term "fire protection" also includes rescue and emergency medical services.

Fort Myers Beach Comprehensive Plan means the town's comprehensive plan adopted pursuant to F.S. ch. 163, as amended from time to time.

General office means, for the purpose of this article only, any type of office except a medical office. A general office building may contain accessory uses such as a beauty or barber shop, shack bar, cafeteria, day care center, or other uses where permitted by ch. 34 of this LDC.

Hotel/motel has the same meaning given it in ch. 34 of this LDC.

Land development activity means any change in land use, or any construction of buildings or structures, or any change in the use of any building or structure that adds dwelling units, attracts or produces vehicular trips, or requires fire protection.

Medical office has the same meaning given it in ch. 34 of this LDC.

Multiple-family building means and includes those definitions set forth in ch. 34 of this LDC for multiple-family building and two-family dwelling units.

Non-residential development means structures that are intended for commercial businesses, institutional uses, and not primarily for residential purposes.

Recreation facility has the same meanings given it in ch. 34 of this LDC.

Regional park means a tract of land designated and used by the public for active and passive recreation. A regional park draws users from a larger area than a community park, frequently from the entire county and beyond, by providing access to especially attractive natural resources, amenities, and specialized activities. It specifically includes municipally owned parks when they are used as regional parks.

Retail store means the use of a building to sell goods and to provide personal services (as described in ch. 34 of this LDC) to the general public.

Road has the same meaning given it in F.S. § 334.03.

Shopping center means an integrated group of commercial establishments planned and managed as a unit, consisting primarily of retail stores but sometimes containing other uses such as restaurants, offices, and personal services.

Single-family residence has the same meaning given it in ch. 34 of this LDC.

Site-related road improvements means physical improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements include, but are not limited to the following:

- (1) Site driveways and roads;
- (2) Median cuts made necessary by those driveways or roads;
- (3) Right turn, left turn, and deceleration or acceleration lanes leading to or from those driveways or roads;
- (4) Traffic control measures for those driveways or roads; and
- (5) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Timeshare unit has the same meaning given it in ch. 34 of this LDC.

Town manager means the manager of the Town of Fort Myers Beach, or the officials that he or she may designate to administer the various provisions of this article.

Warehouse means the use of a building or structure primarily for the storage of goods, boats or vehicles.

Cross reference(s)—Definitions and rules of construction generally, § 1-2 of this LDC.

Sec. 2-305. Imposition.

- (a) Except as provided in §§ 2-312 through 2-314 of this chapter, any person who seeks to develop land by applying for the issuance of a building permit to make an improvement to land for one of the uses which is

specified in § 2-306 below, shall be required to pay impact fees in the manner and amount set forth in this article.

- (b) No building permit for any activity requiring payment of impact fees pursuant to § 2-306 below, shall be issued by the town unless and until the impact fees required by this article have been paid.
- (c) In the case of structures moved from one location to another, impact fees shall be collected for the new location if the structure is a type of land development listed in § 2-306 below, regardless of whether impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure so moved is replaced by an equivalent use, no impact fees shall be owed for the replacement use. In every case, the burden of proving past payment of impact fees or equivalency of use rests with the feepayer.

Sec. 2-306. Computation of amount.

- (a) At the option of the feepayer, the amount of the impact fees may be determined by the schedule set forth in this section.
- (b) References in this schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, noncommon, or other forms of net square footage.

FORT MYERS BEACH IMPACT FEE SCHEDULE

	Impact Fees (rounded to nearest dollar) ¹				
LAND-USE TYPE		Parks			
	Transportation	Regional	Community	Fire >Protection	Schools ²
Residential:					
—Single-family residence	\$2,971.00	\$631	\$788.00	\$610.00	\$4,309.00
—Multiple-family building (per dwelling unit)	\$2,059.00	\$518.00	\$591.00	\$478.00	\$1,704.00
—Timeshare unit	\$2,237.00	\$518.00	\$591.00	\$478.00	\$0.00
—Hotel/motel room	\$2,237.00	\$318.00	\$363.00	\$501.00	\$0.00
—Assisted living facility (per dwelling unit) (see § 34-1415 for density equivalents)	\$1,017.00	\$0.00	\$0.00	\$478.00	\$0.00
Commercial (fee per 1,000 sq. ft. except as noted):					
—Retail store or shopping center	\$5,063.00	\$0.00	\$0.00	\$476.00	\$0.00
—Bank	\$8,038.00	\$0.00	\$0.00	\$476.00	\$0.00
—Car wash, self-service (fee per stall)	\$1,683.00	\$0.00	\$0.00	\$476.00	\$0.00
—Convenience store with gas pumps	\$11,250.00	\$0.00	\$0.00	\$476.00	\$0.00
—Movie theater	\$7,427.00	\$0.00	\$0.00	\$476.00	\$0.00
—Restaurant, fast-food	\$12,763.00	\$0.00	\$0.00	\$476.00	\$0.00
—Restaurant, standard	\$6,504.00	\$0.00	\$0.00	\$476.00	\$0.00
Office (fee per 1,000 square feet):					
—General office	\$2,336.00	\$0.00	\$0.00	\$222.00	\$0.00
—Medical office	\$7,716.00	\$0.00	\$0.00	\$222.00	\$0.00

Institutional (fee per 1,000 square feet):					
–Church	\$1,467.00	\$0.00	\$0.00	\$476.00	\$0.00
–Day-care center	\$4,107.00	\$0.00	\$0.00	\$476.00	\$0.00
–Elementary/secondary school (private)	\$643.00	\$0.00	\$0.00	\$476.00	\$0.00
Warehouse (fee per 1,000 square feet):	\$1,461.00	\$0.00	\$0.00	\$216.00	\$0.00

<u>Development Unit</u>	<u>Parks and Recreation</u>	<u>Multimodal Transportation</u>	<u>Fee Administration</u>	<u>Proposed Total</u>
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Residential Development

<u>999 or less Sq Ft of Living Space</u>	<u>Dwelling Unit</u>	<u>\$413</u>	<u>\$499</u>	<u>\$33</u>	<u>\$945</u>
<u>1,000 to 1,999 Sq Ft of Living Space</u>	<u>Dwelling Unit</u>	<u>\$624</u>	<u>\$755</u>	<u>\$51</u>	<u>\$1,430</u>
<u>2,000 to 2,999 Sq Ft of Living Space</u>	<u>Dwelling Unit</u>	<u>\$751</u>	<u>\$909</u>	<u>\$61</u>	<u>\$1,721</u>
<u>3,000 to 3,999 Sq Ft of Living Space</u>	<u>Dwelling Unit</u>	<u>\$840</u>	<u>\$1,016</u>	<u>\$69</u>	<u>\$1,925</u>
<u>4,000 or More Sq Ft of Living Space</u>	<u>Dwelling Unit</u>	<u>\$907</u>	<u>\$1,097</u>	<u>\$74</u>	<u>\$2,078</u>
<u>Lodging</u>	<u>Room</u>	<u>\$677</u>	<u>\$819</u>	<u>\$55</u>	<u>\$1,551</u>

Nonresidential Development

<u>Retail & Eating/Drinking Places</u>	<u>Floor Area (square feet in thousands)</u>	<u>\$0</u>	<u>\$4,115</u>	<u>\$257</u>	<u>\$4,372</u>
<u>All Other Nonresidential</u>	<u>Floor Area (square feet in thousands)</u>	<u>\$0</u>	<u>\$1,826</u>	<u>\$257</u>	<u>\$2,083</u>

¹ In addition to the impact fees listed, an additional three percent administrative charge will be levied in accordance with § 2-310(e).

² School impact fees are collected in accordance with Lee County Ordinance No. 05-25, effective January 1, 2006.

- (c) If a building permit is requested for a building with mixed uses, as defined in § 2-304 of this LDC, then the fees shall be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. A shopping center will be considered a principal use; however, when located within a shopping center, a fast-food restaurant or convenience store with gasoline sales will be considered a principal use.
- (d) If the type of development activity for which a building permit is applied is not specified on the schedule, the town manager shall use the fee applicable to the most nearly comparable type of land use on the schedule. For ~~transportation~~multimodal impact fees, the town manager shall be guided in the selection of a comparable type by the Institute of Transportation Engineers' Trip Generation (latest edition), studies or

reports by the federal, state, and county departments of transportation, and articles or reports appearing in the ITE Journal and other reliable sources. If the town manager determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the town manager shall determine the fee by:

- (1) Using traffic generation statistics or other relevant data from the sources named in this subsection; and
 - (2) Applying the formula set forth in subsection (g)(3) of this section.
- (e) When change of use, redevelopment, or modification of an existing use requires the issuance of a building permit, impact fees shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment, or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.
- (f) If an impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or collected by the town, whichever is applicable. If impact fees are owed, no permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until all impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.
- (g) The person applying for the issuance of a building permit may, at his option, submit evidence to the town manager indicating that the fees set out in the impact fee schedule in this section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with any applicable administrative code, the town manager may adjust the fee to that appropriate for the particular development.
- (1) The adjustment may include a credit for recreation facilities provided to the development by the feepayer if the recreation facilities serve the same purposes and functions as set forth for regional and/or community parks.
 - (2) If a feepayer opts not to have the transportationmultimodal impact fee determined according to the impact fee schedule in this section, then the feepayer shall prepare and submit to the town manager an independent fee calculation study for the land development activity for which a building permit is sought. The independent fee calculation study shall measure the impact of the development in question on the transportation system by following the prescribed methodologies and formats for such studies established by Lee County's Administrative Code. The feepayer must attend a preapplication meeting with town manager or designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering or economic documentation submitted must address all aspects of the impact fee formula that the county manager determines to be relevant in defining the project's impacts at the preapplication meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:
 - a. *Traffic engineering studies.* All independent fee calculation studies must address all three of the following:
 1. Documentation of trip generation rates appropriate for the proposed land development activity;
 2. Documentation of trip length appropriate for the proposed land development activity; and
 3. Documentation of trip data appropriate for the proposed land development activity.
 - b. *Revenue credit studies.* The feepayer may also provide documentation substantiating that the revenue credits due to the development differ from the average figures used in developing the fee schedule. This documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies.

(3)—The following formula shall be used by the town manager to determine the transportation impact fee per unit of development:

—Impact Fee = VMT x NET COST/VMT		
Where:	VMT =	ADT x %NEW
		x LENGTH ÷ 2
	ADT =	Trip ends during average weekday
	%NEW =	Percent of trips that are primary, as opposed to passby or diverted-link trips
	LENGTH =	Average length of a trip on the approved road system
	÷ 2 =	Avoids double-counting trips for origin and destination
	ADJUSTMENT =	Local adjustment factor, representing the ratio between the VMT predicted by national travel characteristics and observed VMT on the approved road system
—NET COST/VMT = COST/VMT - CREDIT/VMT		
	COST/VMT =	COST/LANE-MILE ÷ AVG LANE CAPACITY
	COST/LANE-MILE =	Average cost to add a new lane to the approved roadway system
	AVG LANE CAPACITY =	Average daily capacity of a lane at level of service "D"
	CREDIT/VMT =	\$/GAL ÷ MPG x 365 x NPV
	\$/GAL =	Capacity-expanding funding for roads per gallon of gasoline consumed
	MPG =	Miles per gallon, average for U.S. motor vehicle fleet
	365 =	Days per year (used to convert daily VMT to annual VMT)
	NPV =	Net present value factor (i.e., 12.46 for 20 years at 5% discount)

Sec. 2-307. Payment.

- (a) The feepayer shall pay the impact fees required by this article to the building official prior to the issuance of the building permit for which the fees are imposed. No building permit may be issued for any development listed in the impact fee schedule in § 2-306 of this LDC until the impact fees have been paid.
- (b) In lieu of cash, up to 100 percent of the impact fees may be paid by the use of credits created in accordance with the provisions of § 2-313 of this LDC.
- (c) All funds collected pursuant to this article shall be promptly transferred for deposit into the appropriate impact fee trust accounts and used solely for the purposes specified in this article.

Sec. 2-308. Reserved.

Sec. 2-309. Trust accounts.

- (a) There is hereby established ~~five-four~~ impact fee trust accounts, one each for ~~multimodal~~ transportation, ~~regional parks, community parks~~~~parks and recreation~~, fire protection, and schools.
- (b) Funds withdrawn from these accounts must be used in accordance with the provisions of § 2-310 of this LDC.

Sec. 2-310. Use of funds.

- (a) Funds collected from impact fees shall be used only for the purpose of capital improvements for ~~transportation~~~~multimodal~~, regional parks, community parks, fire protection, and schools, as defined in § 2-304 of this LDC. Impact fee collections, including any interest earned thereon, but excluding administrative charges pursuant to subsection (e) of this section, shall be used exclusively for capital improvements or expansion. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements.
- (b) Each fiscal year the town manager shall present to the town council a proposed capital improvement program for ~~transportation~~~~multimodal~~, regional parks, and community parks, assigning funds, including any accrued interest, from the appropriate impact fee trust account to specific capital projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in each impact fee trust account until the next fiscal period, except as provided by the refund provisions of this article.
- (c) The town shall remit fire protection impact fees to the fire district at least once each quarter, less any amounts retained or collected pursuant to subsection (e) of this section, unless another method is specified in an appropriate interlocal agreement.
- (d) The town shall remit school impact fees to Lee County ~~or Lee County School Board~~ at least monthly, less any amounts retained or collected pursuant to subsection (e) of this section, unless another method is specified in an appropriate interlocal agreement. ~~Lee County will remit these school impacts to the school board in accordance with Lee County Ordinance No. 01-21.~~
- (e) The town is entitled to charge and collect three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this article. This administrative charge is in addition to the impact fee amounts required by this article. The applicant is responsible for payment of the additional administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-311. Refund of fees paid.

- (a) If a building permit expires, is revoked, voluntarily surrendered, or otherwise becomes void, and no construction or improvement of land has been commenced, then the feepayer shall be entitled to a refund of the impact fees paid as a condition for its issuance, except that three percent of the impact fee paid shall be retained as an administrative fee to offset the cost of processing the refund. This administrative fee is in addition to the charge collected at the time of fee payment. No interest shall be paid to the feepayer on refunds due to noncommencement.
- (b) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the impact fee was paid shall, upon application of the feepayer within 180 days of that date,

be returned to the feepayer with interest at the rate of six percent per annum. For school impact fees, this period is set at six years by Lee County Ordinance No. 01-21.

Sec. 2-312. Exemptions.

- (a) The following shall be exempted from payment of the impact fees:
- (1) Alteration or expansion of an existing building or use of land, where no additional dwelling units will be produced and where the use is not changed and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.
 - (2) The construction of accessory buildings or structures which will not produce additional dwelling units and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.
 - (3) The replacement of an existing building with a new building or structure of the same use and at the same location, provided that no additional dwelling units, vehicular trips, or fire protection demands will be produced over and above those produced by the original use of the land. However, no exemption will be granted if the existing building was removed ~~five~~seven years or more before a building permit is issued for its replacement.
 - (4) A building permit obtained by or for the United States of America, the state, or the county school board.
 - (5) A building permit for which the impact fees thereof have been or will be paid or provided for pursuant to a written agreement, zoning approval, or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact by enforcement of the agreement, zoning approval or development order, and not by the application of this article.
 - (6) A building permit which does not result in an additional dwelling unit, additional vehicular trips, or increased need for fire protection or emergency medical services.
- (b) Exemptions must be claimed by the feepayer at the time of the application for a building permit. Any exemptions not so claimed will be deemed waived by the feepayer.

Sec. 2-313. Credits.

- (a) Impact fee credits are subject to the following:
- (1) *Prohibitions.* No credit shall be given for design or construction of site-related road improvements or local roads. No credit shall be given for recreation facilities except pursuant to an independent fee calculation prepared and accepted in accordance with § 2-306(f) of this LDC.
 - (2) *Eligibility.* Other approved capital improvements for transportation, regional or community parks, or fire protection may generate corresponding impact fee credits in amounts to be established pursuant to this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the town.
 - (3) *Conditions of credit approval.* Credit for capital improvement construction or land dedication is subject to the following:
 - a. *Construction.* A formal request for impact fee construction credits must include a detailed project description and complete cost estimates prepared by qualified professionals and sufficient to enable the town manager to verify these cost estimates and thereby determine the amount of the credit which the town manager will recommend be authorized by the town council.

Construction credits for transportation projects may be given as the town council shall determine on a case-by-case basis if it finds that the granting of such credits will not significantly affect future transportation impact fee collections within the town. The amount of credit shall be limited to the actual verified costs of construction and may be reduced by the percentage to which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated construction in relation to the town's schedule for construction.

- b. *Land dedication.* A formal request for impact fee credits for land dedication must include:
 - 1. A survey of the land to be dedicated, certified by a professional land surveyor duly registered and licensed by the state;
 - 2. A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
 - 3. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the town attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
 - 4. Property appraisals prepared by qualified professionals that appraise the land as part of the whole development or parent parcel; and
 - 5. A document from the tax collector stating the current status of property taxes on the land.
 - c. *Valuations.* In preparing their reports, appraisers shall value, except where a dedication is made pursuant to a condition of zoning approval, the land at its then-current zoning and without any enhanced value which could otherwise be attributed to improvements on adjacent lands. If the land in question is subject to a valid agreement, zoning approval or development order which prescribes a different valuation, the agreement, zoning approval, or development order shall control. If the dedication is made pursuant to a condition of zoning approval and is not a site-related improvement, and the zoning condition does not specifically prescribe otherwise, the land shall be valued based upon the zoning of the land as it existed prior to the zoning approval which contains the condition of dedication.
 - d. *Limitations on credit for land dedications.* The amount of credit which the council may approve shall be limited to the value of the land in question, as determined by the methodology and procedures set out in this section, and may be reduced by the percentage to which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated acquisition in relation to the town's construction schedule.
 - e. *Independent determinations.* The town manager retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates and/or property appraisals for those improvements or land dedications. In applicable cases, impact fee credits shall be calculated so as to be consistent with F.S. § 380.06(16), (1997).
- (4) *Timing of credit issuance.* Credits for construction shall be created when the construction is completed and accepted by the appropriate governmental body for maintenance, or when the feepayer posts security, as provided in this subsection, for the costs of such construction. Credits for land dedication shall be created when the title to the land has been accepted and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, an irrevocable letter of credit or an escrow agreement shall be posted with the town council, made payable to the town in an amount
-

approved by the town manager equal to 110 percent of the full cost of such construction. If the project will not be constructed within one year of the acceptance of the offer by the town, the amount of the security shall be increased by ten percent, compounded for each year of the life of the security. The security shall be reviewed and approved by the town attorney prior to acceptance of the security by the town.

- (5) *Transferability.* Impact fee credits shall be in transferable form and may be sold, assigned, or otherwise conveyed. They may be used to pay or otherwise offset the same type of impact fees required by this article.
- a. Such transferable credits must be used within ten years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements, which were given in exchange for credits, were recorded in the county's official record book. Credits not used during this period shall expire.
 - b. If impact fee rates are increased before the credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in impact fee schedule, will be increased at the time they are used in the same percentage that the Consumer Price Index-All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics) increased between the time the credits are used and the time the credits were created. If impact fee rates are decreased, unused transferable credits will not decrease in value.
 - c. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, nonrefund provisions and other restrictions prescribed in this article.
 - d. Impact fee credits previously issued by Lee County related to development or capital improvements in the town will be accepted as if they were issued by the town, provided the credits have not expired.
- (6) *Withdrawal of offer.* Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this article.
- (b) Feepayers claiming credits shall submit documentation sufficient to permit the building official to determine whether such credits claimed are due and, if so, the amount of such credits.
 - (c) Credits must be claimed by the feepayer at the time of the application for a building permit. Any credits not so claimed shall be deemed waived by the feepayer.
 - (d) Once used, credits shall be canceled and shall not be reestablished even if the permit for which they were used expires without construction.
 - (e) Any person seeking credits for dedication of land must meet with the town manager or designee to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.
 - (f) The town may delegate to Lee County certain administrative matters regarding impact fees, pursuant to interlocal agreement.

Sec. 2-314. Appeals.

Any decision made by the town manager or his designee, or by the building official, in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 of this LDC for appeals of administrative decisions.



Development Impact Fee Study

Prepared for:

*Town of
Fort Myers Beach FL*

August 25, 2025

Prepared by:

DP Guthrie, LLC

Subcontractor to:



August 25, 2025

Will McKannay
Town Manager
Town of Fort Myers Beach
2731 Oak St.
Fort Myers Beach, FL 33931

Subject: 2025 Development Impact Fee Study

Dear Mr. McKannay:

Axis Companies is pleased to provide the 2025 Development Impact Fee Study to the Town of Fort Myers Beach (Town). In collaboration with Town staff, our report:

- Updates development projections and land use assumptions based on most recent and localized demographics, as required by the Florida Impact Fee Act
- Documents projected need for additional facilities
- Includes a fee for administrative costs, consistent with the Florida Impact Fee Act.

It has been a pleasure working with you and Town staff. Everyone's input and support has enabled Axis Infrastructure and our partners to provide an impact fee study that is tailored to the unique characteristics of Fort Myers Beach. If you have any comments or questions, please feel free to contact me directly.

Sincerely,

Jason Green, AICP, CFM
Axis Infrastructure

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Executive Summary

The Town of Fort Myers Beach (hereafter “Town”) retained Axis Infrastructure and their subcontractor DP Guthrie LLC (hereafter “consultant team”) to conduct a comprehensive update of non-utility development impact fees. As shown in Figure 1, Fort Myers Beach currently collects impact fees for Regional Parks, Community Parks, and Transportation infrastructure.

Figure 1 - Current Impact Fees

Impact Fees (rounded to nearest dollar)			
LAND USE TYPE	Transportation	Regional Parks	Community Parks
Residential:			
Single-family	\$2,971	\$631	\$788
Multifamily (per dwelling unit)	\$2,059	\$518	\$591
Timeshare unit	\$2,237	\$518	\$591
Hotel/motel room	\$2,237	\$318	\$363
Assisted living (per dwelling unit)	\$1,017	\$0	\$0
Nonresidential (fee per 1,000 sq. ft. except as noted):			
Retail store or shopping center	\$5,063	\$0	\$0
Bank	\$8,038	\$0	\$0
Car wash, self- service (per stall)	\$1,683	\$0	\$0
Convenience store with gas pumps	\$11,250	\$0	\$0
Movie theater	\$7,427	\$0	\$0
Restaurant, fast-food	\$12,763	\$0	\$0
Restaurant, standard	\$6,504	\$0	\$0
General office	\$2,336	\$0	\$0
Medical office	\$7,716	\$0	\$0
Church	\$1,467	\$0	\$0
Day care center	\$4,107	\$0	\$0
Private school	\$643	\$0	\$0
Warehouse	\$1,461	\$0	\$0

Summary of Major Changes

As documented in this report, Fort Myers Beach has followed the Florida Impact Fee Act and applicable legal precedents. Impact fees are proportionate and reasonably related to capital improvement demands of new development. Specific costs have been identified using local data and current dollars. With input from Town staff, the consultant team has determined demand indicators for each type of infrastructure and calculated growth share factors to allocate costs to new development. This report documents the formulas and input variables used to calculate the impact fees for each type of public facility. Impact fee methodologies also identify the extent to which new development is entitled to various types of credits to avoid potential double payment of growth-related capital costs.

Key differences between current and proposed impact fees are highlighted below.

1. On the effective date of the newly adopted impact fees, Fort Myers Beach will suspend collection of the fees for Regional Parks, Community Parks, and Transportation. Any fund balance in the respective impact fee accounts will be spent as soon as possible, consistent with the previous impact fee study and the Florida Impact Fee Act.
2. Current impact fees for residential development assess impact fees for five categories (i.e., types of units). Proposed impact fees are based on five size thresholds for dwelling units and for lodging (e.g., hotels and motels) fees are assessed per room. Dwelling units are capable of year-round occupancy and impact fees are based on climate-controlled floor area (i.e., excluding garages, porches, etc.). Lodging rooms are intended primarily for short-term occupancy and lack a complete set of kitchen appliances (e.g., range and oven).
3. Current impact fees for nonresidential development are based on 13 land use categories. The proposed fees are based on two general categories, assessed per thousand square feet of floor area. A simplified fee schedule is easier to administer and minimizes the need for assessing fees for land use changes (e.g., converting a general office building to a medical office). Definitions of the proposed nonresidential categories are provided below.
 - a. Retail & Eating/Drinking Places – Nonresidential development that sells goods, including food and drinks.
 - b. All Other Nonresidential – All nonresidential development that is not Retail or Eating/Drinking Places. Examples include, but are not limited to, business services, personal services, educational and religious buildings, entertainment uses (e.g., movie theater), and self-storage businesses.

Proposed Impact Fees

Figure 2 summarizes the methods and cost components used for each type of public facility in the Fort Myers Beach 2025 impact fee study.

Figure 2 - Proposed Fee Methods and Cost Components

Type of Infrastructure	Service Area	Plan-Based (future)	Cost Allocation
<i>Parks and Recreation</i>	Townwide	Parks and Recreation Improvements	Peak Population
<i>Multimodal Transportation</i>	Townwide	Multimodal Improvements	Peak Population and Inbound Primary Vehicle Trips

Figure 3 indicates proposed impact fees for new development in the Town of Fort Myers Beach over the next four years. Consistent with the Florida Impact Fee Act [see F.S. 163.31801(4)(a)], the calculation of impact fees must be based on a study using the most recent and localized data available within the past four years. Also, the new study must be adopted with 12 months of the initiation of the new impact fee study, if fees are increased.

The Town may adopt fees that are less than the amounts shown. However, a reduction in impact fee revenue will necessitate an increase in other revenues, or a decrease in planned capital expenditures, which will decrease levels of service over time.

Figure 3 - Proposed Impact Fees

	Development Unit	Parks and Recreation	Multimodal Transportation	Fee Administration	Proposed Total	Current Total	\$ Change
Residential Development							
999 or less Sq Ft of Living Space	Dwelling Unit	\$413	\$499	\$33	\$945	\$3,168	(\$2,223)
1,000 to 1,999 Sq Ft of Living Space	Dwelling Unit	\$624	\$755	\$51	\$1,430	\$3,168	(\$1,738)
2,000 to 2,999 Sq Ft of Living Space	Dwelling Unit	\$751	\$909	\$61	\$1,721	\$4,390	(\$2,669)
3,000 to 3,999 Sq Ft of Living Space	Dwelling Unit	\$840	\$1,016	\$69	\$1,925	\$4,390	(\$2,465)
4,000 or More Sq Ft of Living Space	Dwelling Unit	\$907	\$1,097	\$74	\$2,078	\$4,390	(\$2,312)
Lodging	Room	\$677	\$819	\$55	\$1,551	\$2,918	(\$1,367)
Nonresidential Development							
Retail & Eating/Drinking Places	Floor Area (square feet in thousands)	\$0	\$4,115	\$257	\$4,372	\$5,063	(\$691)
All Other Nonresidential	Floor Area (square feet in thousands)	\$0	\$1,826	\$257	\$2,083	\$2,336	(\$253)

Introduction

Impact fees are one-time payments used to construct system improvements needed to accommodate new development. An impact fee represents new development's proportionate share of capital facility needs. Impact fees do have limitations and should not be regarded as the total solution for infrastructure funding. Rather, they are one component of a comprehensive portfolio to ensure provision of adequate public facilities needed to serve new development. In contrast to general taxes, impact fees may not be used for operations, maintenance, replacement of infrastructure, or correcting existing deficiencies. Impact fee revenues and expenditures must be accounted for in a separate accounting fund for each impact fee, and revenues must be used for capital projects providing infrastructure capacity that benefits new development.

Legal Framework

In 2006, the Florida legislature passed the "Florida Impact Fee Act" that has been amended over the years. The Town's existing impact fee ordinance will be updated in consideration of the methodology used in the 2025 impact fee study, plus any statutory changes and court rulings.

Impact Fee Methods

In contrast to project-level improvements, impact fees fund growth-related infrastructure that will benefit multiple development projects, or the entire jurisdiction (referred to as system improvements). There are three general methods for calculating impact fees. The choice of method depends primarily on the timing of infrastructure construction (past, concurrent, or future) and service characteristics of the facility type being addressed. Each method can be used simultaneously for different cost components.

Reduced to its simplest terms, the process of calculating impact fees involves two main steps: (1) determining the cost of development-related capital improvements and (2) allocating those costs equitably to various types of development. In practice, though, the calculation of impact fees can become complicated by many variables affecting the relationship between development and the need for facilities within the designated service area. The following paragraphs discuss three basic methods for calculating impact fees and how those methods can be applied.

Cost Recovery (past improvements)

The rationale for recoupment, often called cost recovery, is that new development is paying for its share of the useful life and remaining capacity of facilities already built, or land already purchased, from which new growth will benefit. This methodology is often used for utility systems that must provide adequate capacity before new development can take place.

Incremental Expansion (concurrent improvements)

The incremental expansion method documents current infrastructure standards for each type of public facility, using both quantitative and qualitative measures. New development pays its proportionate share to maintain current standards. This approach assumes there is no existing infrastructure deficiency or surplus capacity. Impact fee revenue will be used to expand or provide additional facilities, as needed to accommodate new development. An incremental expansion cost method is best suited for public facilities that will be expanded in regular increments to keep pace with development.

Plan-Based Fee (future improvements)

The plan-based method allocates costs for a specified set of improvements to a specified amount of development. Improvements are typically identified in a long-range facility plan and development potential is identified by a land use plan. There are two options for determining the cost per service unit: 1) total cost of a public facility can be divided by total demand units (average cost), or 2) the growth-share

of the public facility cost can be divided by the net increase in service units over the planning timeframe (marginal cost).

Credits

Regardless of the methodology, a consideration of “credits” is integral to the development of legally defensible impact fees. There are two types of “credits” with specific characteristics, both of which should be considered by fee studies and ordinances. First, a revenue credit might be necessary if there is a double payment situation and other revenues are contributing to the capital costs of infrastructure to be funded by impact fees. This type of credit is integrated into the impact fee calculation, thus reducing the fee amount. Second, a site-specific credit or developer reimbursement might be necessary for dedication of land or construction of system improvements funded by impact fees. This type of credit is addressed in the administration and implementation of the impact fee program.

Parks and Recreation

The Town owns and maintains parks and recreation facilities for the use and benefit of its residents and visitors. As the Town grows both vertically and horizontally, additional facilities and improvements are necessary. This section provides an analysis for the Town's updated parks and recreation impact fee based on the costs to meet infrastructure demands from growth.

Capital Improvements for Parks and Recreation

Fort Myers Beach and the consultant team compiled a Capital Improvements Program (CIP) for the next ten years. Figure 4 lists specific projects from the CIP used to derive the 2025 impact fee for parks and recreation. Projects include improvements to existing sites, additional facilities, and expansion of sites. Based on discussions with Town staff, growth shares were identified for each project. The table below provides the Town's total cost and the amount allocated to projected growth, consistent with the increase in peak population over the next ten years.

Figure 4 - Parks and Recreation Capital Improvements Plan

Project Description	Town Cost	Growth Share	Growth Cost
Additional facilities at four existing beach parks	\$5,000,000	20%	\$1,000,000
Beach Access Improvements (24 existing sites)	\$2,400,000	20%	\$480,000
Recreation Campus Improvements	\$1,000,000	20%	\$200,000
Total Over Ten Years	\$8,400,000	20%	\$1,680,000
Existing Development Share Funded by Other Revenues =>			\$6,720,000

Source: Town Capital Improvements Program and cost estimates by Axis Infrastructure.

Revenue Credit Evaluation

A credit for future revenue is only necessary if there is potential double payment for system improvements needed to accommodate new development. Fort Myers Beach plans to fund the growth share of future improvements from impact fees, which is approximately 20% of the total estimated capital costs identified. A revenue credit is not applicable because impact fees will be used exclusively for the growth share of capital improvements. As shown in the cash flow analysis table below, projected impact fee revenue roughly matches the growth cost of new parks and recreation facilities.

Parks and Recreation Impact Fee

As shown in Figure 5, the average number of persons per development unit, multiplied by the growth cost per person, yields the 2025 impact fees. For example, the proposed fee for a residential development that has between 2,000 to 2,999 square feet living space is \$751 (truncated) per dwelling unit. This amount is derived by multiplying 2.13 persons per household by the cost factor of \$353 per person. Documentation on the average number of persons by dwelling size is provided in Appendix A. The proposed impact fees for residential development are less than current fees for regional and community parks, ranging from an decrease of \$4 for a lodging room to a decrease of \$696 for the smallest size dwelling unit.

Figure 5 - Proposed Residential Parks and Trails Impact Fees

Growth Cost per Person		Growth Cost for Parks and Recreation Projects -->			\$1,680,000
		2025	2035	Ten-Year Increase	Growth Cost per Person
Peak Population		21,941	26,698	4,757	\$353

Residential Development		Development Unit	Persons per Development Unit	Proposed Parks & Recreation Fee	Current Regional & Community Parks Fee	Increase/ (Decrease)
999 or less Sq Ft of Living Space		Dwelling Unit	1.17	\$413	\$1,109	(\$696)
1,000 to 1,999 Sq Ft of Living Space		Dwelling Unit	1.77	\$624	\$1,109	(\$485)
2,000 to 2,999 Sq Ft of Living Space		Dwelling Unit	2.13	\$751	\$1,419	(\$668)
3,000 to 3,999 Sq Ft of Living Space		Dwelling Unit	2.38	\$840	\$1,419	(\$579)
4,000 or More Sq Ft of Living Space		Dwelling Unit	2.57	\$907	\$1,419	(\$512)
Lodging		Room	1.92	\$677	\$681	(\$4)

Projected Revenue for Parks and Recreation

Over the next ten years, parks and recreation impact fee revenue is projected to approximately match the growth cost of parks and recreation infrastructure (i.e., a ten-year total cost of approximately \$1.68 million). Figure 6 indicates Fort Myers Beach should receive approximately \$1.68 million in parks and recreation impact fee revenue over the next ten years, if actual development matches the land use assumptions provided in Appendix A. To the extent the rate of development either accelerates or slows down, there will be a corresponding change in the need for infrastructure and impact fee revenue.

Figure 6 - Projected Impact Fee Revenue for Parks and Recreation

Ten-Year Growth Cost for Parks and Recreation Facilities

\$1,680,000

Projected Parks and Recreation Impact Fee Revenue

		<i>Dwellings</i> \$679 per housing unit	<i>Lodging</i> \$679 per room
		<i>Housing Units</i>	<i>Lodging Rooms</i>
Base	FY24-25	10,097	1,310
Year 1	FY25-26	10,260	1,384
Year 2	FY26-27	10,423	1,457
Year 3	FY27-28	10,591	1,531
Year 4	FY28-29	10,759	1,604
Year 5	FY29-30	10,933	1,678
Year 6	FY30-31	11,106	1,752
Year 7	FY31-32	11,285	1,825
Year 8	FY32-33	11,465	1,899
Year 9	FY33-34	11,648	1,972
Year 10	FY34-35	11,835	2,046
<i>Ten-Yr Increase</i>		1,738	736
Projected Revenue -->		\$1,180,000	\$500,000
		TOTAL -->	\$1,680,000

Multimodal Transportation

In 2024, the Florida Legislature added definitions of “mobility fee” and “mobility plan” to the Community Planning Act. The 2025 impact fee update is consistent with these definitions, including capital projects and a plan-based methodology promoting compact, mixed use, and interconnected development served by a multimodal transportation system in an area that is urban in character. The Town could impose a “mobility fee” but this would require adding a “mobility plan” into the Comprehensive Plan. To simplify the adoption process, the consultant team recommends a plan-based methodology to provide multimodal transportation improvements. In contrast to old-school transportation impact fees that focus on the movement of vehicles¹, the proposed multimodal transportation fee focuses on moving people, include all modes of travel (i.e., pedestrian, bike, transit and vehicular facilities).

Proportionate Share

As shown in Figure 7, functional population was used to allocate infrastructure costs to residential and nonresidential development. Functional population is like the U.S. Census Bureau’s measurement of “daytime population” that accounts for people living and working in a jurisdiction. However, functional population also considers commuting patterns and time spent at residential versus nonresidential locations. Residents that do not work are assigned 20 hours per average weekday to residential development and 4 hours per average weekday to nonresidential development. Residents that work in Fort Myers Beach are assigned 14 hours to residential development and 10 hours to nonresidential development. Residents that work outside of Fort Myers Beach are assigned 14 hours to residential development only. Finally, inflow commuters, or non-resident workers, are assigned 10 hours to nonresidential development. Based on 2022 functional population data for Fort Myers Beach, the cost allocation for residential development is 68%, while nonresidential development accounts for 32% of the demand for infrastructure. The latest available job data from the Census Bureau is 2022, but the ratio of population to jobs only changes slightly over time.

¹ See American Planning Association PAS Memo “Next-Generation Transportation Impact Fees”, Guthrie and Bise, 2015.

Figure 7 - Functional Population

Infrastructure Cost Allocation Based on Functional Population				
	<i>Demand Units in 2022</i>		<i>Demand Hours/Day</i>	<i>Person Hours</i>
Residential				
Population*	5,665			
71% Residents Not Working	4,020		20	80,400
29% Residents that Work**	1,645			
22% Worked in City**	367	14		5,138
78% Worked Outside City**	1,278	14		17,892
Residential Subtotal				103,430
Residential Share =>				68%
Nonresidential				
Non-working Residents	4,020	4		16,080
Jobs Located in City**	3,323			
11% Resident Workers**	367	10		3,670
89% Non-Resident Workers (inflow commuters)	2,956	10		29,560
Nonresidential Subtotal				49,310
Nonresidential Share =>				32%
TOTAL				152,740

* 2022 U.S. Census Bureau population estimate for Fort Myers Beach
 ** 2022 Inflow/Outflow Analysis, OnTheMap web application, U.S. Census Bureau data for all jobs

Capital Improvements Plan for Transportation

Projects used to derive 2025 multimodal transportation fees were extracted from the Town's CIP, with cost estimates provided by the consultant team. Fort Myers Beach will need approximately \$14.96 million in transportation projects to accommodate new development over the next ten years, with approximately \$2.99 million to be funded by impact fees. The improvements listed below provide additional capacity to existing facilities, with additional bike lanes, sidewalks, multimodal trails and ferry access facilities. The growth shares identified for each of the projects are based on the 10-year growth in peak population and jobs in the Town (see Appendix A). As shown in Figure 8, impact fees will fund 20% of the cost of multimodal transportation projects over the next ten years. The remaining share attributable to existing development (i.e., approximately \$12 million) will be funded by other revenues (e.g., sales tax, grants, and other revenue sources).

Figure 8 – Transportation Improvements

<i>Project Description</i>	<i>Cost per Mile</i>	<i>Miles Needed</i>	<i>Town Cost</i>	<i>Growth Share</i>	<i>Growth Cost</i>
Bike Lanes	\$911,900	9.15	\$8,344,000	20%	\$1,668,800
Multimodal Trails	\$681,800	1.63	\$1,111,000	20%	\$222,200
Sidewalk Connections	\$349,300	1.44	\$503,000	20%	\$100,600
Ferry Access Facilities (5 proposed on R2P2 mobility map)			\$5,000,000	20%	\$1,000,000
Total Over Ten Years			\$14,958,000	20%	\$2,991,600
Existing Development Share of Transportation Projects to be Funded by Other Revenues =>					\$11,966,400

Source: Town Capital Improvements Program and cost estimates by Axis Infrastructure.

Revenue Credit Evaluation

A credit for future revenue is only necessary if there is a potential double payment for the growth share of system improvements needed to accommodate new development. Fort Myers Beach plans to fund the growth share of future improvements from impact fees, which is approximately 20% of the total estimated capital cost. A revenue credit is not applicable because impact fees will be used exclusively for the growth share of capital improvements. As shown in Figure 10 below, projected impact fee revenue roughly matches the growth cost of mobility improvements.

Multimodal Transportation Fees

As shown in Figure 9, the ten-year growth cost of transportation improvements to be funded by fees is \$2,991,600. Based on the above functional population analysis, the cost allocation for residential development is 68%, while nonresidential development accounts for 32% of the demand for multimodal transportation improvements. For residential development, the growth cost of improvements is \$427 per person. The multimodal transportation fee per unit or room is equal to the cost per person multiplied by the average number of persons per development unit. Persons per unit, by size threshold, are documented in Appendix A.

For nonresidential development, the growth cost is \$337 per inbound, primary vehicle trip. Transportation fees for nonresidential development equal the capital cost per additional vehicle trip end multiplied by the average number of inbound, primary vehicle trips per development unit, for each type of development. Trip generation rates per thousand square feet of floor area are documented in Appendix A. A vehicle trip end represents a vehicle either entering or exiting a development (as if a traffic counter were placed across a driveway). To calculate transportation fees, trip generation rates require an adjustment factor to avoid double counting each trip at both the origin and destination points. Therefore, the basic trip adjustment factor is 50%. As discussed further below, the transportation impact fee methodology includes an additional adjustment to make the fees proportionate to infrastructure demand for commercial development.

For Retail & Eating/Drinking Places, the trip adjustment factor is less than 50% because these developments attract vehicles as they pass by on arterial roads. For example, when someone stops at a convenience store on the way home from work, the convenience store is not their primary destination. For the average shopping center, the Institute of Transportation Engineers indicates that 34% of the vehicles that enter are passing by on their way to some other primary destination. The remaining 66% of attraction trips have the commercial site as their primary destination. Because attraction trips are half of all trips, the trip adjustment factor is 66% multiplied by 50%, or approximately 33% of the trip ends for an average-size shopping center, which is the proxy for Retail & Eating Drinking Places.

Figure 9 - Proposed Multimodal Transportation Fees

Growth Cost and Allocation per Service Unit						
Growth Cost for Transportation Improvements =>			\$2,991,600			
	2025	2035	Proportionate Share	2025 to 2035 Increase	Growth Cost per Service Unit	
Peak Population	21,941	26,698	68%	4,757	\$427	
Inbound Primary Vehicle Trips	16,456	19,294	32%	2,839	\$337	
Residential Development						
	Development Unit	Persons per Development Unit	Proposed Multimodal Transportation Fee	Current Transportation Fee	Increase/ (Decrease)	
999 or less Sq Ft of Living Space	Dwelling Unit	1.17	\$499	\$2,059	(\$1,560)	
1,000 to 1,999 Sq Ft of Living Space	Dwelling Unit	1.77	\$755	\$2,059	(\$1,304)	
2,000 to 2,999 Sq Ft of Living Space	Dwelling Unit	2.13	\$909	\$2,971	(\$2,062)	
3,000 to 3,999 Sq Ft of Living Space	Dwelling Unit	2.38	\$1,016	\$2,971	(\$1,955)	
4,000 or More Sq Ft of Living Space	Dwelling Unit	2.57	\$1,097	\$2,971	(\$1,874)	
Lodging	Room	1.92	\$819	\$2,237	(\$1,418)	
Nonresidential Development						
ITE Code	Type	Development Unit	Inbound Primary Vehicle Trips	Proposed Multimodal Transportation Fee	Current Transportation Fees	Increase/ (Decrease)
820	Retail & Eating/Drinking Places	KSF	12.21	\$4,115	\$5,063	(\$948)
710	All Other Nonresidential	KSF	5.42	\$1,826	\$2,336	(\$510)

Projected Impact Fee Revenue for Transportation

Over the next ten years, transportation impact fee revenue is projected to be slightly less than the growth cost of capital improvements, which has a ten-year total cost of approximately \$2.99 million. Figure 10 indicates that Fort Myers Beach should receive approximately \$2.99 million (rounded) in transportation impact fee revenue, if actual development matches the land use assumptions documented in Appendix A.

Figure 10 - Projected Transportation Impact Fee Revenue

		Growth Cost			
Transportation Improvements =>		\$2,991,600			
Projected Transportation Fee Revenue					
		Dwellings	Lodging	Retail & Eating/Drinking Places	All Other Nonresidential
		\$821 per housing unit	\$821 per room	\$4,115 per 1,000 Sq Ft	\$1,826 per 1,000 Sq Ft
Year		Housing Units	Lodging Rooms	KSF	KSF
Base	FY24-25	10,097	1,310	1,228	269
Year 1	FY25-26	10,260	1,384	1,248	273
Year 2	FY26-27	10,423	1,457	1,268	277
Year 3	FY27-28	10,591	1,531	1,289	282
Year 4	FY28-29	10,759	1,604	1,309	286
Year 5	FY29-30	10,933	1,678	1,330	291
Year 6	FY30-31	11,106	1,752	1,351	296
Year 7	FY31-32	11,285	1,825	1,373	300
Year 8	FY32-33	11,465	1,899	1,395	305
Year 9	FY33-34	11,648	1,972	1,417	310
Year 10	FY34-35	11,835	2,046	1,440	315
Ten-Yr Increase		1,738	736	212	46
Projected Revenue =>		\$1,427,000	\$604,000	\$872,000	\$84,000
				TOTAL ->	\$2,987,000

Administrative Charges

According to Florida's impact fee enabling legislation, a jurisdiction must limit administrative charges for the collection of impact fees to actual costs. Because impact fees will be updated every four years, administrative charges were allocated to the projected increase in service units over four years. Costs shown below are limited to the cost of impact fee studies.

Figure 11 - Actual Cost of Fee-Related Studies and Administration

<i>Input Variables for Administrative Charges</i>		
Impact Fee Administration by City Staff		\$0
Consultant Studies		\$80,000
Total Administrative Cost =>		\$80,000
Proportionate Share (Functional Population) =>	68%	32%
	Population	Jobs
Four-Year Increase in Service Units =>	1,838	229
	Cost per Person	Cost per Job
	\$29	\$111
<i>Residential Development</i>		
Category	Persons per Unit	Proposed Administrative Charge
999 or less Sq Ft of Living Space per Dwelling	1.17	\$33
1,000 to 1,999 Sq Ft of Living Space per Dwelling	1.77	\$51
2,000 to 2,999 Sq Ft of Living Space per Dwelling	2.13	\$61
3,000 to 3,999 Sq Ft of Living Space per Dwelling	2.38	\$69
4,000 or More Sq Ft of Living Space per Dwelling	2.57	\$74
Lodging (per room)	1.92	\$55
<i>Nonresidential Development (per 1,000 square feet of floor area)</i>		
Category	Jobs per 1,000 Sq Ft	Proposed Administrative Charge
Retail & Eating/Drinking Places	2.32	\$257
All Other Nonresidential	2.32	\$257

Appendix A: Demographics and Development Projections

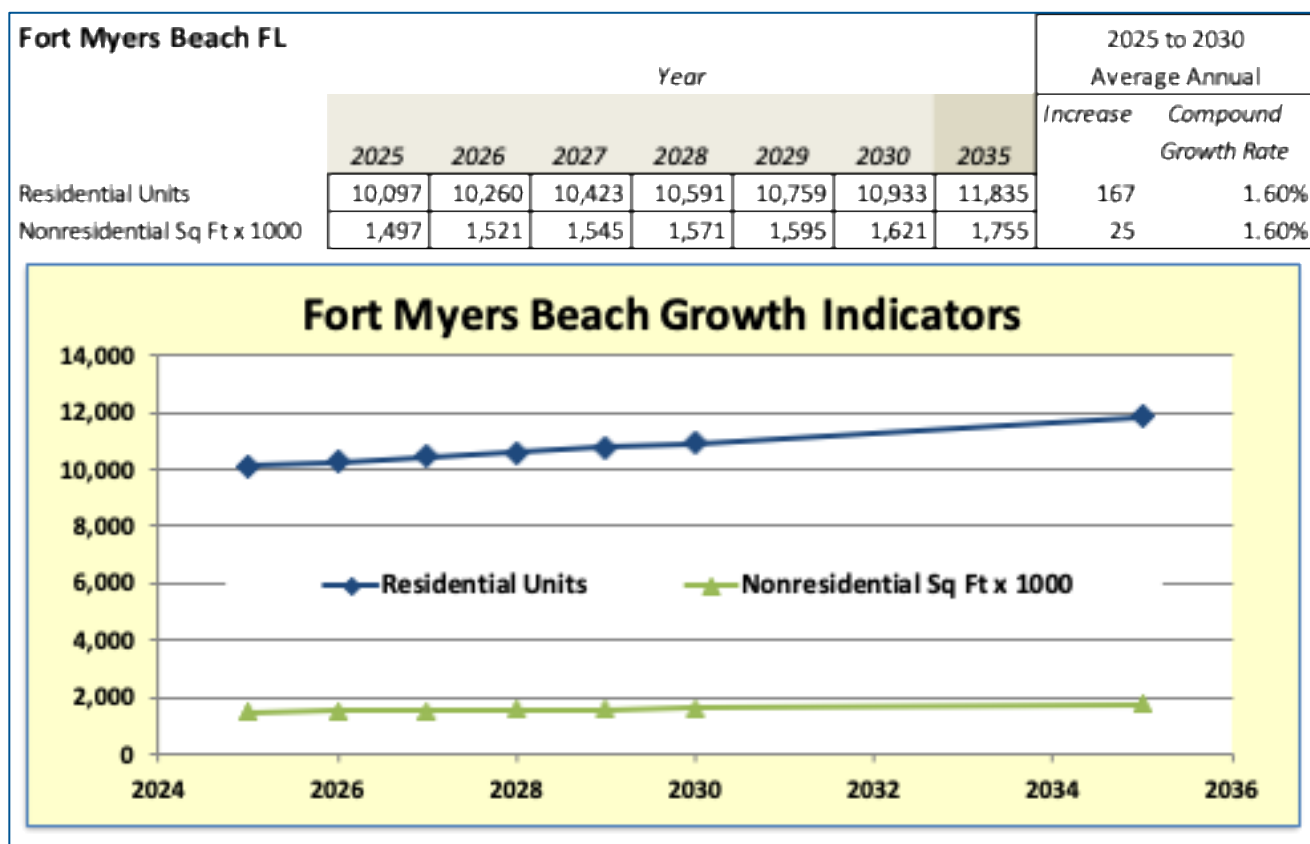
Appendix A contains the projected population, housing units, jobs, and nonresidential floor area data that provide the foundation for the Town of Fort Myers Beach impact fee update. To evaluate the demand for growth-related infrastructure by development type and size, the consultant team also prepared documentation on average number of persons by size of dwelling and jobs per thousand square feet of floor area (abbreviated as “KSF”).

Development impact fees are based on the need for growth-related improvements and must be proportionate by type of land use. Demographic data and development projections will be used to demonstrate proportionality and anticipate the need for future infrastructure. In contrast to the Town’s Comprehensive Plan, which has a long-range horizon (typically at least 20 years), impact fees require a quantitative analysis with a shorter focus. Impact fee studies typically look forward no more than ten years, with the expectation that fees will be periodically updated (e.g. every 4 years to comply with the Florida Impact Fee Act). Infrastructure standards were calibrated using fiscal year FY24-25 data, with FY25-26 being the first projection year. The Town’s fiscal year begins on October 1st.

Summary of Growth Indicators

Key development projections for the 2025 Fort Myers Beach impact fee study are housing units and nonresidential floor area (see Figure A1). Over the next five years, the impact fee update expects an average increase of 167 housing units per year. The compound growth rate of 1.6% per year is based on 2023 and 2035 population data for Lee County (University of Florida, BEBR Population Projections, November 2024).

For nonresidential development, Fort Myers Beach expects an average increase of 23,000 square feet of nonresidential floor area per year. These projections will be used to estimate impact fee revenue and to indicate the anticipated need for growth-related infrastructure. The goal is to have reasonable projections. Because impact fee methods are designed to reduce sensitivity to development projections in the determination of the proportionate-share fee amounts, if actual development is slower than projected, impact fee revenue will decline, but so will the need for growth-related infrastructure. In contrast, if development is faster than anticipated, the Town will receive an increase in impact fee revenue and will need to accelerate infrastructure improvements to keep pace with the actual rate of development.

Figure A1 - Projected Development Units and Growth Rates

Residential Development and Persons per Household

For detailed demographic data, the U.S. Census Bureau uses a continuous monthly mailing of surveys known as the American Community Survey (ACS), which is limited by sample-size constraints. For example, data on detached housing units are now combined with attached single units (commonly known as townhouses). Part of the rationale for imposing fees by size threshold, as discussed further below, is to address this ACS data limitation. Because townhouses and apartments generally have fewer bedrooms and less floor area than detached units, size thresholds make fees more proportionate and facilitates construction of affordable units.

According to the U.S. Census Bureau, a household is a housing unit that is occupied by year-round residents. Development fees often use per capita standards and persons per housing unit, or persons per household, to derive proportionate-share fee amounts. The consultant team recommends that impact fees for residential development in Fort Myers Beach be imposed according to the number of year-round residents per household. Figure A2 indicates that Fort Myers Beach averages 1.92 year-round residents per household.

Figure A2 - Persons per Household

2023 Estimates for Town of Fort Myers Beach

	Year-round Residents	Households	Residents per Household	Housing Units	Residents per Housing Unit	Vacancy Rate
All Units	5,527	2,872	1.92	9,773	0.57	71%
Group Quarters	21					
TOTAL	5,548					

Source: U.S. Census Bureau, 2019-2023 American Community Survey,
Tables B01003, B11002, B25011, B25001 and B26001.

Demand Indicators by Dwelling Size

Impact fees must be proportionate to the demand for infrastructure. Because the average number of persons per household has a strong, positive correlation to the number of bedrooms, the consultant team recommends residential impact fee schedules that increase by dwelling size. Custom tabulations of demographic data by bedroom range can be created from individual survey responses provided by the U.S. Census Bureau, in files known as Public Use Micro-Data Samples (PUMS). PUMS files are only available for areas of at least 100,000 persons. For the 2025 impact fee study, the consultant team used data from four coastal Public Use Micro-Data Areas (PUMA) extending from Fort Myers Beach to Naples. As shown in Figure A3, the consultant team derived average persons per household by bedroom range, from un-weighted PUMS data. The recommended multipliers by bedroom range (shown below) are for all types of housing units, adjusted to the control totals for the Town. As shown above, the U.S. Census Bureau indicates that the Town averages 1.92 persons per household.

Figure A3 - Average Number of Persons by Bedroom Range

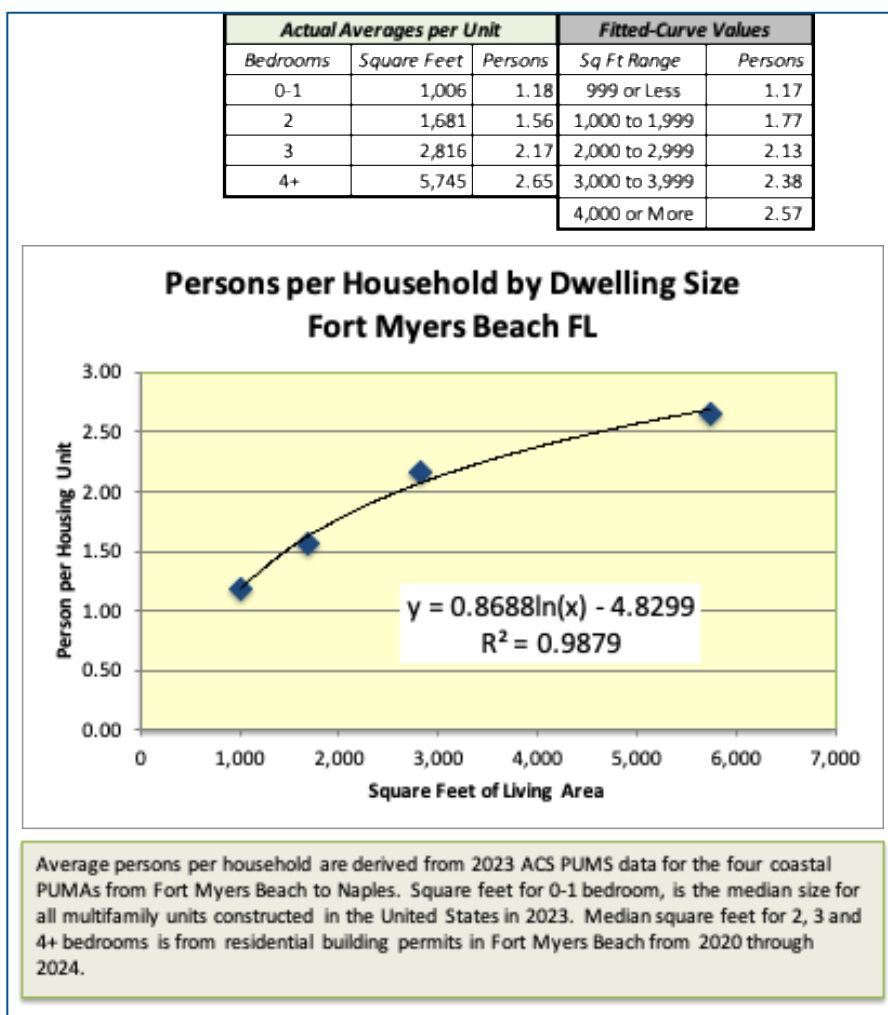
Bedrooms			Recommended Multipliers (2)	
	Residents (1)	Housing Units (1)	Residents per Household	Housing Mix
0-1	265	276	1.18	7.6%
2	1,788	1,413	1.56	39.1%
3	2,554	1,450	2.17	40.1%
4+	1,026	476	2.65	13.2%
Total	5,633	3,615	1.92	100.0%

(1) American Community Survey 2023, Public Use Microdata Sample (PUMS) includes four coastal PUMAs from Fort Myers Beach to Naples.

(2) Recommended persons per housing unit are scaled to make the average derived from PUMS survey data match the control total for Fort Myers Beach (i.e. 1.92 persons per household).

Impact fees based on size of dwelling are generally easier to administer when expressed in square feet of finished living space for all types of housing. Fees based on floor area rather than the number of bedrooms eliminates the need for criteria to make administrative decisions on whether a room qualifies as a bedroom. The consultant team recommends that impact fees for residential development be imposed based on finished square feet of living space, excluding garages, patios and porches that are not climate-controlled. Average floor area and number of persons by bedroom range are plotted in Figure A4, with a logarithmic trend line derived from averages for Fort Myers Beach. Using the trend line formula shown in the chart, the consultant team derived estimated average number of persons, by dwelling size, using five sizes thresholds. The consultant team recommends a minimum fee based on a unit size of 999 square feet or less, and a maximum impact fee for units 4,000 square feet or greater. According to the U.S. Census Bureau's 2023 Survey of Construction Microdata, the national median size multifamily housing unit with 0-1 bedrooms was 1,006 square feet. Based on building permits provided by the Town, residential units in Fort Myers Beach constructed from 2020 through 2024 had the median square feet by size range, as shown in Figure A4.

Figure A4 - Persons by Square Feet of Living Space



Nonresidential Development

In addition to data on residential development, the calculation of impact fees requires data on nonresidential development. The consultant team uses the term “jobs” to refer to employment by place of work. In Figure A5, gray shading indicates two nonresidential development prototypes used to derive vehicle miles of travel. Average weekday vehicle trip generation rates are from the Institute of Transportation Engineers (ITE 2022). The prototype for Retail & Eating/Drinking Places is an average-size shopping center. This category includes all businesses that sell merchandise, including eating/drinking places. For All Other Nonresidential, the development prototype is an average-size general office building. This category includes, but is not limited to, all business and personal services, like banks, medical offices, real estate offices, beauty salons, and spas.

Figure A5: Employee and Building Area Ratios

ITE Code	Land Use / Size	Demand Unit	Wkdy Trip Ends Per Dmd Unit*	Wkdy Trip Ends Per Employee*	Emp Per Dmd Unit	Sq Ft Per Emp
820	Shopping Center	1,000 Sq Ft	37.01	17.42	2.12	471
710	General Office	1,000 Sq Ft	10.84	3.33	3.26	307
610	Hospital	1,000 Sq Ft	10.77	3.77	2.86	350
310	Hotel	Room	7.99	14.34	0.56	1,795
150	Warehousing	1,000 Sq Ft	1.71	5.05	0.34	2,953
110	Light Industrial	1,000 Sq Ft	4.87	3.10	1.57	637

* *Trip Generation*, Institute of Transportation Engineers, 11th Edition (2022).

The calculation of impact fees requires data on nonresidential development, as discussed below. Consultant team uses the term “jobs” to refer to employment by place of work. Figure A6 indicates 2022 estimates of jobs and nonresidential floor area in Fort Myers Beach. Job estimates, by type of nonresidential development, are from the Work Area Profile, available through the U.S. Census Bureau’s online web application known as OnTheMap. The square feet of floor area by nonresidential type were estimated using square feet per employee multipliers derived from ITE data.

Figure A6 - Jobs and Floor Area Estimates

	2022 Jobs (1)		Sq Ft per Job	Square Feet of Floor Area (2)	Jobs per 1000 Sq Ft
Retail & Eating/Drinking Places (2)	2,489	75%	471	1,170,000	2.13
All Other Nonresidential (3)	834	25%	307	260,000	3.21
TOTAL	3,323	100%	430	1,430,000	2.32

(1) Work Area Profile, OnTheMap, U.S. Census Bureau.

(2) Major sectors are Retail Trade and Accommodation/Food Services.

(3) Major sectors are Real Estate/Rental/Leasing, Public Administration, and Other Services.

Detailed Land Use Assumptions

Development projections shown in Figure A7 and A8 are key inputs for the 2025 impact fee update. Peak population estimates are derived from Fort Myers Beach's 2023 population estimate published by the U.S. Census Bureau and a 1.6% annual compound growth rate. The latter is consistent with the Bureau of Economic and Business Research projected population increase for Lee County from 2023 to 2035. The consultant team converted population into housing units, using the latest Census Bureau estimate of 0.57 persons per housing unit. Housing units include occupied, vacant, and seasonal dwellings.

Figure A7 - Projected Population and Housing Units

Fort Myers Beach FL	<i>FY24-25</i>	<i>FY25-26</i>	<i>FY26-27</i>	<i>FY27-28</i>	<i>FY28-29</i>	<i>FY29-30</i>	<i>FY34-35</i>	<i>Compound</i>
FY begins October 1st	2025	2026	2027	2028	2029	2030	2035	<i>Annual</i>
Year =>	<i>Base</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>10</i>	<i>Growth Rate</i>
Peak Population								
Year-Round Residents	5,705	5,797	5,889	5,984	6,079	6,177	6,687	1.60%
Seasonal Visitors in Housing Units	13,721	13,942	14,164	14,392	14,620	14,857	16,083	
Seasonal Visitors in Lodging Rooms	2,515	2,657	2,798	2,939	3,080	3,222	3,928	
TOTAL	21,941	22,396	22,851	23,315	23,779	24,256	26,698	
Housing Units								
Total Housing Units	10,097	10,260	10,423	10,591	10,759	10,933	11,835	
Persons per Housing Unit	0.57	0.57	0.57	0.57	0.57	0.57	0.57	

Figure A8 indicates projected jobs and nonresidential floor area by type of development. Projected jobs were converted to nonresidential floor area using the current multipliers shown in Figure A6. Fort Myers Beach currently averages 430 square feet of nonresidential floor area per job. The constant ratio 0.35 jobs per housing unit, indicates that nonresidential development is expected to increase at the same pace as residential development over the next ten years.

Figure A8 - Projected Jobs and Non-residential Floor Area

Fort Myers Beach FL	<i>FY24-25</i>	<i>FY25-26</i>	<i>FY26-27</i>	<i>FY27-28</i>	<i>FY28-29</i>	<i>FY29-30</i>	<i>FY34-35</i>
FY begins October 1st	2025	2026	2027	2028	2029	2030	2035
Year =>	Base	1	2	3	4	5	10
Jobs in Fort Myers Beach							
Retail & Eating/Drinking Places	2,610	2,652	2,694	2,738	2,782	2,826	3,060
All Other Nonresidential	875	889	903	917	932	947	1,025
Total Jobs	3,485	3,541	3,597	3,655	3,714	3,773	4,085
Jobs to Housing Ratio	0.35	0.35	0.35	0.35	0.35	0.35	0.35
Nonresidential Floor Area (square feet in thousands)							
Retail & Eating/Drinking Places	1,228	1,248	1,268	1,289	1,309	1,330	1,440
All Other Nonresidential	269	273	277	282	286	291	315
Total KSF	1,497	1,521	1,545	1,571	1,595	1,621	1,755
Avg Sq Ft Per Job	430	430	430	430	429	430	430
Avg Jobs per KSF	2.32	2.32	2.32	2.32	2.32	2.32	2.32

Appendix B: Implementation and Administration

The service area for Town impact fees is the entire incorporated area of Fort Myers Beach. According to the Florida Impact Fee Act, a municipality may provide an exception or waiver of impact fees for construction of housing that is affordable. If a municipality provides such an exception or waiver, it is not required to use any other revenue source to offset the impact.

Impact fees for dwelling units will be imposed according to size thresholds. For a building with more than one residential unit, Town staff will determine the average size threshold for the entire building by dividing total climate-controlled floor area by the total number of dwellings in the building.

Nonresidential development categories represent general groups of land uses that share similar vehicle trip generation rates. An applicant may submit an independent study to document unique demand indicators for a particular development. The independent study must be prepared by a professional engineer or certified planner and use the same type of input variables as those in the impact fee study. The independent fee study will be reviewed by Town staff and can be accepted as the basis for a unique fee calculation. If staff determines the independent fee study is not reasonable, the applicant may appeal the administrative decision to elected officials for their consideration.

Credits and Reimbursements

New development should not be required to pay twice for the cost of new facilities (i.e., once through development fees and again through other taxes or fees that are used to fund the growth cost of facilities). To avoid potential double-payment, development fees may be reduced, and such a reduction is referred to as an offset or revenue credit that is incorporated into the development fee calculation. In general, offsets are only required for funding that is dedicated for capacity-expanding improvements of the type addressed by the development fee. A municipality is not required to use general fund revenue to pay for growth-related improvements.

Specific policies and procedures related to site-specific credits or developer reimbursements should be addressed in the ordinance that establishes the impact fee schedule. Project-level improvements, normally required as part of the development approval process, are not eligible for credits against impact fees. If a developer constructs a system improvement, it will be necessary to either reimburse the developer or provide a site-specific credit. The latter option is more difficult to administer because it creates unique fees for specific geographic areas. The consultant team recommends establishing a reimbursement agreement with a developer that construct a system improvement. The reimbursement agreement should be limited to a payback period of no more than ten years. The Town should not pay interest on the outstanding balance. The developer must provide sufficient documentation of the actual cost incurred for the system improvement. The Town should only agree to pay the lesser of the actual construction cost or the estimated cost used in the impact fee analysis. If the Town pays more than the cost used in the fee analysis, there will be insufficient impact fee revenue. Reimbursement agreements should only obligate the Town to reimburse developers annually according to actual fee collections from the service area. If the Town collects impact fees for other types of infrastructure, site specific credits or developer reimbursements for one type of system improvement does not negate payment of impact fees for other types of infrastructure.



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: Ord 25-24 Impact Fee Study and LDC Text Amendment

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA ADOPTING AN IMPACT FEE STUDY DATED AUGUST 25, 2025 AND PREPARED BY AXIS INFRASTRUCTURE AND DP GUTHRIE LLC; AMENDING ARTICLE IV ENTITLED "IMPACT FEES" IN CHAPTER 2 ENTITLED ADMINISTRATION OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) INCORPORATE UPDATED INFORMATION CONTAINED IN THE REFERENCED IMPACT FEE STUDY, 2) REDUCE THE NUMBER OF IMPACT FEE CATEGORIES AND SPECIFIC USES, 3) CHANGE THE METHOD OF CALCULATION OF FEES FOR SINGLE FAMILY HOMES FROM PER DWELLING TO SQUARE FOOTAGE RANGE TO REFLECT THE TYPICAL IMPACT OF LARGER HOMES, 4) REDUCE THE AMOUNT OF FEES BASED ON UPDATED POPULATION AND PROJECT EXPECTATIONS, AND 5) PROVIDING FOR AN UPDATE EVERY FOUR (4) YEARS PAYABLE FROM COLLECTED IMPACT FEES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state 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.

- ☒ X 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;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - 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 adopt the Town's updated Impact Fee Study and amend Article IV Impact Fees of the Town's Land Development Code to provide updates from the study for the application of and collection of fees related to growth.

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.

The proposed changes to the Impact Fee schedule includes reduction in fees for multiple categories and leaves the estimated administrative fee at the same rate as allowed by the current Impact Fee schedule.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

Dozens of properties will be impacted if they decide to rebuild larger structures and change uses to those that have a higher Impact Fee rate. Those properties will be given credit for what was previously on the property if they develop within the adopted exemption period.

4. Additional information the governing body deems useful (if any):

N/A

1. **Request:**

Meeting Date: October 20, 2025

What's Up FMB, Inc is asking for approval for Lanterns of the Island procession (Illumination Parade) to be held on November 15, 2025

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Thomas Yozzo, Emergency
Services Director

5. **Background:**

What's up FMB Inc is asking for approval for the Lanterns of the Island procession (Illumination Parade) to be held on November 15, 2025. The lanterns are on poles with battery-operated lights. This event will start off from Bayside Park and ending at a designated location on Avenue A. This event will have Lee County Sheriff's Office and the Town working during the event.

Start time: 6 pm

End time 7 pm

Attachments:

1. 28129168-Paper lantern

Financial Impact:

2 Rangers for 2 hours assisting traffic / pedestrian safety. \$40.15@4hrs / \$160.60

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
Traci Kohler, Deputy Town Manager
nancy stuparich, Town Attorney
Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/10/2025
Approved - 10/10/2025
Approved - 10/10/2025
Approved - 10/13/2025
Approved - 10/14/2025
Approved - 10/14/2025
Final Approval - 10/15/2025



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

- ☒ *dm* 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.
- ☒ *dm* All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.
- ☒ *dm* 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.
- ☒ *dm* Detailed description of entire event including set up and breakdown
- ☒ Letters of permission if using someone else's property for event.
- ☒ *dm* Site plan – marked off with placement of objects (chairs, tables, tents, etc.)
- ☒ *dm* Parking Plan – if applicable
- ☒ *dm* Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder
- ☒ *dm* 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.

Dawn Miller



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931

Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

Name of event Lanterns of the Island Procession
Attach separate sheet of paper with detailed description of event

Date(s) and times of event Nov 15, 2025 Dusk (6-7pm)

Address of event See Attached

Expected # of participants/attendees 250

Sponsoring Organization What's Up FMB, Inc

Organization address 3043 Estero Blvd FMB

Contact Person/Phone# 614 578 2588

E-mail dawnmiller@thewholefmb.com

Amplified Music Y ☐ N ☒ 500 Ft Notifications _____ Copy of Letter _____

Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒

How many Spaces? _____ How many hours _____

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 Dawn Miller

Printed Name Dawn Miller

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.

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 DEPT

15650 Pine Ridge Road, Fort Myers, FL 33908

Tel (239)477-1830

Fax (239)432-0268

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: 8/27/25	Date of Event: Nov 15, 2025	
Location: see attached		
Event Start Date/Time: 11-15-25	Event End Date/Time: 11-15-25	
Setup Date: 11-15-25	Setup Time: 5pm	Inspection Time:
Event Sponsor: What's Up FMB		
Sponsor Contact: Dawn Miller	Sponsor Phone #: 645782588	Sponsor Email: dawnmiller@thehale.com
Anticipated Number of Attendees: 250	Anticipated Number of Event Workers: 10 smb.com	
Will there be carnival or mechanical rides: No	Number of Stages: NA	
Total Number of Vendors: NA	Total Number of Hot Food Vendors: NA	
Number of Tents larger than 20 x 20: 0	Number of 10 x 10 Tents: 0	

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).

Submitting Party Name (Print): Dawn Miller	Submitting Party Name (Sign): Dawn Miller
Date: 8/27/25	

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.

Lanterns of the Island Procession – Route Options (Permit Attachment)

Overview: Community lantern procession beginning at dusk (approx. 60 minutes). **Start:** Bayside Park. **End:** The Whale (via Palermo Circle).

Option	Route Description	Pros	Cons
Option 1: Fifth Street Route	Start at Bayside Park → Left on Fifth Street → Right on San Carlos Boulevard → Left on Palermo Circle → End at The Whale	Direct and simple, easy for participants to follow, strong visibility on San Carlos.	San Carlos is a busy corridor — will require heavier traffic control.
Option 2: Crescent Street Loop	Start at Bayside Park → Left on Third Street → Right on Crescent Street → Left on Estero Boulevard → Left on Palermo Circle → End at The Whale	Showcases more of the rebuilt downtown (Estero), strong community exposure, wider spaces.	Slightly longer route, multiple turns may slow procession, Estero closure coordination needed.
Option 3: Beach Walk Route	Start at Bayside Park → Walk through Times Square to the beach → Left on beachfront to 1240 Estero Blvd. → Cross over to Palermo Circle → End at The Whale	Most magical/unique route (lanterns glowing on the sand), minimal car traffic, high visual appeal for photos/press.	Dependent on tides/weather, beach permitting required, accessibility concerns for strollers/wheelchairs.

Detailed Route Descriptions

Option 1: Fifth Street Route

- **Route:** Start at Bayside Park → Left on Fifth Street → Right on San Carlos Boulevard → Left on Palermo Circle → End at The Whale
- **Pros:** Direct and simple, easy for participants to follow, strong visibility on San Carlos.
- **Cons:** San Carlos is a busy corridor — will require heavier traffic control.

Option 2: Crescent Street Loop

- **Route:** Start at Bayside Park → Left on Third Street → Right on Crescent Street → Left on Estero Boulevard → Left on Palermo Circle → End at The Whale
- **Pros:** Showcases more of the rebuilt downtown (Estero), strong community exposure, wider spaces.
- **Cons:** Slightly longer route, multiple turns may slow procession, Estero closure coordination needed.

Option 3: Beach Walk Route

- **Route:** Start at Bayside Park → Walk through Times Square to the beach → Left on beachfront to 1240 Estero Blvd. → Cross over to Palermo Circle → End at The Whale
- **Pros:** Most magical/unique route (lanterns glowing on the sand), minimal car traffic, high visual appeal for photos/press.
- **Cons:** Dependent on tides/weather, beach permitting required, accessibility concerns for strollers/wheelchairs.

Notes for Town Review

- Estimated total participants: 30-40
- Requested escort/support: Police escort; temporary street closures as listed per option; on-street barricades; beach access (Option 3).
- ADA accommodations: Strollers/wheelchairs encouraged on Options 1 and 2; Option 3 (beach) may require an alternate hard-surface path.
- Cleanup & staffing: Volunteer marshals every 1-2 blocks; lantern safety monitors; post-event cleanup crew.
- Event timing: Procession begins at dusk and completes within ~60 minutes.

1. **Request:**

Meeting Date: October 20, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, PROVIDING DIRECTION TO THE TOWN OF FORT MYERS BEACH CHARTER REVIEW COMMISSION REGARDING THE ROLE OF ALTERNATES TO THE COMMISSION WHO WERE APPOINTED BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

At the first meeting of the newly created Town of Fort Myers Beach Charter Review Commission, there was discussion regarding the role of the appointed alternates. This resolution is intended to respond to several of the questions that were raised as Council Member Safford can further explain.

Attachments:

1. NS 25-300, Charter Review Commission Alternates

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 - 10/10/2025
Approved - 10/13/2025
Approved - 10/14/2025
Approved - 10/14/2025
Approved - 10/15/2025
Final Approval - 10/15/2025

RESOLUTION NUMBER 25-300

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, PROVIDING DIRECTION TO THE TOWN OF FORT MYERS BEACH CHARTER REVIEW COMMISSION REGARDING THE ROLE OF ALTERNATES TO THE COMMISSION WHO WERE APPOINTED BY THE TOWN COUNCIL; 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, Section 13.03 of the Town Charter states that “[a] five-member charter review commission shall be appointed and funded by the council. The charter review commission shall be appointed at least 6 months before the next scheduled election and complete its work and present any recommendations to the Council for change no later than 60 days before the election. The council shall hold a minimum of two public hearings to approve, reject or modify the proposed changes to the charter prior to placing the proposed changes on the scheduled election ballot”; and

WHEREAS, during the June 2, 2025 Town Council meeting, the Town Council appointed five individuals to serve on the Town’s Charter Review Commission (“CRC”) and two additional individuals to serve as alternates; and

WHEREAS, the appointment of the two individuals to serve as alternates is not in conflict with or prohibited by the Town Charter or in its Code of Ordinances; and

WHEREAS, during its first public meeting the CRC requested direction from the Town Council regarding the role of the appointed alternates; and

WHEREAS, adoption of this Resolution is in the best interest of the Town and its residents.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. The Town Council directs that the role of the alternate appointed members of the CRC serve as follows:

- a. Alternates shall attend all meetings of the CRC and participate as non-voting members of the CRC.
- b. In the event of an absence of an appointed CRC member, an alternate in attendance shall become a voting member of the CRC. The two alternates shall alphabetically rotate in filling occasional absences of appointed CRC members if both are present at the meeting.
- c. Alternates shall be subject to compliance with the Sunshine and Public Records laws throughout the duration of their appointment as required by all appointed members of the CRC.

Section 3. 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.

1. **Request:**

Meeting Date: October 20, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #1 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2025-26 FISCAL YEAR EFFECTIVE OCTOBER 1, 2025; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Agreements over the procurement threshold for administrative approval require Town Council approval.

What the action accomplishes:

Provides Technical Support, GIS, Special Project Management for FY 25/26.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Community
Development Director

5. **Background:**

The following services will be provided by Axis Infrastructure for fiscal year 2025/2026:

1. Planning and Zoning staff, permit review, and technical analysis as required by the Comprehensive Plan and Land Development Code.
2. Coordination with Town departments and staff, advisory boards, and public hearings.
3. Coordinate special projects, manage Comprehensive Plan and LDC rewrite, manage GIS resource and other assets.
4. Coordinate with Town Management and Town Council and serve at their direction.
5. Transportation reviews and coordination when appropriate.

Attachments:

1. 25-301, Axis Infrastructure STA1 FY25-26 Services
2. STA 1 2025-2026 Axis Infrastructure FY26 Planning Services

Financial Impact:

Not to exceed \$280,000.00

6. **Alternative Action**

Do not approve the agreement.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Created/Initiated - 10/14/2025

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

Approved - 10/14/2025
Approved - 10/14/2025
Approved - 10/14/2025
Approved - 10/15/2025
Final Approval - 10/15/2025

RESOLUTION NO. 25-301

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #1 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2025-26 FISCAL YEAR EFFECTIVE OCTOBER 1, 2025; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR 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 ("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 executed a professional services agreement under RFQ-24-06-AD with Axis Infrastructure, LLC ("Contractor"), whereby Contractor will provide the Town with professional services to assist with ongoing miscellaneous professionals services within the categories of work included within the agreement; and

WHEREAS, the Town is in need of services under the professional services agreement for the current fiscal year, including technical support, GIS, and special project management; and

WHEREAS, approval of this Supplemental Task Authorization #1 is in the best interest of the residents of Fort Myers Beach as it will provide for the uninterrupted delivery of service.

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

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 the Supplemental Task Authorization between the Town and Contractor for the provision of professional services for the current fiscal year as attached and incorporated herein as Exhibit "A" is approved.

Section 3. That the Town Manager is authorized to execute the Supplemental Task Authorization and to expend budgeted funds on behalf of the Town as needed.

Section 4. That if any section, sentence, clause or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. That 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 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 20th 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.

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**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

 X Supplemental Task Authorization

NO.: STA # 1

CONTRACT/PROJECT NAME: Technical Support, GIS, and Special Project Management for FY25/26

CONSULTANT: Axis Infrastructure

PROJECT NO.: _____

SOLICIT NO.: RFQ-24-06-AD

CONTRACT NO.: _____

REQUESTED BY: Frankie Kropacek DATE OF REQUEST: October 10, 2025

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: October 10, 2025

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: October 10, 2025

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: October 10, 2025

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: October 10, 2025

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____

Department Director

Date

By: _____

Contracts Manager

Date

ACCEPTED: Axis Infrastructure

By: _____

Consultant/Provider

Date

TOWN APPROVAL:

By: _____

Town Manager

Date

By: _____

Town Attorney

Date

Date to Proceed: _____

Cost of STA: N.T.E. \$ 280,000.00

Date: October 10, 2025

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Technical Support, GIS, Special Project Management for FY 25/26

Overview

STA NO. 16: Technical Support, GIS, Special Project Management for FY 25/26

The following services will be provided by Axis Infrastructure for fiscal year 2025/2026:

1. Planning and Zoning staff, permit review, and technical analysis as required by the Comprehensive Plan and Land Development Code.
2. Coordination with Town departments and staff, advisory boards, and public hearings.
3. Coordinate special projects, manage Comprehensive Plan and LDC rewrite, manage GIS resource and other assets.
4. Coordinate with Town Management and Town Council and serve at their direction.
5. Transportation reviews and coordination when appropriate.

Hourly Breakdown:

Planner @ \$110/ hour
Senior Planner @ \$130/hour
Principal Planner @ \$150/hour
Senior GIS Analysis @ 185/hour

Total Cost (of Job): N.T.E. \$280,000.00

COMPENSATION AND METHOD OF PAYMENT FOR
Technical Support, GIS, Special Project Management for FY 25/26

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Technical Support Community Development		NTE	WIPP
TOTAL (Unless list is continued on next page)		\$280,000.00	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated September 27, 2025, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto September 27, 2025, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: October 10, 2025

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR
Technical Support, GIS, Special Project Management for FY 25/26

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Principal Planner	65.00	2.3	\$150
Senior Planner / Manager	\$56.52	2.3	\$130
Planner	\$37.93	2.97	\$110
GIS Analyst	61.66	3.0	\$185
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: October 10, 2025

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
Technical Support, GIS, Special Project Management for FY 25/26

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Standard Rate Schedule As Included with Proposal	
Travel to requested meetings	As outlined in Proposal
Items as directed by the Town, backup provided.	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

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

EXHIBIT C

Date: October 10, 2025

TIME AND SCHEDULE OF PERFORMANCE FOR

JOB NAME – Fiscal 2023 Technical Support, GIS, and Special Project Management

This EXHIBIT “C” establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT “A”	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1-5	Technical Support, GIS, Special Project Management for FY 24/25	FY 2026	FY 2026

EXHIBIT DDate: October 10, 2025

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

Technical Support, GIS, Special Project Management for FY 25/26

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Planning /Transportation	Planning Analytics LLC					
GIS/Planning	Exp					

1. **Request:**

Meeting Date: October 20, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #14 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR ADDITIONAL CONSTRUCTION PHASE SERVICES, RE-SURVEYS, AND SHOREBIRD MONITORING ASSOCIATED WITH THE ESTERO ISLAND SHORELINE PROTECTION PROJECT, AND PERMIT REQUIRED POST CONSTRUCTION WINTER BIRD MONITORING, FUNDING SUPPORT, STAKEHOLDER COORDINATION, AND PROJECT ADMINISTRATION SERVICES FOR A COST OF \$161,720.00; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Town's CONTRACTOR took as additional 192 days to substantially complete the Estero Island Beach Nourishment and Hurricane Recovery Project The CONSULTANT provided continued construction phase services beyond the original contract time.

The scope also includes the FDEP and USACE permit required winter bird monitoring, funding support, stakeholder coordination, and project administration services.

What the action accomplishes:

TASK 1 ADDITIONAL CONSTRUCTION MANAGEMENT

Attend construction progress meetings with the Town and Contractor as requested by the Town covering work progress and schedule, conformance to plans and specifications, and other relevant issues that need to be addressed. Record and distribute the minutes of each meeting. Assist the Town and Contractor perform the routine reporting to the Florida Department of Environmental Protection (FDEP) in accordance with the Permits.

Review invoices for payment submitted by the Contractor along with daily records of the Town, Contractor and CEC, and surveys provided by the Contractor and performed by CEC. Determine the amounts of progress payments due based on completion of work. Upon completion of review, submit recommendations to Town for payment of invoices to the Contractor.

Assist the Town in preparing and evaluating required field changes, change orders, or contract modifications requested by the Contractor and submit them to the Town for approval. Provide the Contractor with instructions issued by the Town in addition to providing any necessary interpretations or clarifications of the contract documents requested by the Contractor. Make determinations on non-conforming and unauthorized work as authorized in the contract documents.

TASK 2 ADDITIONAL CONSTRUCTION OBSERVATIONS

Provide on-site inspection by a competent and qualified technical representative including the following. Provide on-site determinations of compliance with the Permits, Construction Plans and Technical Specifications, determination of work completed, keeping detailed records of quantities of materials, maintaining weather and working day reports, listing equipment on site, and reporting Contractor's performance and daily activities.

Perform some or all of the following specific activities during their observation period:

- Project Layout: Monitor the Contractor's layout of the Project to assure its compliance with the Construction Plans and Technical Specifications.
- Site Access and Environmental Impacts: Monitor that the Contractor accesses the site through approved routes and conducts their work in accordance with the environmental protection measures as defined in the Permits, Construction Plans, and Technical Specifications. Document and report to the Town any non-compliance with these measures as soon as practicable after observing same.

- Construction Progress: Monitor the progress of construction performed by the Contractor and any sub-contractors for conformance to the Construction Plans and Technical Specifications and any field or change orders issued by the Town. The Owner's Representative shall monitor the outfall of the hydraulic dredging activities and fill placement on the schedule and method defined in the Permits and FDEP approved Sediment Quality Assurance / Quality Control Plan (QA/QC) to verify that the fill material is excavated and placed in accordance with the Permits. Complete and submit inspection reports to the Town for review including the Contractor's daily activity, significant events, amount of work performed including quantities of material placed, equipment on site, weather conditions, and any other pertinent information.

- Dredge Quality Management: Review the Contractor's daily dredge reports to verify compliance with the Project Technical Specifications and QA/QC Plan.

- Observation of Surveys: Observe the surveys conducted by the Contractor's surveyor to verify that methods, instrumentation, benchmarks, and records are done in accordance with the Project Technical Specifications.

- Sediment Placement: Conduct sediment sampling and analyses during construction and post-construction in accordance with the FDEP approved QA/QC Plan.

- Monitors: Coordinate with the Contractor's biological monitors for shorebird protection and the Town's sea turtle monitors.

- Compaction Testing: Conduct compaction testing to verify the Contractor's tilling was completed in accordance with the Permits.

TASK 3 ADDITIONAL PAY SURVEYS

Conduct post-construction beach profile surveys of two acceptance sections that has to be repeated due to Town's CONTRACTOR not achieving 90% fill requirements. Compute the pay volumes.

TASK 4 2025 SHOREBIRD MONITORING

Retain agency approved Shorebird Consultants to conduct the Permit required monitoring and reporting for the 2024 shorebird nesting season and assisting with establishing Permit required signage and marking. Provide technical support services for the Town through the Shorebird Consultants' implementation of the monitoring, reporting, and signage. Prepare graphics showing nesting locations and similar information derived from Shorebird Consultants daily reports. Prepare and submit construction monitoring report to the agencies.

TASK 5 WINTERING BIRD MONITORING

Retain agency approved Shorebird Consultants to conduct the Permit required post-construction wintering bird monitoring and reporting in accordance with the Project Permits from completion of construction to May 15, 2026. Surveys shall be conducted three times per 30-day period. Prepare and submit first year post-construction wintering bird monitoring report to the agencies.

TASK 6 FUNDING, ADMINISTRATION, AND STAKEHOLDERS

Prepare Resolution for Town Council to approve agreeing to provide the local cost-share and affirming their support for Project and the FY2026-2027 Funding Request. Assist the Town prepare and submit the FY2026-2027 Funding Application to the State for inclusion in the Beach Management Funding Assistance Program. Respond to one DEP Request for Additional Information per Funding Request.

Throughout the progress of work under the above sub-tasks, manage and coordinate the Project team's internal efforts and maintain informal contact with the Town staff. "Informal contact" includes meeting with the Town's Project Manager routinely, necessary telephone contact, emails, and similar activities. Prepare written monthly progress reports. Prepare Project schedule and update it as tasks and milestones are met.

Attend and present at two(2) meetings such as Town Council, Town Committees, and Tourist Development Council. Provide technical support services for the Town specific to stakeholder coordination. Prepare for and participate in the meetings. Prepare a written summary of the meetings.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

The Town's CONTRACTOR took as additional 192 days to substantially complete the Estero Island Beach Nourishment and Hurricane Recovery Project The CONSULTANT provided continued construction phase services beyond the original contract time including construction management, construction observations, re-surveys, and shorebird monitoring. The scope also includes the permit required winter bird monitoring, funding support, stakeholder coordination, and project administration services.

Attachments:

1. NS 25-302 CEC STA 14 Additional Const Phase Services
2. 25504 STA 14 EI Additional Const Phase Services 20250902
3. ITB-24-003 Contract Page 3 - Liquidated Damages

Financial Impact:

Tasks 1,2,3, and 4 are actual damages that will be assessed to Ahtna per contract ITB-24-03-EN.

Task 5 is 42% reimbursable by FDEP Grant Agreement 23LE1, 43% reimbursable by the TDC Beach Trust Fund ILA, and 15% paid for by the Town.

Task 6 is the responsibility of the Town to pay.

Task Number	Task Title	Amount of Compensation
Task 1	Additional Construction Management	\$38,290
Task 2	Additional Construction Observations	\$65,160
Task 3	Additional Pay Surveys	\$5,600
Task 4	Shorebird Monitoring	\$39,540
Task 5	Wintering Bird Monitoring	\$8,070
Task 6	Funding, Administration, and Stakeholders	\$5,060

6. **Alternative Action**

Do not approve STA No. 14 of Contract RFQ-21-09-EN.

7. **Management Recommendations:**

Approve STA No. 14 of RFQ-21-009.

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 - 10/7/2025
Approved - 10/7/2025
Approved - 10/7/2025
Approved - 10/13/2025
Approved - 10/14/2025
Final Approval - 10/15/2025

RESOLUTION NUMBER 25-302

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #14 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR ADDITIONAL CONSTRUCTION PHASE SERVICES, RE-SURVEYS, AND SHOREBIRD MONITORING ASSOCIATED WITH THE ESTERO ISLAND SHORELINE PROTECTION PROJECT, AND PERMIT REQUIRED POST CONSTRUCTION WINTER BIRD MONITORING, FUNDING SUPPORT, STAKEHOLDER COORDINATION, AND PROJECT ADMINISTRATION SERVICES FOR A COST OF \$161,720.00; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town's Contractor Ahtna Marine & Construction Company took an additional 192 days to substantially complete the Estero Island Beach Nourishment and Hurricane Recovery Project, and

WHEREAS, the Town's Consultant Coastal Engineering Consultants were required to provide continued construction phase services beyond the original contract time including construction management, construction observations, re-surveys, and shorebird monitoring, and

WHEREAS, permits from the Florida Department of Environmental Protection and the United States Army Corps of Engineers require winter bird monitoring, funding support, stakeholder coordination and project administration services, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Supplemental Task Order #14 of Contract # RFQ-21-09-EN.

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

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

Section 2. The Town Council hereby approves Supplemental Task Order #14 of Contract # RFQ-21-09-EN between the Town and Coastal Engineering Consultants, Inc., for \$161,720.00. A copy of the Supplemental Task Order #14 of Contract # RFQ-21-09-EN is attached hereto as Attachment "A".

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

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

ADOPTED this ____ day of 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 _____, 2025.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 14

CONTRACT/PROJECT NAME: Estero Island Beach Nourishment Project

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: Estero Island Beach Renourishment

CONTRACT NO.: RFQ-21-09-EN

REQUESTED BY: Chadd Chustz, Environmental Project Manager DATE OF REQUEST: August 22, 2025

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: September 2, 2025

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: September 2, 2025

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: September 2, 2025

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: September 2, 2025

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By: Michael C. Hoff
Consultant/Provider

September 2, 2025
Date

TOWN APPROVAL:

By: _____
Town Manager Date

SCOPE OF PROFESSIONAL SERVICES

ESTERO ISLAND BEACH NOURISHMENT PROJECT: CONSTRUCTION PHASE SERVICES

The Town's CONTRACTOR took as additional 192 days to substantially complete the Estero Island Beach Nourishment and Hurricane Recovery Project. The CONSULTANT provided continued construction phase services beyond the original contract time including construction management, construction observations, re-surveys, and shorebird monitoring. The scope also includes the permit required winter bird monitoring, funding support, stakeholder coordination, and project administration services.

TASK 1 ADDITIONAL CONSTRUCTION MANAGEMENT

Attend construction progress meetings with the Town and Contractor as requested by the Town covering work progress and schedule, conformance to plans and specifications, and other relevant issues that need to be addressed. Record and distribute the minutes of each meeting. Assist the Town and Contractor perform the routine reporting to the Florida Department of Environmental Protection (FDEP) in accordance with the Permits.

Review invoices for payment submitted by the Contractor along with daily records of the Town, Contractor and CEC, and surveys provided by the Contractor and performed by CEC. Determine the amounts of progress payments due based on completion of work. Upon completion of review, submit recommendations to Town for payment of invoices to the Contractor.

Assist the Town in preparing and evaluating required field changes, change orders, or contract modifications requested by the Contractor and submit them to the Town for approval. Provide the Contractor with instructions issued by the Town in addition to providing any necessary interpretations or clarifications of the contract documents requested by the Contractor. Make determinations on non-conforming and unauthorized work as authorized in the contract documents.

TASK 2 ADDITIONAL CONSTRUCTION OBSERVATIONS

Provide on-site inspection by a competent and qualified technical representative including the following. Provide on-site determinations of compliance with the Permits, Construction Plans and Technical Specifications, determination of work completed, keeping detailed records of quantities of materials, maintaining weather and working day reports, listing equipment on site, and reporting Contractor's performance and daily activities.

Perform some or all of the following specific activities during their observation period:

- **Project Layout:** Monitor the Contractor's layout of the Project to assure its compliance with the Construction Plans and Technical Specifications.
- **Site Access and Environmental Impacts:** Monitor that the Contractor accesses the site through approved routes and conducts their work in accordance with the environmental protection measures as defined in the Permits, Construction Plans, and Technical Specifications. Document and report to the Town any non-compliance with these measures as soon as practicable after observing same.
- **Construction Progress:** Monitor the progress of construction performed by the Contractor and any sub-contractors for conformance to the Construction Plans and Technical Specifications and any field or change orders issued by the Town. The Owner's Representative shall monitor the outfall of the hydraulic dredging activities and fill placement on the schedule and method defined in the Permits and FDEP approved Sediment Quality Assurance / Quality Control Plan (QA/QC) to verify that the fill material is excavated and placed in accordance with the Permits. Complete and submit inspection reports to the Town for review including the Contractor's daily activity, significant events, amount of

work performed including quantities of material placed, equipment on site, weather conditions, and any other pertinent information.

- **Dredge Quality Management:** Review the Contractor's daily dredge reports to verify compliance with the Project Technical Specifications and QA/QC Plan.
- **Observation of Surveys:** Observe the surveys conducted by the Contractor's surveyor to verify that methods, instrumentation, benchmarks, and records are done in accordance with the Project Technical Specifications.
- **Sediment Placement:** Conduct sediment sampling and analyses during construction and post-construction in accordance with the FDEP approved QA/QC Plan.
- **Monitors:** Coordinate with the Contractor's biological monitors for shorebird protection and the Town's sea turtle monitors.
- **Compaction Testing:** Conduct compaction testing to verify the Contractor's tilling was completed in accordance with the Permits.

TASK 3 ADDITIONAL PAY SURVEYS

Conduct post-construction beach profile surveys of two acceptance sections that has to be repeated due to Town's CONTRACTOR not achieving 90% fill requirements. Compute the pay volumes.

TASK 4 2025 SHOREBIRD MONITORING

Retain agency approved Shorebird Consultants to conduct the Permit required monitoring and reporting for the 2024 shorebird nesting season and assisting with establishing Permit required signage and marking. Provide technical support services for the Town through the Shorebird Consultants' implementation of the monitoring, reporting, and signage. Prepare graphics showing nesting locations and similar information derived from Shorebird Consultants daily reports. Prepare and submit construction monitoring report to the agencies.

TASK 5 WINTERING BIRD MONITORING

Retain agency approved Shorebird Consultants to conduct the Permit required post-construction wintering bird monitoring and reporting in accordance with the Project Permits from completion of construction to May 15, 2026. Surveys shall be conducted three times per 30-day period. Prepare and submit first year post-construction wintering bird monitoring report to the agencies.

TASK 6 FUNDING, ADMINISTRATION, AND STAKEHOLDERS

Prepare Resolution for Town Council to approve agreeing to provide the local cost-share and affirming their support for Project and the FY2026-2027 Funding Request. Assist the Town prepare and submit the FY2026-2027 Funding Application to the State for inclusion in the Beach Management Funding Assistance Program. Respond to one DEP Request for Additional Information per Funding Request.

Throughout the progress of work under the above sub-tasks, manage and coordinate the Project team's internal efforts and maintain informal contact with the Town staff. "Informal contact" includes meeting with the Town's Project Manager routinely, necessary telephone contact, emails, and similar activities. Prepare written monthly progress reports. Prepare Project schedule and update it as tasks and milestones are met.

Attend and present at two(2) meetings such as Town Council, Town Committees, and Tourist Development Council. Provide technical support services for the Town specific to stakeholder coordination. Prepare for and participate in the meetings. Prepare a written summary of the meetings.

DELIVERABLES

Task 1

- Construction Progress Meeting Minutes
- Pay Request Reviews and Recommendations
- Field Orders, Changes Orders, and Contract Modifications
- Contract Document Interpretation

Task 2

- Construction Observation Reports

Task 3

- Pay Survey Field Notes, Profiles Plots, Pay Quantity Calculations and Data Files

Task 4

- Nesting Shorebird Monitoring Report

Task 5

- Wintering Bird Monitoring and Report

Task 6

- FY2026-2027 Funding Application
- Meeting Presentations
- Project Schedule

EXHIBIT B

Date: September 2, 2025

COMPENSATION AND METHOD OF PAYMENT
ESTERO ISLAND BEACH NOURISHMENT PROJECT

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
Task 1	Additional Construction Management	\$38,290	LS	W.I.P.P.
Task 2	Additional Construction Observations	\$65,160	LS	W.I.P.P.
Task 3	Additional Pay Surveys	\$5,600	LS	W.I.P.P.
Task 4	Shorebird Monitoring	\$39,540	LS	W.I.P.P.
Task 5	Wintering Bird Monitoring	\$8,070	LS	W.I.P.P.
Task 6	Funding, Administration, and Stakeholders	\$5,060	LS	W.I.P.P.
TOTAL		\$161,720	LS	

(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 12/27/2023, 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 12/27/2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: September 2, 2025

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR
ESTERO ISLAND BEACH NOURISHMENT PROJECT

Consultant or Sub-Consultant Name: Coastal Engineering Consultants, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Principal Engineer			\$255
Principal Surveyor			\$255
Coastal Modeler			\$185
Managing Consultant			\$195
Project Consultant			\$175
Staff Consultant			\$155
2-Man Survey Crew			\$193
1-Man Survey Crew			\$155
Crew Chief			\$155
Crew Member			\$95
Construction Manager			\$128
Senior Designer			\$140
Senior Coordinator			\$100
Laborer			\$55

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: September 2, 2025

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

ESTERO ISLAND BEACH NOURISHMENT PROJECT

CONSULTANT OR SUB-CONSULTANT NAME: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
	Breakfast
	Lunch
	Dinner
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	\$12.01 \$11.82 \$24.72
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Permit Fees	Actual Cost
RTK (per day)	\$150
Survey Boat (day)	\$400
Bathymetric Survey System (day)	\$600
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

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

EXHIBIT C

Date: September 2, 2025

TIME AND SCHEDULE OF PERFORMANCE
ESTERO ISLAND BEACH NOURISHMENT PROJECT

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion from Date of Notice to Proceed
Task 1	Additional Construction Management	177	177
Task 2	Additional Construction Observations	177	177
Task 3	Additional Pay Surveys	177	177
Task 4	Shorebird Monitoring	177	177
Task 5	Wintering Bird Monitoring	400	577
Task 6	Funding, Administration, and Stakeholders	300	577

EXHIBIT D

Date: September 2, 2025

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

ESTERO ISLAND BEACH NOURISHMENT PROJECT

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						

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of \$3,570 per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

The TOWN shall have the right to deduct all damages due from the final payment request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the TOWN resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

1. **Request:**

Meeting Date: October 20, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #1 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION INCREASING THE CONTRACT PRICE TO \$95,720.00 TO CONSTRUCT THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Dune plantings stabilize beach sand and build dunes, protecting the Town's investment in beach nourishment and mitigating storm surge impacts caused by storms. Dune vegetation will also offer valuable habitat to nesting sea turtles and shorebirds.

What the action accomplishes:

This resolution approves change order # 1 to contract ITB-25-002-EN by \$95,720.00, planting an additional 25,000 dune plants to the original 135,000 contracted plantings.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

ITB-25-002-EN contracted EarthBalance to plant dune vegetation in accordance with the Town's Dune Management Plan at participating beach front properties. Property owners were offered additional plantings increasing the width of the of the dune vegetation.

The additional plantings will stabilize a greater area of the beach, protecting the beach from erosion. In addition, the additional plantings will build a bigger dune over time. which will offer greater protection to upland properties and infrastructure from storm surge.

Attachments:

1. NS 25-303; Change Order #1 ITB 25-02-EN EARTHBALANCE (2)
2. Attachment A - CO#1 ITB-25-002
3. RCO1 - Estero Island Dune Planting

Financial Impact:

FDEM LAP Grant DS1502 can be used to pay for 100% of change order #1 to ITB-25-002-EN.

6. **Alternative Action**

Do not approve change order #1 to ITB-25-002-EN

7. **Management Recommendations:**

Authorize the Town Manager to execute change order #1 to contract ITB-25-02-EN.

8. **Recommended Approval:**

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director

Created/Initiated - 10/7/2025
Approved - 10/7/2025
Approved - 10/7/2025

nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Approved - 10/13/2025
Approved - 10/15/2025
Final Approval - 10/15/2025

RESOLUTION NUMBER 25-303

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #1 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION INCREASING THE CONTRACT PRICE TO \$95,720.00 TO CONSTRUCT THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach recognizes the beach as a vital economic and environmental asset for the Town residents and businesses, and

WHEREAS, the Town of Fort Myers Beach recognizes the importance of the beach providing recreational space, native habitat for listed species, and storm impact reduction benefit to upland properties, and

WHEREAS, the Town of Fort Myers Beach is responsible for beach management, restoration and maintenance of the beach in its jurisdiction, and

WHEREAS, the Town of Fort Myers Beach recognizes increased dune vegetation on the beach is beneficial to the public by stabilizing beach sand from erosion and building dunes to protect upland property and infrastructure, and

WHEREAS, the Town Council approved Contract ITB-25-02-EN with EarthBalance Corporation for \$509,859.50 to be completed in 120 days; and

WHEREAS, it is in the best interest of the Town to approve the requested Change Order #1 of Contract ITB-25-02-EN to increase the area of dune vegetation on the beach.

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

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

Section 2. The Town Council hereby approves Change Order #1 of Contract ITB-25-02-EN between the Town of Fort Myers Beach and EarthBalance, increasing the contract price by \$95,720.00, resulting in a total contract price of \$605,579.50. A copy of the Change Order #1 of Contract ITB-25-02-EN is attached hereto as Attachment "A".

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

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

ADOPTED this ____ day of 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 _____, 2025.



TOWN of FORT MYERS BEACH

BID NO. ITB-25-02-EN

PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 4

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: DUNE PLANTING PROJECT

CONTRACTOR: EarthBalance Corporation PROJECT NO.: _____

CONTRACT NO.: ITB-25-02-EN BID NO.: ITB-25-02-EN

CHANGE REQUESTED BY: DUNE PLANTING PROJECT DATE OF REQUEST: 10/20/2025

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:
(If you need space other than what has been provided, please attach additional sheets.)

Description: The Town requested the contractor to plant additional dune vegetation at participating properties.

Purpose of Change Order: Increase contract price

Attachments: (List documents supporting change) _____

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price	Original Contract Time
\$509,859.50	<u>120</u> Calendar Days
Previous Change Order No. N/A to No. <u>N/A</u>	Net Change from previous Change Orders
	<u>0</u> Calendar Days
Contract Price prior to this Change Order	Contract Time prior to this Change Order
\$509,859.50	<u>120</u> Calendar Days
Net Increase (Decrease) of this Change Order	Net Increase (Decrease) of this Change Order
<u>\$95,720.00</u>	<u>0</u> Calendar Days
Contract Price with all approved Change Orders	Contract Time with all approved Change Orders
<u>\$605,579.50</u>	<u>120</u> Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:

By: _____
Consultant (if applicable) Date

By: _____
Department Director Date

Contracts Management

APPROVED:

Town Attorney Date

ACCEPTED

By: _____
Contractor

Date Accepted: _____

(CORPORATE SEAL)

TOWN APPROVAL:

By: _____
Finance Director (Under \$25,000)

Date Approved: _____

By: _____
Town Manager (Under \$25,000)

Date Approved: _____

By: _____
Mayor, Town Council
(Over \$25,000)

Date Approved: _____



CHANGE ORDER #1

PROJECT NAME: Estero Island Dune Planting

ATTENTION: Chadd Chustz
Project Manager, Marine Operations
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL 33931
Chadd@fmbgov.com

EarthBalance® has received a request from Town of Fort Myers Beach to perform additional work for the Estero Island Dune Planting project. The original Contract was signed on August 25, 2025, in the amount of \$509,859.50. The Terms and Conditions of the original Contract shall remain in full force.

The need for additional services has caused a change in the scope of the project and has prompted us to submit this contract addendum.

PRICE QUOTED:

Task	Description	Total Price
1	STA 335-338 Planting	\$12,737.35
2	STA 298-303 Planting	\$3,406.10
3	STA 41-44 Planting	\$1,690.70
4	STA 349 and 352 Planting	\$2,740.60
5	STA 370-374 Planting	\$10,181.60
6	STA 91-95 Planting	\$18,783.20
7	STA 113-115 Planting	\$2,990.00
8	STA 127-130 Planting	\$5,544.45
9	STA 185-188 Planting	\$12,951.75
10	STA 164-165 Planting	\$2,284.25
11	STA 299-309 Planting	\$22,410.00
Total		\$95,720.00



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

SCOPE OF WORK:

Task 1 – STA 335-338 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 335-338 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	255	\$7.25	\$1,848.75
Sea oats (4-inch)	EA	544	\$2.65	\$1,441.60
Dune sunflower	EA	1,050	\$2.65	\$2,782.50
Dune panic grass	EA	805	\$2.65	\$2,133.25
Railroad vine	EA	625	\$7.25	\$4,531.25
TOTAL COST				\$12,737.35

EarthBalance® will perform the services described in **Task 1** for a lump sum fee of **\$12,373.35**.

Task 2 - STA 298-303 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 298-303 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	55	\$7.25	\$398.75
Sea oats (4-inch)	EA	102	\$2.65	\$270.30
Dune sunflower	EA	356	\$2.65	\$943.40
Dune panic grass	EA	406	\$2.65	\$1,075.90
Railroad vine	EA	99	\$7.25	\$717.75
TOTAL COST				\$3,406.10

EarthBalance® will perform the services described in **Task 2** for a lump sum fee of **\$3,406.10**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 3 – STA 41-44 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 41-44 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (4-inch)	EA	150	\$2.65	\$397.50
Dune sunflower	EA	244	\$2.65	\$646.60
Dune panic grass	EA	244	\$2.65	\$646.60
TOTAL COST				\$1,690.70

EarthBalance® will perform the services described in **Task 3** for a lump sum fee of **\$1,690.70**.

Task 4 – STA 349 and 352 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 349 and 352 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	60	\$7.25	\$435.00
Sea oats (4-inch)	EA	72	\$2.65	\$190.80
Dune sunflower	EA	108	\$2.65	\$286.20
Dune panic grass	EA	504	\$2.65	\$1,335.60
Railroad vine	EA	68	\$7.25	\$493.00
TOTAL COST				\$2,740.60

EarthBalance® will perform the services described in **Task 4** for a lump sum fee of **\$2,740.60**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 5 – STA 370-374 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 970-374 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	575	\$7.25	\$4,168.75
Sea oats (4-inch)	EA	288	\$2.65	\$763.20
Dune sunflower	EA	956	\$2.65	\$2,533.40
Dune panic grass	EA	300	\$2.65	\$795.00
Railroad vine	EA	265	\$7.25	\$1,921.25
TOTAL COST				\$10,181.60

EarthBalance® will perform the services described in **Task 5** for a lump sum fee of **\$10,181.60**.

Task 6 – STA 91-95 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 91-95 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	705	\$7.25	\$5,111.25
Dune sunflower	EA	1,958	\$2.65	\$5,188.70
Dune panic grass	EA	1,505	\$2.65	\$3,988.25
Railroad vine	EA	620	\$7.25	\$4,495.00
TOTAL COST				\$18,783.20

EarthBalance® will perform the services described in **Task 6** for a lump sum fee of **\$18,783.20**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 7 – STA 113-115 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 113-115 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Dune sunflower	EA	400	\$2.65	\$1,060.00
Dune panic grass	EA	400	\$2.65	\$1,060.00
Railroad vine	EA	120	\$7.25	\$870.00
TOTAL COST				\$2,990.00

EarthBalance® will perform the services described in **Task 7** for a lump sum fee of **\$2,990.00**.

Task 8 – STA 127-130 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 127-130 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	80	\$7.25	\$580.00
Sea oats (4-inch)	EA	415	\$2.65	\$1,099.75
Dune sunflower	EA	633	\$2.65	\$1,677.45
Dune panic grass	EA	415	\$2.65	\$1,099.75
Railroad vine	EA	150	\$7.25	\$1,087.50
TOTAL COST				\$5,544.45

EarthBalance® will perform the services described in **Task 8** for a lump sum fee of **\$5,544.45**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 9 – STA 185-188 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 185-188 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	575	\$7.25	\$4,168.75
Sea oats (4-inch)	EA	500	\$2.65	\$1,325.00
Dune sunflower	EA	620	\$2.65	\$1,643.00
Dune panic grass	EA	1,100	\$2.65	\$2,915.00
Railroad vine	EA	400	\$7.25	\$2,900.00
TOTAL COST				\$12,951.75

EarthBalance® will perform the services described in **Task 9** for a lump sum fee of **\$12,951.75**.

Task 10 – STA 164-165 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 164-165 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	45	\$7.25	\$326.25
Sea oats (4-inch)	EA	80	\$2.65	\$212.00
Dune sunflower	EA	130	\$2.65	\$344.50
Dune panic grass	EA	310	\$2.65	\$821.50
Railroad vine	EA	80	\$7.25	\$580.00
TOTAL COST				\$2,284.25

EarthBalance® will perform the services described in **Task 10** for a lump sum fee of **\$2,284.25**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 11 – STA 299-309 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 299-309 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	700	\$7.25	\$5,075.00
Sea oats (4-inch)	EA	1,800	\$2.65	\$4,770.00
Dune sunflower	EA	1,500	\$2.65	\$3,975.00
Dune panic grass	EA	1,600	\$2.65	\$4,240.00
Railroad vine	EA	600	\$7.25	\$4,350.00
TOTAL COST				\$22,410.00

EarthBalance® will perform the services described in **Task 11** for a lump sum **fee of \$22,410.00.**



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

The net amount for Change Order #1 is an increase of \$95,720.00.

Original Contract Amount	\$ 509,859.50
Change Order #1	\$ <u>95,720.00</u>
New Contract Amount	\$ 605,579.50

I hereby grant authorization for the Scope of Work and Fees listed above. I understand that all terms and conditions of the standard **EarthBalance®** Professional Services Agreement still apply to these requested services. This Change Order shall remain valid for a period not to exceed thirty (30) days beyond the submittal date of **October 6, 2025**.

QUOTED BY: James Barron
Project Manager
EarthBalance®
2570 Commerce Parkway
North Port, FL 34289
jbarron@earthbalance.com

EARTHBALANCE®

By: _____

Printed: _____

Title: Vice President

Date: _____, 2025

CLIENT

By: _____

Printed: _____

Title: _____

Date: _____, 2025

1. **Request:**

Meeting Date: October 20, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING 7 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) ADG ARCHITECTURE LLC, 2) BOWMAN CONSULTING GROUP 3) CW3 ENGINEERING 4) LJA ENGINEERING, 5) TETRA TECH, 6) TRAFFIC & MOBILITY CONSULTANTS, AND 7) WESTON & SAMPSON ENGINEERING; 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 approved by Council at their October 6, 2025 meeting. As the remaining 16 contracts are negotiated and prepared, they will be presented to the Town Council for approval. Copies of each of the professional service agreements are included in the agenda materials.

Nine (9) agreements remain to be executed and will be provided to Council at later meeting.

Attachments:

1. Resolution 25-304, RFQ-24-06-AD
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 - ADG Architecture LLC
8. PSA - Bowman Consulting Group
9. PSA - CW3 Engineering
10. PSA - LJA Engineering
11. PSA - Tetra Tech
12. PSA - Traffic and Mobility Consultants

13. PSA - Weston & Sampson Engineering

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:

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Joe Onzick, Finance Director
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/15/2025
Approved - 10/15/2025
Approved - 10/15/2025
Approved - 10/15/2025
Final Approval - 10/15/2025

RESOLUTION NUMBER 25-304

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 20th 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
RADISE	117 ENVIRONMENTAL ASSESSMENT
RG ARCHITECT	110 GEO
RWA	102 ARCHITECTUAL
	101 WATER RESOURCES
	104 WATER DISTRIBUTION
	106 LANDSCAPE ARCHITECT
	107 COMMUNITY & NEIGHBORHOOD
SCHENKEL & SHULTZ	111 CIVIL ENGINEERING
	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 SYSTEMS				
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		
			111 CIVIL ENGINEERING				
Committee Total	Ranking		Proposing Firm	Joe	Frankie		
426	2		Tetra Tech, Inc.	99	95		
422	3		Ensite, Inc.	98	98		
404	4		RWA, Inc.	100	80		
404	4		Bowman Consulting Group, Ltd.	89	95		
387	5		AIM Engineering & Surveying, Inc.	75	100		
			112 Development and Building				
Committee Total	Ranking		Proposing Firm	Joe	Frankie		
441	1		Tetra Tech, Inc.	99	98		
426	2		CAP Government, Inc.	95	80		
426	2		JR Evans Engineering PA	65	100		
422	3		Castellanos + Tramonte Architects	10	100		
421	4		113 TRANSPORTATION PLANNING & TRAFFIC				
420	5		Proposing Firm	Joe	Frankie		
			Johnson Engineering, Inc.	100	98		
Committee Total	Ranking		AIM Engineering & Surveying, Inc.	100	98		
433	1		Corradino Group, Inc.	95	95		
431	2		Traffic & Mobility Consultants, LLC	75	96		
407	3		Bowman Consulting Group, Ltd.	80	100		
385	4						
362	5						

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		

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**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
Proposing Firm	Joe	Frankie	Jeff	Mark	Chadd	Committee Total	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
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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

**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... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																
		DBE?	Y	N																	
		MBE?	Y	N																	
		WBE?	Y	N																	
		SDV 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
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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 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: _____
William B. McKannay, Town Manager

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

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.

QUALIFICATION FOR TYPE OF WORK

A listing of personnel who would be working on this project

g.

Name of Firm: ADG Architecture, Ilc

Date: August 19, 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
Robert Taylor	Alva	AR0012668	49	Architecture, Planning, Design, Roofing, and Construction Administration
M. Clarisa Parodi	Alva		28	Architecture, Planning, Design, Construction Administration, CPTED, ADA Remediations
Frederick J. Koenig	Punta Gorda	AR99709	28	Architecture, Planning, Design, Roofing and Construction Administration
Zachary Isaacs	Fort Myers	AR103273	7	Architecture, Planning, Design, and Construction Administration
Claude Pullen	Punta Gorda	AR93455	30	Architecture, Planning, Design, Roofing, and Construction Administration
Sherese Powell	Fort Myers		7	Architecture, Interior Design
Ronald Brown	Cape Coral		23	Architecture, Planning, Design and Construction Administration
Rosa Valera	Alva		17	Architecture, Planning, Design and Construction Administration
Tim Griffin	Cape Coral		19	Architecture, Planning, Design and Construction Administration

RFQ-24-06-AD | Ongoing Miscellaneous Professional Services



ADG Architecture, Ilc.
LIC. #: AR0012668

19

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.

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 _____, 2025, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated _____, 2025, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".



2025 ADG Architecture Hourly Fees

ADDITIONAL CLIENT-AUTHORIZED WORK AND STANDARD HOURLY RATES

Upon prior authorization from Client, additional authorized work performed beyond the scope of this project as detailed herein shall be invoiced at the following hourly rates:

Principal	\$245.00
Staff Architect	\$175.00
Project Manager	\$170.00
Interior Designer	\$165.00
Interior Architect Intern	\$155.00
Senior CADD/Draftsperson	\$120.00
Junior CADD/Draftsperson	\$ 99.00
Clerical	\$ 95.00

** Rates shall increase 5% per annum from date of contract **

REPRODUCTIONS AND REIMBURSABLE EXPENSES

Special Consultants / Engineering Fees	Cost + 10%
Postage	Cost + 10%
Commercial Travel	Cost + 10%
Automobile Travel beyond Lee & Charlotte Counties	Standard IRS Mileage Rate
B&W Photocopies 8 ½" x 11"	\$0.20 per page
B&W Photocopies 8 ½" x 14"	\$0.30 per page
B&W Photocopies 11" x 14"	\$0.40 per page
Color Photocopies 8 ½" x 11"	\$2.75 per page
Color Photocopies 8 ½" x 14"	\$3.25 per page
Xerographic Bond Reproductions 24" x 36"	\$2.25 per drawing
Xerographic Bond Reproductions 30" x 42"	\$3.25 per drawing
Standard Courier Service	Cost + 10%
Overnight Delivery	Cost + 10%
Drawings	\$85.00 per sheet
Drawings – Electronic – CD-ROM or Flash	\$85.00 per sheet
Drawings – Electronic – via e-mail	\$40.00 per sheet

Supplemental Services as Authorized by Client

Shop Drawing Review

In accordance with hourly rates

On-site Construction Observation

In accordance with hourly rates

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 Crimes Affidavit

I.

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 Robert Taylor, President
(print individual's name and title)

for ADG Architecture, llc
(print name of entity submitting sworn statement)

whose business address is 3820 Colonial Blvd., Suite 100
Fort Myers, FL 33966

and (if applicable) its Federal Employer Identification Number (FEIN) is 45-4265882
(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.)

xx 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 19th day of August, 20 24, by Robert Taylor, 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: 6/11/27

Signature of Notary Public

Notary Public, State of
FLORIDA

Printed, Typed or Stamped Name

Commission/Serial No. HH 408819



EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Exhibit J – Affidavit Certification of Compliance with Immigrations Laws in accordance with E-Verify



EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: 8/19/24

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING 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 UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY 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: ADG Architecture, Ilc
(Signature) President 8/19/24
(Title) (Date)

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by Robert Taylor, 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: 6/11/27



Brandy Flanagan
Signature of Notary Public

Notary Public, State of
FLORIDA

Brandy Flanagan
Printed, Typed or Stamped Name

Commission/Serial No. HH 408819

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.

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**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: Ongoing Professional Services**

Exhibit K – Affidavit of Confidentiality

n.

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-24-06-AD**

I, the undersigned, Robert Taylor, am an employee of ADG Architecture, Ilc, 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

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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

Dan Allers, Mayor

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 **Bowman Consulting Group, Ltd., Inc.** ("Consultant"), whose address is **12355 Sunrise Valley Drive, Suite 520, Reston, VA 20191.**

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: _____
William B. McKannay, Town Manager

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.

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.

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.

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.

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.

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.

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

101: Water Resource, 103: Stormwater, 104: Water Distribution, Including Lift and Pump Station Design, 105: Surveying Services, 106: Landscape Architect, 107: Community and Neighborhood Improvements, 111: Civil Engineering, 113: Transportation Planning and Traffic Engineering Services
114: Planning / Zoning, 119: Geographical Information System (GIS)

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Bowman Consulting Group, Ltd., Inc. **Date:** August 19, 2024

101, 103, 104, 105, 106, 107, 111, 113, 114, 119 **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
Richard E. Brylanski, PE	Cape Coral, FL	42339	38	101, 103, 107, 111, 113 (Consultant Supervisor)
Natalia T. Lercari, PE	Boynton Beach, FL	68205	23	113
Charlie Krebs, PE	North Fort Myers, FL	56835	28	101, 103, 107, 111
R. Trent Ebersole, PE	Wellington, FL	64318	35	111, 113
Austin Brown, PE	Bonita Springs, FL	91952	7	111
Jared Mellein, PE	Estero, FL	89872	15	101, 104, 111
Bob Mulhere, FAICP	Naples, FL	010931	35	114
Tyler Bonnough, PE	Fort Myers, FL	89711	7	103, 104, 111
Thomas M. Murphy, PSM	Fort Myers, FL	LS5628	41	105
John J. Hilton, PSM	Naples, FL	LS6278	23	105
John Archibald	Fort Myers, FL	N/A	43	111

101: Water Resource, 103: Stormwater, 104: Water Distribution, Including Lift and Pump Station Design, 105: Surveying Services, 106: Landscape Architect, 107: Community and Neighborhood Improvements, 111: Civil Engineering, 113: Transportation Planning and Traffic Engineering Services
114: Planning / Zoning, 119: Geographical Information System (GIS)

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Bowman Consulting Group, Ltd., Inc. **Date:** August 19, 2024

101, 103, 104, 105, 106, 107, 111, 113, 114, 119 **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
Gino Charles, PE	West Palm Beach, FL	87758	38	111, 113
John M. Boyer, PE	Palm Bay, FL	57970	27	101, 104, 107, 111
Bill Prysi, PLA, ASLA	Fort Myers, FL	LA0001342	36	106
Cecil Jernigan, Jr., PE	Cantonment, FL	34272	50+	101, 103, 104, 111
Dawn Barnard, PE	Naples, FL	0006437	40+	101, 104
David Schmitt, PE	Bonita Springs, FL	41671	44	101, 103, 104, 107, 111, 113
Frank Fabre, PE, PSM	Pensacola, FL	PSM: LS3132 PE: 15967	41	101, 103, 105, 111
Octavio "Oats" Reis, PE, LEED AP	Jensen Beach, FL	65661	34	103, 104, 111
Jeremie Chastain, AICP	Fort Myers, FL	33820	6	114
J. David Hill	Jupiter, FL	N/A	37	113
Fran Litton	Fort Myers, FL	N/A	26	106

101: Water Resource, 103: Stormwater, 104: Water Distribution, Including Lift and Pump Station Design, 105: Surveying Services, 106: Landscape Architect, 107: Community and Neighborhood Improvements, 111: Civil Engineering, 113: Transportation Planning and Traffic Engineering Services
114: Planning / Zoning, 119: Geographical Information System (GIS)

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Bowman Consulting Group, Ltd., Inc. Date: August 19, 2024

101, 103, 104, 105, 106, 107, 111, 113, 114, 119 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
Veronica A. Altuve, PE	Miami, FL	68194	29	113, 114
John P. Kim, PE	Palm Bch Gardens, FL	62400	28	113
Natalia Ramirez, AICP	Deerfield Beach, FL	29626	15	113, 119
Bertram Darville, Jr.	Naples, FL	N/A	9	106
Megan Dean	Reston, VA	N/A	4	119
Charles Weise	Sebastian, FL	SL3413058	19	119

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



BOWMAN CONSULTING GROUP LTD.

SCHEDULE B - HOURLY RATE

January 2025

CLASSIFICATION	HOURLY RATES
Senior Principal	\$345.00/HR
Principal	\$320.00/HR
Department Executive	\$270.00/HR
Senior Project Manager	\$245.00/HR
Project Manager	\$210.00/HR
Project Coordinator	\$120.00/HR
Senior Surveyor	\$245.00/HR
Engineer I II III	\$135.00/HR \$145.00/HR \$165.00/HR
Planner I II III	\$130.00/HR \$140.00/HR \$180.00/HR
Designer I II III	\$130.00/HR \$140.00/HR \$150.00/HR
CADD Drafter I II III	\$ 95.00/HR \$120.00/HR \$130.00/HR
Construction Inspector	\$120.00/HR
Landscape Architect I II III	\$130.00/HR \$145.00/HR \$185.00/HR
GIS Developer I II III	\$130.00/HR \$170.00/HR \$205.00/HR
Senior Environmental Scientist	\$200.00/HR
Environmental Scientist I II III	\$125.00/HR \$155.00/HR \$185.00/HR
Right of Way Specialist I II III	\$100.00/HR \$120.00/HR \$145.00/HR
Survey Technician I II III	\$110.00/HR \$130.00/HR \$150.00/HR
Project Surveyor	\$190.00/HR
Survey Field Crew – 1 Man	\$155.00/HR
Survey Field Crew – 2 Man	\$195.00/HR
Survey Field Crew – 3 Man	\$250.00/HR
3D Scanning Crew	\$285.00/HR
Survey Field Technician	\$100.00/HR
3D/UAV Modeling Technician	\$180.00/HR
UAV Operation	\$320.00/HR
SUE Field Crew - 1 Man	\$155.00/HR
SUE Field Crew - 2 Man	\$200.00/HR
SUE Field Crew - 3 Man	\$260.00/HR
SUE Field Crew - 4 Man	\$295.00/HR
SUE Utility Coordinator	\$200.00/HR
SUE Technician I II III	\$120.00/HR \$135.00/HR \$160.00/HR
Machine Control Technician	\$270.00/HR
Administrative Professional	\$100.00/HR
Remote Sensing Technician I II III	\$110.00/HR \$130.00/HR \$150.00/HR

Initials: Bowman / Client

Table 1812018 - DEFAULT 2025 Florida/Georgia

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, FL
(print name of public entity)
- by Richard E. Brylanski, PE
(print individual's name and title)
- for Bowman Consulting Group, Ltd., Inc.
(print name of entity submitting sworn statement)
- whose business address is 6200 Whiskey Creek Dr., Fort Myers, FL 33919

and (if applicable) its Federal Employer Identification Number (FEIN) is 54-1762351
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: n/a.)

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 Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by Richard E. Brylanski, PE, 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: June 21, 2026



Signature of Notary Public

Notary Public, State of
Florida

Catherine E. Crum

Printed, Typed or Stamped Name

Commission/Serial No. HH246786

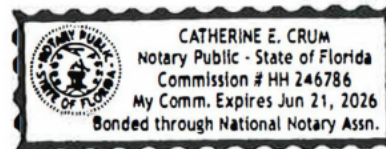


EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

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: Bowman Consulting Group, Ltd., Inc

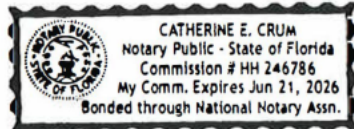
(Signature) Director of Civil Engineering August 19, 2024
(Title) (Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 19th day of August, 20 24, by Richard E. Brylanski, PE, 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: June 21, 2026



(Signature)

Signature of Notary Public

Notary Public, State of
FLORIDA

Catherine E. Crum

Printed, Typed or Stamped Name

Commission/Serial No. HH246786

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, Richard E. Brylanski, PE, am an employee of Bowman Consulting Group, Ltd., 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 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 Bowman Consulting Group, Ltd., 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

Dan Allers, Mayor

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 **CW3 Engineering, Inc.** ("Consultant"), whose address is **8500 DOSONTE LANE, N. FT. MYERS, FL 33917.**

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: _____
William B. McKannay, Town Manager

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.

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.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Clair Wright, III

Date: 8/19/24

101, 103,
Code: 104, 111 Type of Work: Water Resource, Stormwater, Water Distribution, 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
Clair Wright, III, P.E.	North Ft. Myers	64089	20+	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
George Brinson, Jr., P.E.	Fort Myers	47607	30+	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
Christopher Muldoon, P.E.	North Fort Myers	96857	20+	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
Christopher Carter, E.I.	Fort Myers	1100026508	3	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
Andrew Lountchenko, E.I.	North Fort Myers	1100026960	2	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
David Zemaitis	Fargo		20+	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil Engineering
Clinton Masser	Haymarket		20+	101 Water Resource, 103 Stormwater, 104 Water Distribution, 111 Civil 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



Engineering your future

Clair E. Wright, III, P.E., President

2025 MANHOUR HOURLY RATE SHEET

Principal	\$310
Project Manager	\$225
Sr. Design Engineer, PE	\$200
Design Engineer, PE	\$170
Design Engineer, EI	\$150
CAD Designer II	\$170
CAD Designer I	\$140
CAD Technician II	\$125
CAD Technician I	\$105
Engineering Intern	\$90
Administrative.....	\$90
CEI Sr. Project Engineer.....	\$215
CEI Project Administrator.....	\$185
CEI Field Inspector	\$120
CEI Sr. Inspector	\$135
Expert Witness	\$500

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 Clair Wright, III, P.E., President
(print individual's name and title)
- for CW3 Engineering, Inc.
(print name of entity submitting sworn statement)
- whose business address is 5783 Bayshore Road, Suite 113
N. Fort Myers, FL 33917

and (if applicable) its Federal Employer Identification Number (FEIN) is 83-3507763
(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.



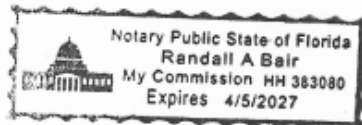
(Signature)

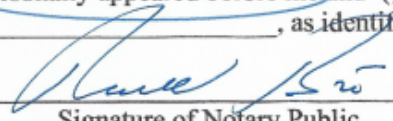
STATE OF Florida

COUNTY OF Lee

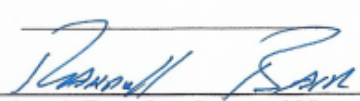
The foregoing instrument was acknowledged before me this 13TH day of August, 20 24, by Clair Wright, III, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☒ is personally known to me or ☐ who has produced _____, as identification.

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

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: 8/13/24, 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: CW3 Engineering, Inc.

[Signature]
(Signature)

President
(Title)

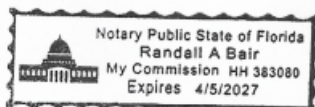
8/13/24
(Date)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 13th day of August, 20 24, by Clair Wright, III, 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

Randall A Bair
Printed, Typed or Stamped Name

Commission/Serial No. _____

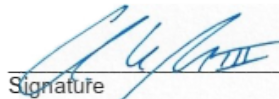
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

**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, Clair Wright, III, am an employee of CW3 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 CW3 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

Dan Allers, Mayor

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 **LJA Engineering, Inc.** ("Consultant"), whose address is **3600 W Sam Houston Pkwy S, Houston, TX 77042.**

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: _____
William B. McKannay, Town Manager

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

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.

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: LJA Engineering, Inc.

Date: August 19, 2024

Code: ^{101, 103, 104,}
~~105, 106, 107~~ Type of Work: ^{Water Resource; Stormwater; Water Distribution; Surveying Services; Landscape Architect;}
~~Community and Neighborhood Improvements; Civil Engineering; Transportation Planning~~
^{111, 113, 114,}
~~and Traffic Engineering Services; Planning/Zoning; Floodplain Management; Geographical~~
^{115, 119}
~~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
Dominick J. Amico, P.E. Principal in Charge/ Supervisor	Naples	39382	41	101-Water Resources; 103-Stormwater; 104- Water Distribution; 111-Civil Engineering; 114-Planning/Zoning; 115- Floodplain Management
James A. Carr, P.E.	Naples	51318	32	101-Water Resources; 103-Stormwater; 104- Water Distribution; 107-Community and Neighborhood Improvements; 111-Civil Engineering; 114-Planning/Zoning; 115- Floodplain Management
Edward F. Tryka, P.E.	Fort Myers	60284	27	101-Water Resources; 103-Stormwater; 111-Civil Engineering; 113-Transportation Planning & Traffic Engineering Services
Kellie Fissinger, P.E.	Bonita Springs	88527	9	101-Water Resources; 103-Stormwater; 104- Water Distribution; 111-Civil Engineering
Barry E. Jones, P.E.	Naples	52675	34	101-Water Resources; 103-Stormwater; 104- Water Distribution; 107-Community and Neighborhood Improvements; 111-Civil Engineering;
Brent Guillot, RLA	Naples	LA6667385	23	106- Landscape Architect; 107- Community and Neighborhood Improvements
Margaret Emblidge, AICP	Bonita Springs	N/A	35	107- Community and Neighborhood Improvements; 114-Planning/Zoning
George Hackney, PSM	Naples	LS5606	38	105- Surveying Services; 119- Geographical Information Sysytem
Mark Texter, PSM	Naples	LS6392	35	105- Surveying Services; 119- Geographical Information Sysytem

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

ATTACHMENT B

HOURLY RATE SCHEDULE FOR COMPENSATION, BILLING AND PAYMENT

	<u>Hourly Rate</u>
Professional VI	\$290
Professional V	\$275
Professional IV	\$230
Professional III	\$225
Professional II	\$175
Professional I	\$170
Tech VI	\$230
Tech V	\$225
Tech IV	\$165
Tech III	\$155
Tech II	\$ 135
Tech I	\$ 125
Admin	\$ 95
4-Man Survey Crew	\$ 295
3-Man Survey Crew	\$ 280
2-Man Survey Crew	\$ 235
1-Man Survey Crew	\$ 225
Expert Witness	Hourly Rate x 1.5/hour
Reimbursable Expenses	Cost plus 15%

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 LJA Engineering, Inc.
(print name of public entity)

by Dominick J. Amico, Senior Vice President
(print individual's name and title)

for LJA Engineering, Inc.
(print name of entity submitting sworn statement)

whose business address is 7400 Trail Boulevard, Suite 200
Naples, FL 34108

and (if applicable) its Federal Employer Identification Number (FEIN) is 76-0540328
(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.

Dominick J. Amico
(Signature)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 16th day of August, 20 24, by Dominick J. Amico, 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:



ELISE WILCOX
Notary Public
State of Florida
Comm# HH451489
Expires 10/5/2027

Elise Wilcox
Signature of Notary Public

Notary Public, State of
FLORIDA

ELISE WILCOX
Printed, Typed or Stamped Name

Commission/Serial No. HH451489

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: LJA Engineering, Inc.
Dominick J. Amico Senior Vice President 08/16/2024
(Signature) (Title) (Date)

STATE OF FLORIDA

COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 16th day of August, 20 24, by Dominick J. Amico, 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:



ELISE WILCOX
Notary Public
State of Florida
Comm# HH451489
Expires 10/5/2027

Elise Wilcox
Signature of Notary Public

Notary Public, State of
FLORIDA

ELISE WILCOX
Printed, Typed or Stamped Name

Commission/Serial No. HH451489

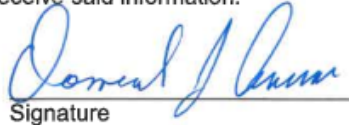
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. *TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.*

**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, Dominick J. Amico, am an employee of LJA 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

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 LJA 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

Dan Allers, Mayor

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 **Tetra Tech, Inc.** ("Consultant"), whose address is **3475 E. FOOTHILL BLVD., PASADENA, CA 91107.**

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: _____
William B. McKannay, 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

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.

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.

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.

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.

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.

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: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **101** Type of Work: **Water Resources**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Water Resources
Paul Clinghan	Estero	73670 (PE)	38	Water Resources
Timothy Vanderwalker	Oviedo	74415 (PE)	17	Water Resources
Eric Fey	Estero	65601 (PE)	21	Water Resources
Tyler Wainright	Fort Myers	80476 (PE)	11	Water Resources
Steven Agapi	Fort Myers	88612 (PE)	8	Water Resources
Sicheng Zhu	Estero	97091 (PE)	6	Water Resources
Christian Colarusso	Fort Myers	85484 (PE)	14	Water Resources
Drew Brady	Estero	1100025379 (EI)	4	Water Resources

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **103** Type of Work: **Stormwater**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Stormwater
Paul Clinghan	Estero	73670 (PE)	38	Stormwater
Timothy Vanderwalker	Oviedo	74415 (PE)	17	Stormwater
Eric Fey	Estero	65601 (PE)	22	Stormwater
Roderick Cashe	Orlando	45169 (PE)	36	Stormwater
Michael Thatcher	Orlando	83331 (PE)	11	Stormwater
James Warner	Oviedo	61871 (PE)	34	Stormwater

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **104** Type of Work: **Water Distribution, Including Lift and Pump Station Design**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Water Distribution
Paul Clinghan	Estero	73670 (PE)	38	Water Distribution
Timothy Vanderwalker	Oviedo	74415 (PE)	17	Water Distribution
Eric Fey	Estero	65601 (PE)	21	Water Distribution
Christian Colarusso	Fort Myers	85484 (PE)	11	Water Distribution
Tyler Wainright	Fort Myers	80476 (PE)	11	Water Distribution
Steven Agapi	Fort Myers	88612 (PE)	9	Water Distribution
Sicheng Zhu	Estero	97091 (PE)	6	Water Distribution
Drew Brady	Estero	1100025379 (EI)	4	Water Distribution

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **105** Type of Work: **Surveying Services**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Surveying Services
Paul Clinghan	Estero	73670 (PE)	38	Surveying Services
Lawrence Jenkins	Chuluota	5364 (PSM)	39	Surveying Services
Thomas Niarchos	Longwood	6210 (PSM)	37	Surveying Services
Charles Woodard	Deltona	N/A	38	Surveying Services

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **108** Type of Work: **Electrical Systems**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Electrical Systems
Paul Clinghan	Estero	73670 (PE)	38	Electrical Systems
Roger Harris	Orlando	1100008435 (EI)	20	Electrical Systems
Jason Seignoret	Orlando	N/A	17	Electrical Systems

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **111** Type of Work: **Civil Engineering**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Civil Engineering
Timothy Vanderwalker	Oviedo	74415 (PE)	17	Civil Engineering
Eric Fey	Estero	65601 (PE)	21	Civil Engineering
Roderick Cashe	Orlando	45169 (PE)	36	Civil Engineering
James Warner	Oviedo	61871 (PE)	34	Civil Engineering
Michael Thatcher	Orlando	83331 (PE)	11	Civil Engineering

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **112** Type of Work: **Development & Building Services**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Development & Building Services
Eric Fey	Estero	65601 (PE)	21	Development & Building Services
Sicheng Zhu	Estero	97091 (PE)	6	Development & Building Services
James Warner	Oviedo	61871 (PE)	34	Development & Building Services
Kevin Roe	Atlanta	PE039494 (GA; PE)	16	Development & Building Services
Burl Reardon	Orlando	83331 (PE)	23	Development & Building Services

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **114** Type of Work: **Planning/Zoning**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	Planning / Zoning
Eric Fey	Estero	65601 (PE)	21	Planning/Zoning
Sicheng Zhu	Estero	97091 (PE)	6	Planning/Zoning
James Warner	Oviedo	61871 (PE)	34	Planning / Zoning
Kevin Roe	Atlanta	PE039494 (GA; PE)	16	Planning / Zoning
Burl Reardon	Orlando	83331 (PE)	23	Planning / Zoning

QUALIFICATION FOR TYPE OF WORK

Name of Firm: **Tetra Tech, Inc.**

Date: **08/19/2024**

Code: **119** Type of Work: **Geographical Information Systems**

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

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
Daniel Nelson	LaBelle	56152 (PE)	27	GIS
Paul Clinghan	Estero	73670 (PE)	38	GIS
Alex Montalvo	Orlando	N/A	27	GIS
Betty Morris	Orlando	23442 (GISP)	30	GIS
Darryl Albert	Bath, MI	N/A	17	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

CPM Labor Rate Table	
Rates for:	IEW
Updated:	April 16, 2025
	
Labor Group	Billing Title from Rate Table
	Bill Rate
Operations Management	
	Principal in Charge
	390.00
Project and Program Management	
	Project Manager 1
	225.00
	Project Manager 2
	250.00
	Sr Project Manager
	300.00
	Program Manager
	315.00
Engineers	
	Engineer 1
	125.00
	Engineer 2
	140.00
	Engineer 3
	155.00
	Project Engineer 1
	195.00
	Project Engineer 2
	210.00
	Sr Engineer 1
	245.00
	Sr Engineer 2
	280.00
	Sr Engineer 3
	290.00
	Principal Engineer
	370.00
Engineering Designers	
	Engineering Technician
	85.00
	Engineering Designer 1
	105.00
	Engineering Designer 2
	125.00
	Engineering Designer 3
	150.00
	Sr Eng Designer 1
	190.00
	Sr Eng Designer 2
	205.00
	Sr Eng Designer 3
	215.00
Information Technology	
	Sys Analyst / Programmer 1
	180.00
	Sys Analyst / Programmer 2
	190.00
	Sr Sys Analyst / Programmer 1
	225.00
	Sr Sys Analyst / Programmer 2
	285.00
Scientists	
	Scientist 1
	90.00
	Scientist 2
	110.00
	Scientist 3
	135.00
	Sr Scientist 1
	155.00
	Sr Scientist 2
	190.00
	Sr Scientist 3
	245.00
	Principal Scientist
	275.00
Planners	
	Planner 1
	105.00
	Planner 2
	125.00
	Planner 3
	135.00
	Sr Planner 1
	155.00
	Sr Planner 2
	180.00
	Sr Planner 3
	205.00
	Principal Planner
	235.00
Construction Observation	
	Construction Project Rep 1
	130.00
	Construction Project Rep 2
	145.00
	Sr Constr Project Rep 1
	170.00

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 Tetra Tech, Inc.
(print name of public entity)

by Daniel Nelson; Vice President
(print individual's name and title)

for Tetra Tech, Inc.
(print name of entity submitting sworn statement)

whose business address is 10600 Chevrolet Way, Suite 102
Estero, FL 33928

and (if applicable) its Federal Employer Identification Number (FEIN) is 95-4148514
(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]

(Signature)

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 15 day of AUGUST, 20 24, by DANIEL NELSON, by means of ☒ physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced (PERSONALLY KNOWN TO ME) as identification.

My Commission Expires:
AUGUST 27, 2025

[Signature]
Signature of Notary Public

Notary Public, State of
FLORIDA

GERMAIN MARQUEZ
Printed, Typed or Stamped Name

Commission/Serial No. HH 165524



EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

Date: 08/19, 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: Tetra Tech, Inc.

[Signature]
(Signature)

Vice President
(Title)

08/19/2024
(Date)

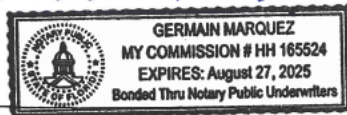
STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 15 day of AUGUST, 20 24, by DANIEL NELSON, by means of ☒ physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced CPERSONALLY KNOWN TO ME as identification.

My Commission Expires:

AUGUST 27, 2025



[Signature]
Signature of Notary Public

Notary Public, State of FLORIDA

GERMAIN MARQUEZ
Printed, Typed or Stamped Name

Commission/Serial No. HH 165524

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, Daniel Nelson, Vice President, am an employee of Tetra Tech, 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 Tetra Tech, 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

Dan Allers, Mayor

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 **Traffic & Mobility Consultants, LLC** ("Consultant"), whose address is **988 WOODCOCK RD, SUITE 200, ORLANDO, FL 32803.**

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: _____
William B. McKannay, Town Manager

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

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.

QUALIFICATION FOR TYPE OF WORK

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Traffic & Mobility Consultants LLC **Date:** 08/19/2024
Code: 113 **Type of Work:** Transportation Planning and 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 *
Ayman As-Saidi, PE	Orlando	PE# 56849	30	TP-ALL, TE-ALL CONSULTANT SUPERVISOR
Mohammed Abdallah, PE, PTOE	Orlando	PE# 56169 PTOE# 2415	30	TP-ALL, TE-ALL
Eliot Brown, PE	Port Saint Lucie	PE# 82232	12	TE-4,8,12,14
Jeremy Crowe, PE	Maitland	PE# 77064	14	TE-ALL
Charlotte Davidson, PE, PTP	Winter Park	PE# 50725 PTP# 852	33	TP-ALL, TE-ALL
Conroy Jacobs, AICP, PMP	Palm Bay	AICP# 31118 PMP# 3555276	12	TP-1,7,9,10,13
Vibhuti Patel, PE	Kissimmee	PE# 94205	11	TE-ALL
Pamela Richmond	Mount Dora		28	TP-ALL
Batuhan Anlitan, EI	Maitland	EI# 1100027599	2	TE-2,3,6,7,14
Christopher Godwin, EI	Ocoee	EI# 1100026103	2	TE-2,3,6,7,14
Trace Raulerson, EI	Jacksonville	EI# 1100025192	3	TE-2,3,4,6,8,10,11,12,14

* LEGEND: PE - Professional Engineer; PTOE - Professional Traffic Operations Engineer; PTP - Professional Transportation Planner; PMP - Project Management Professional; EI - Engineer Intern; TP - Transportation Planning; TE - Traffic Engineering; 1 - review of traffic impact statements/studies provided by development applicants; 2 - traffic data/counts; 3 - traffic models; 4 - signal operations; 5 - traffic monitoring; 6 - traffic analysis; 7 - roadway safety assessment; 8 - ITS applications; 9 - traffic operations improvements; 10 - traffic calming; 11 - roadway lighting; 12 - traffic control device assessment; 13 - Other transportation planning services as needed by the Town; 14 - Other traffic engineering services as needed by the Town

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
RATE SCHEDULE

<u>Category</u>	<u>Rate / Hour</u>
Expert Witness.....	\$ 550.00
Principal-in-Charge	\$ 325.00
Principal Engineer.....	\$ 270.00
Senior Engineer/Senior Planner	\$ 230.00
Engineer	\$ 165.00
Traffic Analyst	\$ 135.00
CADD/Technician	\$ 110.00
Administrative	\$ 95.00

(1/25)

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 The Town of Fort Myers Beach
(print name of public entity)
- by Mohammed Abdallah, CEO
(print individual's name and title)
- for Traffic & Mobility Consultants LLC
(print name of entity submitting sworn statement)
- whose business address is 3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803
- and (if applicable) its Federal Employer Identification Number (FEIN) is 93-2568295
(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 ORANGE

The foregoing instrument was acknowledged before me this 19TH day of AUGUST, 20 24, by Mohammed Abdallah, 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



SARAH J. DAVENPORT
Notary Public
State of Florida
Comm# HH234089
Expires 3/26/2026

Signature of Notary Public

Notary Public, State of
FLORIDA

Exp: 03/26/2026

SARAH J. DAVENPORT

Printed, Typed or Stamped Name

Commission/Serial No. HH234089

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: Traffic & Mobility Consultants LLC
(Signature) CEO 08/19/2024
(Title) (Date)

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 19th day of AUGUST, 20 24, by Mohammed Abdallah, 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:



SARAH J. DAVENPORT
Notary Public
State of Florida
Comm# HH234089
Expires 3/26/2026

(Signature)
Signature of Notary Public

Notary Public, State of
FLORIDA

03/26/2026

SARAH J DAVENPORT
Printed, Typed or Stamped Name

Commission/Serial No. HH234089

The signer 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, Mohammed Abdallah, am an employee of Traffic & Mobility Consultants 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

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 Traffic & Mobility Consultants, 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

Dan Allers, Mayor

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 **Weston & Sampson Engineers, Inc.** ("Consultant"), whose address is **55 Walkers Brook Drive, Suite 100, Reading, MA 01867.**

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: _____
William B. McKannay, Town Manager

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

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.

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: Weston & Sampson Engineers, Inc. **Date:** August 19, 2024

Code: 104 **Type of Work:** Water Distribution, including Lift and Pump Station 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
Gary Ferrante	LaBelle, FL	PE #65011	31	project management / water & wastewater planning, design, bidding & construction administration / funding assistance
Joseph Zongol	Cape Coral, FL	PE #93111	16	project management / water & wastewater planning, design, bidding & construction administration / funding assistance
Tim Harley	Jacksonville, FL	PE #63321	36	project management / planning, design, permitting, const. management, and operation of pump stations and collection & distribution systems
Jesse Cummins	Fort Myers, FL	PE #92741	7	design/construction of wastewater treatment process/collection system and water treatment/distribution
Margaret McCarthy	Amesbury, MA	PE: MA	23	water distribution planning, design, bidding and construction administration / automatic metering infrastructure (AMI) specialist
Robert Horner	Charleston, SC	PE: SC, NC	39	planning, design, permitting, and const. management, of pump stations and collection & distribution systems
David Elmer	Nahant, MA	PE #73739	29	technical review / wastewater planning, design, bidding and construction administration
Leah Stanton	Amesbury, MA	PE #82069	28	technical review / water distribution planning, design, bidding and construction administration
Brandon Ivey	Arcadia, FL	EI #1100012297	19	water & wastewater utility design, permitting & construction oversight / expertise in regulatory compliance requirements

* As Weston & Sampson's regional manager, Joe Zongol, PE will serve as project supervisor for all staff.

QUALIFICATION FOR TYPE OF WORK

Name of Firm: Weston & Sampson Engineers, Inc. **Date:** August 19, 2024

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
Wade Brown	Bonita Springs, FL	PE #87545	37	project management / building and bridge structural designs and rehabilitations
Muhammad (Atif) Anwer	North Fort Myers, FL	N/A	11	inspection, planning, and design of various structures, including buildings and bridges
Scott Bruso	Franklin, MA	PE: MA,	23	structural design of bridges, culverts, buildings, water and wastewater treatment facilities, and hydraulic structures
Nathan Seifert	Mansfield, MA	PE #79595	30	project management / design and construction for various buildings; water/wastewater facilities; and bridges
Steven Delia	Amherst, NH	EIT: NH	27	design, construction inspection, and plan preparation for various municipal structures
Rafael Jimenez	Fort Myers, FL	PE #84876	22	project management, design, permitting, building structural design, threshold inspection
Carlyn Krapf	Naples, FL	PE #99178	14	project management, design, permitting, building structural design, construction administration

* As Weston & Sampson's regional manager, Joe Zongol, PE will serve as project supervisor for all staff.

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-24-06-AD

Date: September 19, 2025

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: **Weston & Sampson Engineers, 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)
Discipline Leader	*Can be provided for each task work order for staff anticipated to work on the individual assignment	*Varies by Classification	\$350.00
Practice Leader			\$340.00
Regional Manager			\$325.00
Senior Team Leader			\$320.00
Team Leader			\$285.00
Technical Leader			\$270.00
Senior Project Manager			\$260.00
Project Manager			\$215.00
Senior Project Engineer			\$195.00
Project Engineer/GIS Project Analyst			\$170.00
Engineer III/GIS Analyst III			\$155.00
Engineer II/GIS Analyst II			\$135.00
Engineer I/GIS Analyst I			\$125.00
Administrative Assistant			\$110.00
Co-Op			\$85.00

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

NOTE: Rates are valid for the calendar years 2025, 2026, & 2027. Weston & Sampson reserves the right to negotiate rate increases commensurate with salary increases if the contract options for 2028 & 2029 are exercised.

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, FL
(print name of public entity)
- by Joseph Zornig, PE, Regional Manager
(print individual's name and title)
- for Weston & Sampson Engineers, Inc.
(print name of entity submitting sworn statement)
- whose business address is 1520 Royal Palm Square Blvd, Suite 260
Fort Myers, FL 33919

and (if applicable) its Federal Employer Identification Number (FEIN) is 04-2601194
(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)

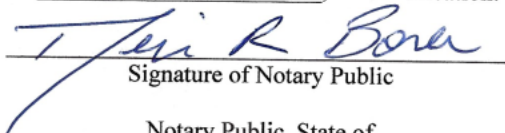
STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 19 day of August, 20 24, by Joseph Zongol, by means of ☒ physical presence or ☐ online notarization, personally appeared before me and ☐ is personally known to me or ☒ who has produced D.C., as identification.

My Commission Expires:

1/18/26


Signature of Notary Public

Notary Public, State of

FL



Printed, Typed or Stamped Name

Commission/Serial No. HH217329



DEVIN R. BOREN
Commission # HH 217329
Expires January 18, 2026

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: Weston F. Sampson Engineers, Inc.
(Signature) [Signature] (Title) Regional Manager (Date) 8/19/24

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 19 day of August, 2024, by Joseph Zongo, by means of (☒) physical presence or () online notarization, personally appeared before me and () is personally known to me or (☒) who has produced D.L. as identification.

My Commission Expires: 1/18/26



DEVIN R. BOREN
Commission # HH 217329
Expires January 18, 2026

[Signature]
Signature of Notary Public

Notary Public, State of FL

Devin R Boren
Printed, Typed or Stamped Name

Commission/Serial No. HH217329

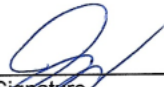
The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

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, Joseph Zengul, PE, am an employee of Weston & Simpson Engineers, PC, 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 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 Weston & Sampson Engineers, 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

Dan Allers, Mayor

APPROVED AS TO FORM

Town Attorney

IN THE CIRCUIT COURT OF THE TWENTIETH CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

TOWN OF FORT MYERS BEACH,
FLORIDA,

Plaintiff,

vs.

CASE NO.:

WHITE SAND PROPERTIES OF FORT
MYERS BEACH, LLC,

Defendant.

_____ /

COMPLAINT TO FORECLOSE MUNICIPAL LIENS

Plaintiff, Town of Fort Myers Beach, a Florida municipal corporation (the “TOWN”), by and through its undersigned counsel, sues Defendant, White Sand Properties of Fort Myers Beach, LLC (“DEFENDANT”) and alleges:

Subject Matter, Parties, and Venue

1. This is an action to foreclose two (2) municipal code enforcement liens on real property and/or personal property located in Lee County, Florida.

2. The TOWN is a Florida municipal corporation located in Lee County, Florida, and organized under the laws of the State of Florida.

3. The TOWN is authorized by the State of Florida to create a code enforcement board or code enforcement special magistrate position, to establish a code enforcement system, to hold code enforcement hearings, to assess fines against violators of the Town of Fort Myers Beach Code of Ordinances, and to record and foreclose liens for unpaid fines, consistent with its obligation to promote, protect, and improve the health, safety, and welfare of the residents of the TOWN and the public.

See Chapter 162, Florida Statutes.

4. The real property and personal property to be foreclosed in this matter is located at 80 Avenue E, Fort Myers Beach, Florida 33931, which is legally described as follows:

Lot 2, Block “A”, CRESCENT BEACH SUBDIVISION, according to the Plat thereof, recorded in Plat Book 4, Page 45, of the Public Records of Lee County, Florida. (“SUBJECT PROPERTY”).

5. DEFENDANT is a Florida limited liability company having a principal address in Lee County, Florida.

6. DEFENDANT is made a party defendant since it the owner of the SUBJECT PROPERTY.

7. FCG Associates, LLC (“FCG”) is a Florida limited liability company having a principal address in Lee County, Florida.

8. FCG may have claimed some interest in the SUBJECT PROPERTY by virtue of that certain Mortgage recorded on February 18, 2020, as Official Records Instrument No. 2020000042330 in the Public Records of Lee County, Florida (“FCG Mortgage”). However, any claimed interest that FCG may have had in the SUBJECT PROPERTY has been satisfied and extinguished by virtue of the Stipulated Final Judgment between FGC and DEFENDANT recorded on July 11, 2023, as Official Records Instrument No. 2023000236853 in the Public Records of Lee County, Florida (outlining payment terms to satisfy the FCG Mortgage) and the Satisfaction of Stipulated Final Judgment recorded on January 24, 2024, as Official Records Instrument No. 2024000020689 in the Public Records of Lee County, Florida.

9. Venue properly lies in Lee County, Florida pursuant to Section 47.011, Florida Statutes, because the SUBJECT PROPERTY is located in Lee County, Florida, and the causes of action arose or accrued in Lee County.

10. This Court has subject matter jurisdiction over this action pursuant to Sections

26.012 and 162.30, Florida Statutes.

11. This Court has personal jurisdiction over DEFENDANT under Section 48.193, Florida Statutes.

12. The TOWN's validly recorded liens encumbering the SUBJECT PROPERTY are superior in dignity and right to any subsequently recorded interest, mortgage, claim, or lien attaching to the SUBJECT PROPERTY through the DEFENDANT and any of its mortgagors, lienholders, claimants, and successors, assigns, and tenants.

13. The SUBJECT PROPERTY is not a homestead under the laws of the State of Florida.

14. All conditions precedent to the bringing of this action have been performed, have been waived, have been executed, or have occurred.

15. The TOWN is obligated to pay its attorneys a reasonable fee for their services and DEFENDANT is responsible for payment of the liens and all costs of foreclosure, including reasonable attorney's fees, incurred by the TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Sec. 2-427(d).

Background Facts

16. From on or about October 3, 2014, until on or about December 2, 2015, the owner of record of the SUBJECT PROPERTY was Leo J. Dibiasi, individually and as Trustee of the Leo J. Dibiasi and Valerie J Dibiasi Revocable Living Trust ("DIBIASI").

17. During DIBIASI's ownership of the SUBJECT PROPERTY, DIBIASI was the sole member and president of Absolute Best Rate Rentals LLC, a Florida limited liability company ("ABSOLUTE").

18. From on or about December 2, 2015, until on or about July 15, 2016, the owner of

record of the SUBJECT PROPERTY was ABSOLUTE.

19. The Trustee's Deed conveying ownership of the SUBJECT PROPERTY to ABSOLUTE was recorded on December 4, 2015, at Official Records Instrument No. 2015000260051, in the public records of Lee County, Florida.

20. On April 12, 2016 during ABSOLUTE's ownership of the SUBJECT PROPERTY, a municipal lien for code enforcement violations ("Lien 1") was recorded against the SUBJECT PROPERTY, as described in more detail in Count 1 below.

21. ABSOLUTE conveyed the SUBJECT PROPERTY to Joseph B. ORLANDINI ("ORLANDINI") by Warranty Deed.

22. The Warranty Deed conveying ownership of the SUBJECT PROPERTY to ORLANDINI was recorded on July 20, 2016, Official Records Instrument No. 2016000153777, in the public records of Lee County, Florida.

23. ORLANDINI acquired the SUBJECT PROPERTY subject to and encumbered by Lien 1. At the time ORLANDINI acquired the SUBJECT PROPERTY, none of the existing code violations on the SUBJECT PROPERTY had been corrected, and the fines set forth in Lien 1 continued to accrue.

24. On July 26, 2017, during ORLANDINI's ownership of the SUBJECT PROPERTY, an additional municipal code enforcement lien ("Lien 2") was recorded against the SUBJECT PROPERTY for new code violations, as described in more detail in Count 2 below.

25. Section 162.09(3) provides "A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator."

26. As such, upon recording, Lien 2 constituted a lien upon the SUBJECT PROPERTY and upon any other real or personal property owned by ORLANDINI.

27. Over two years later, on December 9, 2019, DEFENDANT attended a TOWN Council meeting (“December 2019 Meeting”) and explained to the TOWN Council that DEFENDANT intended to buy one of ORLANDINI’s other properties, located at 1560 I Street, Fort Myers Beach, Florida (“I Street Property”).

28. DEFENDANT explained that the I Street Property “has some lien issues, it’s kind of under blanket umbrella of violations” and “we would like to pledge that \$50,000.00 towards his liens ... to get [the I Street Property] off of the liens.”

29. ORLANDINI also spoke at the December 2019 meeting, stating “there is a particular property I have at 80 Avenue E (the SUBJECT PROPERTY) that is has some encumbrances on it of liens... we're looking to close a property at 1560 I Street and that is the one that is in the umbrella of the parcels that got encumbered from the 80 Avenue E violation” and “ungluing this property helps tremendously with getting rid of debt.”

30. At the time of this meeting, the I Street Property had no known code enforcement violations.

31. However, because the I Street Property was owned by ORLANDINI, all code enforcement liens recorded in the public records against the SUBJECT PROPERTY during ORLANDINI’s ownership of the SUBJECT PROPERTY also encumbered the I Street Property.

32. As a result, the I Street Property was also encumbered by Lien 2.

33. At the December 2019 meeting, the Town Council agreed to DEFENDANT’s request to pay the \$50,000.00 to pull the I Street Property out of the “umbrella” of the code enforcement liens on the SUBJECT PROPERTY.

34. At the December 2019 meeting, DEFENDANT did not indicate that it also intended to purchase the SUBJECT PROPERTY from ORLANDINI.

35. At the December 2019 meeting, the Town Council did not consider a request to release the SUBJECT PROPERTY from the liens encumbering the SUBJECT PROPERTY.

36. On or about December 12, 2019, DEFENDANT delivered a check to the TOWN for \$50,000.00 in exchange for a partial release of the code enforcement liens encumbering the I Street Property only. A copy of the check is attached hereto as **Exhibit “A.”**

37. On January 29, 2020, the TOWN recorded three partial releases to release the I Street Property from the code enforcement liens recorded against the SUBJECT PROPERTY during ORLANDINI’s ownership of the SUBJECT PROPERTY, including Lien 2.

38. Each partial release provided, “[i]n accordance to the decision by Town Council on December 9, 2019 to release [the I Street Property] from this lien for the amount of \$50,000.00 has been satisfied in full and that the undersigned hereby releases the lien as to the whole of [the I Street Property] . . . This Partial Release of Lien releases only the property mentioned herein. All other properties attached as a result of [this lien] remain.” [Emphasis added.]

39. Because the partial releases only released the I Street Property from the “umbrella” of the code enforcement liens against the SUBJECT PROPERTY, Liens 1 and 2 remained unsatisfied and valid encumbrances upon the SUBJECT PROPERTY.

40. Lien 1 was recorded before ORLANDINI became record owner of the SUBJECT PROPERTY; therefore, Lien 1 did not encumber the I Street Property.

41. As such, the Town did not record a partial release to release the I Street Property from Lien 1.

42. On or about March 20, 2020, DEFENDANT acquired the I Street Property from

ORLANDINI.

43. When DEFENDANT acquired the I Street Property, DEFENDANT's \$50,000.00 payment to pull the I Street Property out of the "umbrella" of the code enforcement liens on the SUBJECT PROPERTY was credited toward the purchase price of the I Street Property.

44. On or about March 25, 2020, DEFENDANT acquired the SUBJECT PROPERTY, 80 Avenue E, from ORLANDINI.

45. When DEFENDANT, acquired the SUBJECT PROPERTY on or about March 25, 2020, it did so with the knowledge that Liens 1 and 2 were recorded, that the fines continued to accrue as provided in the recorded liens, and there were no recorded releases of the SUBJECT PROPERTY from Liens 1 and 2.

46. At the time the SUBJECT PROPERTY was acquired by DEFENDANT, there were no pending cases before the Special Magistrate for any subsequent code violations on the SUBJECT PROPERTY.

47. Thus, when DEFENDANT acquired the SUBJECT PROPERTY on or about March 25, 2020, it did so with the knowledge that the SUBJECT PROPERTY remained encumbered by the liens and subject to foreclosure as authorized by Florida law in Chapter 162 and Sections 2-427(c) and 2-425(e) of the Town of Fort Myers Beach Code of Ordinances.

48. Pursuant to Section 162.09(3), Florida Statutes, and Section 2-425(e) of the Town of Fort Myers Beach Code of Ordinances, recorded code enforcement liens "run with the land" and are binding upon subsequent purchasers.

49. As of the date of this Complaint, no releases or satisfactions have been recorded releasing the SUBJECT PROPERTY from the code enforcement liens subject to this foreclosure action.

50. As of the date of this Complaint, there exists no agreement between DEFENDANT and the TOWN Council, the TOWN Manager or any other duly authorized TOWN representative that obligates the TOWN to release the SUBJECT PROPERTY from Liens 1 and 2.

51. As of the date of this Complaint, there exists no agreement between ORLANDINI and the TOWN Council, the TOWN Manager or any other duly authorized TOWN representative that obligates the TOWN to release the SUBJECT PROPERTY from Liens 1 and 2.

52. To the extent any conditions for the release of Liens 1 and 2 have been proposed, no such conditions were ever accepted or satisfied.

53. At a regularly scheduled meeting of the TOWN Council on April 18, 2022 (“April 2022 meeting”), the Town Council authorized the TOWN Attorney to enforce and foreclose Liens 1 and 2.

54. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order which authorized the TOWN Attorney to foreclose Liens 1 and 2 on the SUBJECT PROPERTY.

55. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

56. At the May 6, 2024, public hearing before the TOWN Council, Defendant, DEFENDANT, alleged that the \$50,000.00 check paid by DEFENDANT, released the SUBJECT PROPERTY from the recorded lien. A copy of the check is attached hereto as **Exhibit “A.”**

57. The \$50,000.00 check DEFENDANT claimed released the SUBJECT PROPERTY

from the recorded lien is the same check DEFENDANT delivered to the Town in exchange for a partial release of the code enforcement liens encumbering the I Street Property only.

58. At the May 6, 2024 hearing, DEFENDANT offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$595,150.00 attributable to Liens 1 and 2).

59. The TOWN Council offered to reduce the liens if DEFENDANT paid \$247,000.00.

60. The reduced amount of \$247,000 included a credit for the \$50,000 previously paid to the Town by DEFENDANT on December 12, 2019.

61. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, “Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall become null and void and the full amount of the lien shall be due and payable.”

62. The TOWN did not receive any of the reduced payment amount by June 5, 2024, and no release has been recorded by the TOWN. As a result of the non-payment of the offered reduced lien amount, such lien reduction became null and void

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE15-0167)

63. The TOWN repeats and realleges Paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. This is an action to foreclose a municipal code enforcement lien imposed on the SUBJECT PROPERTY by a Special Magistrate in Code Enforcement Case No. CE15-0167.

65. On or about April 16, 2015, a Fort Myers Beach Code Enforcement Officer

inspected the SUBJECT PROPERTY and observed one or more violations of Section 6-111 of the Fort Myers Beach Land Development Code (incorporating Section 103.5 of the Florida Building Code), to wit: Unsafe buildings or systems (“Violation 1”) on the SUBJECT PROPERTY

66. At the time Violation 1 was observed, the record owner of the SUBJECT PROPERTY was DIBIASI.

67. On or about July 15, 2015, the TOWN issued a Notice of Violation regarding Violation 1 on the SUBJECT PROPERTY, pursuant to Section 162.12, Florida Statutes, to DIBIASI. The Notice of Violation was mailed to DIBIASI via certified mail and posted on the SUBJECT PROPERTY in accordance with Section 2-429, TOWN of Fort Myers Beach Code of Ordinances. The Notice of Violation required the premises to be vacated and other corrective actions to be completed by August 4, 2015, and notified DIBIASI that the matter would be scheduled for hearing before the TOWN of Fort Myers Beach Special Magistrate if Violation 1 remained uncorrected after August 4, 2015. True and correct copies of the Notice of Violation and proof of mailing are attached hereto as **Exhibit “B.”**

68. The property was inspected on or about October 29, 2015, and the violations remained in effect.

69. On December 4, 2015, deed was recorded transferring the SUBJECT PROPERTY from DIBIASI to DIBIASI’s business, ABSOLUTE.

70. On or about January 13, 2016, the TOWN mailed a Notice of Hearing to Leo Dibiasi as agent for ABSOLUTE via certified mail, advising that a public hearing concerning Violation 1 would be conducted by the Code Enforcement Special Magistrate on February 24, 2016. True and correct copies of the Notice of Hearing and proof of mailing is attached hereto as **Exhibit “C.”**

71. On February 24, 2016, the Special Magistrate for the TOWN held a duly noticed public hearing related to Lien 1. ABSOLUTE was not present at the hearing. After having considered the sworn testimony, evidence, and arguments presented at the hearing, the Special Magistrate entered a Code Enforcement Order finding that the SUBJECT PROPERTY was occupied and did not have a permit for the replacement of the main ingress/egress in violation of Fort Myers Beach Land Development Code Section 6-111 (adopting the Florida Building Code 103.5) and assessed \$150.00 in administrative costs. The Special Magistrate ordered correction of Violation 1 before March 25, 2016, and ordered that failure to comply would result in a fine of \$250.00 per day beginning on March 25, 2016, and continuing for each day the violation continues to exist. A true and correct copy of the Order is attached hereto as **Exhibit “D.”**

72. The corrective action ordered by the Special Magistrate was to “Obtain a permit for remodel work and pass all inspections” and “Obtain a permit for stairwell build and pass all subsequent inspections.”

73. On March 25, 2016, the TOWN conducted a re-inspection of the SUBJECT PROPERTY, and issued an Affidavit of Non-Compliance, providing competent, substantial evidence that the corrective action ordered by the Special Magistrate had not been taken. A true and correct copy of the Affidavit of Non-Compliance is attached hereto as **Exhibit “E.”**

74. On or about March 28, 2016, the Affidavit of Non-Compliance was provided to the Special Magistrate.

75. On March 30, 2016, the Special Magistrate executed a Code Enforcement Order Imposing Lien on the SUBJECT PROPERTY. The Special Magistrate found that the violations still existed on the SUBJECT PROPERTY and that ABSOLUTE failed to comply with its February 24, 2016 Order and failed to pay the \$150.00 in administrative costs. The Special Magistrate ordered

ABSOLUTE to pay the TOWN a fine of \$250.00 per day, beginning on March 25, 2016, and continuing to accrue for each day the violations continued to exist on the SUBJECT PROPERTY.

76. The Code Enforcement Order Imposing Lien further ordered that, upon recording in the Public Records, the order would constitute a lien against the SUBJECT PROPERTY and any other real or personal property owned by ABSOLUTE for the fine amount and prosecution costs.

77. The Code Enforcement Order Imposing Lien was recorded on April 12, 2016, as Official Records Instrument No. 2016000076124¹, in the public records of Lee County, Florida. A copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit “F.”**

78. ABSOLUTE did not appeal the Code Enforcement Order Imposing Lien to the Circuit Court within the thirty days allowed pursuant to Section 162.11, Florida Statutes. Therefore, the Code Enforcement Order Imposing Lien is a final, non-appealable order.

79. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 1,” constitutes a valid and enforceable lien against the SUBJECT PROPERTY.

80. Lien 1 was recorded in the public records and attached to the SUBJECT PROPERTY at the time ABSOLUTE was the owner of record of the SUBJECT PROPERTY. Lien 1 is considered to “run with the land” pursuant to Fla. Stat. § 162.09(3) and Florida law. Despite the subsequent change in ownership of the SUBJECT PROPERTY, Lien 1 still encumbers the SUBJECT PROPERTY and is thus enforceable against DEFENDANT.

¹ A certified copy of the same was recorded on the same day as No. 2016000076145.

81. On April 16, 2024, the TOWN issued an Affidavit of Compliance finding the SUBJECT PROPERTY was in compliance as of September 28, 2022, as a result of Hurricane Ian and the SUBJECT PROPERTY being demolished. A copy of the Affidavit of Compliance is attached hereto as **Exhibit “G.”**

82. Fines accrued between March 25, 2016, and September 28, 2022, for the violation in the amount of \$250.00 per day for 2,378 days, equaling a total fine of \$594,500.00 plus \$150.00 in administrative fees for a total amount of \$594,650.00 due under Lien 1. Pursuant to Section 162.10, Florida Statutes, the total amount due to satisfy the lien is the amount of the fine, together with, but not limited to, the cost of serving notice, advertising, recording the Final Order, reasonable attorney’s fees and costs, and collection cost.

83. Section 162.09(3), Florida Statutes, provides that after three months from the filing of any code enforcement lien which remains unpaid, such lien may be foreclosed upon authorization from a code enforcement board or special magistrate.

84. On January 30, 2024, a Notice of Hearing was mailed via certified mail to the current owner, DEFENDANT, and a copy of the Notice was posted on the SUBJECT PROPERTY, advising that a public hearing to authorize the TOWN to foreclose and collect the outstanding monies owed for Lien 1 would be held before the Special Magistrate on February 12, 2024. True and correct copies of the Notice of Hearing and an Affidavit of Mailing and Posting of Notice of Hearing are attached hereto as **Exhibit “H.”**

85. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order which authorized the TOWN to foreclose Lien 1 on the SUBJECT PROPERTY.

A copy of the Order is attached hereto as **Exhibit “I.”**

86. No appeal of the Special Magistrate’s Order was filed.

87. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

88. At the May 6, 2024, public hearing before the TOWN Council, DEFENDANT alleged that the \$50,000.00 check paid by DEFENDANT released the SUBJECT PROPERTY from the recorded lien. A copy of the check is attached hereto as **Exhibit “A.”**

89. The \$50,000.00 check DEFENDANT claimed released the SUBJECT PROPERTY from the recorded lien is the same check DEFENDANT delivered to the Town in exchange for a partial release of the code enforcement liens encumbering the I Street Property only.

90. At the May 6, 2024 hearing, DEFENDANT offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$594,650.00 attributable to Lien 1).

91. The TOWN Council offered to reduce the liens if DEFENDANT paid \$247,000.00.

92. The reduced amount of \$247,000.00 included a credit for the \$50,000.00 previously paid to the Town by DEFENDANT on December 12, 2019.

93. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, “TOWN council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall become null and void and the full amount of the lien shall be due and payable.”

94. No payment was received by June 5, 2024, and no release has been recorded by the TOWN.

95. Accordingly, the TOWN declares that the fines under the above-referenced Lien 1 remain due and payable and hereby demands payment of the full amount, together with interest, attorney fees, administrative costs, recording, title search expenses for ascertaining necessary parties to this action, and such other expenses as this Court deems just and proper.

96. The TOWN exercises its right to foreclose Lien 1 on the referenced SUBJECT PROPERTY in Code Enforcement Case No. CE15-0167.

97. The interests of DEFENDANT are subordinate and inferior to the right, title, and interest of the TOWN's lien under the above-referenced code compliance case.

WHEREFORE, the TOWN respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the SUBJECT PROPERTY for the full amount due and owing the TOWN pursuant to Lien 1, including the principal, all accrued interest, attorney's fees and costs, and other expenses, minus any credits for payments previously received by TOWN from DEFENDANT, and if such sums are not paid within the time set by the Court, that the SUBJECT PROPERTY be sold to satisfy the amounts owed to the TOWN;

(b) Order that DEFENDANT, and all persons, partnerships, corporations, or entities claiming by, through or under the DEFENDANT since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the SUBJECT PROPERTY;

(c) That the proceeds of any sale resulting therefrom, if any, be applied to reduce the indebtedness due under Lien 1;

(d) Order that DEFENDANT is responsible for Lien 1 and all costs of foreclosure

including reasonable attorney's fees incurred by TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Provide such other and further relief as the Court deems just and proper.

COUNT II

FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE17-0065)

98. Plaintiff repeats and realleges Paragraphs 1 through 62 of the Complaint as if fully set forth herein.

99. This is an action to foreclose on a municipal code enforcement lien entered against the SUBJECT PROPERTY in Case No. CE17-0065.

100. On or about February 3, 2017, the TOWN observed that the SUBJECT PROPERTY had one or more violations of the Fort Myers Beach Land Development Code, to wit: Work without permit – building C (“Violation 2”).

101. At the time of the observed Violation 2, the record owner of the SUBJECT PROPERTY was Joseph B. ORLANDINI (“ORLANDINI”).

102. On or about February 9, 2017, the TOWN issued a Notice of Violation regarding Violation 2 on the SUBJECT PROPERTY, 80 Avenue E, pursuant to Section 162.12, Florida Statutes, to ORLANDINI. The Notice of Violation was mailed via certified mail posted on the SUBJECT PROPERTY in accordance with Section 2-429, TOWN of Fort Myers Beach Code of Ordinances. The Notice of Violation required corrective action by securing the appropriate permits and associated inspections within 14 days of receipt of the Notice and notified ORLANDINI that the matter would be scheduled for hearing before the TOWN of Fort Myers Beach Special Magistrate if Violation 2 remained uncorrected after 14 days. A true and correct copy of the Notice of Violation is attached hereto as **Exhibit “J.”**

103. On or about June 16, 2017, the TOWN mailed a Notice of Hearing to

ORLANDINI via certified mail, advising that a public hearing concerning Violation 2 would be conducted by the Code Enforcement Special Magistrate on July 26, 2017. A true and correct copy of the Notice of Hearing is attached hereto as **Exhibit “K.”**

104. At the July 26, 2017, hearing, following the presentation of evidence and testimony from the Code Enforcement Officer and ORLANDINI, The Special Magistrate entered a Code Enforcement Order finding that paver work had been done on the SUBJECT PROPERTY without a permit in violation of Fort Myers Beach Land Development Code Section 1—101(a). A true and correct copy of the Code Enforcement Order is attached hereto as **Exhibit “L.”**

105. The July 26, 2017, Code Enforcement Order required ORLANDINI to correct Violation 2 by securing the required permits, passing the required inspections, and obtaining a Limited Development Review Order before August 30, 2017, and ordered that failure to comply would result in a fine of \$150.00 per day beginning on August 30, 2017, and continuing for each day the violation continued to exist. The July 26, 2017, Code Enforcement Order also assessed \$175.00 in administrative costs.

106. The July 26, 2017, Code Enforcement Order was recorded on March 1, 2018, at Official Records Instrument No. 2018000049665, in the public records of Lee County, Florida.

107. On or about May 30, 2019, the TOWN mailed a Notice of Hearing to ORLANDINI via certified mail and posted a Notice of Hearing on the SUBJECT PROPERTY. The Notice of Hearing advised that a public hearing to consider entering an order imposing a fine and lien against the SUBJECT PROPERTY for the uncorrected Violation 2 would be conducted by the Code Enforcement Special Magistrate on June 20, 2019. True and correct copies of the Notice of Hearing and proof of mailing is attached hereto as **Exhibit “M.”**

108. At the June 20, 2019, hearing, following the presentation of evidence and testimony

from the Code Enforcement Officer and ORLANDINI, the Special Magistrate executed a Code Enforcement Order Imposing Lien. The Special Magistrate found that it took ORLANDINI 310 days to comply with the Code Enforcement Order and bring the SUBJECT PROPERTY into compliance, and that ORLANDINI failed to pay the accrued fine in the amount of \$46,500.00 and the \$175.00 in administrative costs.

109. Although the Special Magistrate certified that a fine of \$46,675.00 had accrued, the Special Magistrate reduced the fine to \$500.00 based on evidence of mitigating circumstances presented by ORLANDINI.

110. The Code Enforcement Order Imposing Lien ordered that, upon recording in the Public Records, the order would constitute a lien against the SUBJECT PROPERTY and any other real or personal property owned by ORLANDINI for the fine amount of \$500.00.

111. The Code Enforcement Order Imposing Lien was recorded on July 9, 2019, as Official Records Instrument No. 2019000160404 in the public records of Lee County, Florida. A true and correct copy of the Code Enforcement Order Imposing Lien is attached hereto as **Exhibit “N.”**

112. ORLANDINI did not appeal the Code Enforcement Order Imposing Lien to the Circuit Court within the thirty days allowed pursuant to Section 162.11, Florida Statutes. Therefore, the Code Enforcement Order Imposing Lien is a final, non-appealable order.

113. Pursuant to Fla. Stat. § 162.09(3), the Code Enforcement Order Imposing Lien, which is hereafter referred to as “Lien 2,” constitutes a valid and enforceable lien against the SUBJECT PROPERTY.

114. Lien 2 was recorded in the public records and attached to the SUBJECT PROPERTY at the time ORLANDINI was the owner of record of the SUBJECT PROPERTY.

Lien 2 is considered to “run with the land” pursuant to Fla. Stat. § 162.09(3) and Florida law. Despite the subsequent change in ownership of the SUBJECT PROPERTY, Lien 2 still encumbers the SUBJECT PROPERTY and is thus enforceable against DEFENDANT.

115. On April 16, 2024, the TOWN issued an Affidavit of Compliance finding the SUBJECT PROPERTY to be in compliance as of September 28, 2022, as a result of Hurricane Ian and the SUBJECT PROPERTY being demolished. A copy of the Affidavit of Compliance is attached hereto as **Exhibit “O.”**

116. As of the date of this Amended Complaint, the total amount owed on Lien 2 is \$500.00.

117. The amount due for Lien 2 remains unpaid, together with interest, attorney fees, administrative costs, recording, and title search expenses for ascertaining necessary parties to this action.

118. Section 162.09(3), Florida Statutes, provides that after three months from the filing of any code enforcement lien which remains unpaid, such lien may be foreclosed upon authorization from a code enforcement board or special magistrate.

119. On January 30, 2024, a Notice of Hearing was mailed via certified mail to the current owner, DEFENDANT, and posted a copy of the Notice on the SUBJECT PROPERTY, advising that a public hearing to authorize the TOWN to foreclose and collect the outstanding monies owed for Lien 2 would be held before the Special Magistrate on February 12, 2024. True and correct copies of the Notice of Hearing and an Affidavit of Mailing and Posting of Notice of Hearing are attached hereto as **Exhibit “H.”**

120. On February 12, 2024, a duly noticed foreclosure hearing was held before the Special Magistrate. DEFENDANT was represented at the hearing by its attorney. On or about

February 22, 2024, the Special Magistrate entered a Foreclosure Findings of Fact, Conclusions of Law, and Order in which the TOWN authorized to foreclose Lien 2 on the SUBJECT PROPERTY.

A copy of the Order is attached hereto as **Exhibit “I.”**

121. No appeal of the Special Magistrate’s Order was filed.

122. On May 6, 2024, DEFENDANT appeared before the TOWN Council and requested a lien reduction as authorized by Section 2-432 of the TOWN of Fort Myers Beach Code of Ordinances.

123. At the May 6, 2024 public hearing before the TOWN Council, DEFENDANT alleged that the \$50,000.00 check paid by DEFENDANT released the SUBJECT PROPERTY from the recorded lien and offered to pay \$15,000.00 for a release of the liens on the SUBJECT PROPERTY, which at the time had accrued fines in the amount of \$1,189,800.00 (with \$500.00 attributable to Lien 2).

124. The TOWN Council offered to reduce the lien if DEFENDANT paid \$247,000.00.

125. The reduced amount of \$247,000 included a credit for the \$50,000 previously paid to the Town by DEFENDANT on December 12, 2019.

126. Section 2-432(10) of the TOWN of Fort Myers Beach Code of Ordinances provides, “TOWN council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the TOWN council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.”

127. No payment was received by June 5, 2024, and no release has been recorded by the TOWN.

128. Accordingly, the TOWN declares that the fines under the above-referenced Lien 2

remains due and payable and hereby demands payment of the full amount, together with interest, attorney fees, administrative costs, recording, title search expenses for ascertaining necessary parties to this action, and such other expenses as this Court deems just and proper.

129. The TOWN exercises its right to foreclose the Lien 2 on the referenced SUBJECT PROPERTY in Code Enforcement Case No. CE17-0065.

130. The interest of DEFENDANT is subordinate and inferior to the right, title, and interest of the TOWN's lien under the above-referenced code compliance case.

WHEREFORE, the TOWN respectfully requests that this Court:

(a) Enter Final Judgment of Foreclosure on the SUBJECT PROPERTY for the full amount due and owing the TOWN pursuant to Lien 2, including the principal, all accrued interest, attorney's fees and costs, and other expenses, minus any credits for payments previously received by the TOWN from DEFENDANT, and if such sums are not paid within the time set by the Court, that the SUBJECT PROPERTY be sold to satisfy the amounts owed to the TOWN;

(b) Order that DEFENDANT, and all persons, partnerships, corporations or entities claiming by, through, or under the DEFENDANT since the filing of the Notice of Lis Pendens, be forever barred and foreclosed of any and all right, interest, or claim in and to the SUBJECT PROPERTY;

(c) That the proceeds of any sale resulting therefrom, if any, be applied to reduce the indebtedness due under Lien 2;

(d) Order that DEFENDANT is responsible for Lien 2 and all costs of foreclosure including reasonable attorney's fees incurred by TOWN in this action pursuant to Section 162.10, Florida Statutes, and the TOWN's Code of Ordinances, Article V, Sec. 2-427(d); and

(e) Provide such other and further relief as the Court deems just and proper.

Dated this 8th day of August, 2025.

/s/ Gretchen R.H. Vose

GRETCHEN R.H. VOSE, ESQ.

Florida Bar No. 169913

NANCY STUPARICH, ESQ.

Florida Bar No. 0646342

CHLOE BERRYMAN, ESQ.

Florida Bar No. 1032129

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>
<i>Town of Fort Myers Beach</i>		<i>Godwin Hannon</i> AUTHORIZED SIGNATURE	
Partial Release for 1560 I Street		[REDACTED]	
⑈002265⑈ ⑆2711716161⑆			

Details on Back
Security Features Included

PAY TO THE ORDER OF
FIRST FLORIDA INTEGRITY BANK
067016325
FOR DEPOSIT ONLY
TOWN OF FORT MYERS BEACH
OPERATING ACCT 1101666



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0591

7/14/2015

DIBIASI LEO J + DIBIASI LEO J
12071 MCGREGOR BLVD
FORT MYERS, FL 33919

CASE NUMBER: **CE15-0167**

Certified Mail: 7014 2870 0000 6232 3267

Posted Property: 7/14/15

SITE ADDRESS: **80 AVENUE E**
PARCEL STRAP NO: **194624W40070A0020**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **4/16/15** by Lee County Building Inspector, William Sammons, per 2013-2015 interlocal agreement with Lee County, indicates that violation(s) of the following Town Codes currently exist on said property (see attached report):

➤ **Town of Fort Myers Beach LDC, Chapter 6 Section 111:**
Adoptions; amendments, adopting the Florida Building
Code as amended. Florida Building Code section:

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

You are hereby directed to abate or remedy these violations on or before **8/4/15 (15 Days)**.

The violation(s) can be abated or corrected by taking the following actions:

- Premises must be vacated.
- Remove ladder.
- Obtain a permit to replace deck and stairs and pass all subsequent inspections.



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0591

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 765-0202 if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS

Code Enforcement Officer
Town of Fort Myers Beach

80 Ave E
CE15-0167
Unsafe Deck

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage		

Sent To: **Leo Dibiasi**
Street & Apt. No.
or PO Box No.
City, State, ZIP: **12071 McGregor Blvd
Fort Myers, FL 33919**

PS Form 3800, July 2013

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

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.



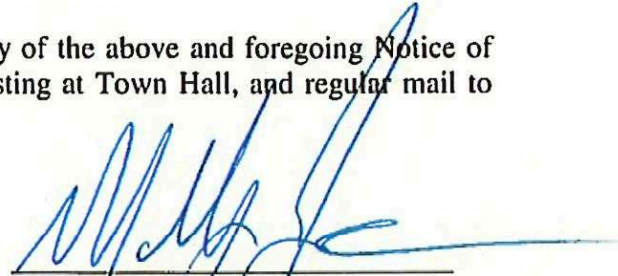
Town of Fort Myers Beach

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.



Molly Jacobs
Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931, TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.

80 Ave E
CE15-0167
NOH
Unsafe Dec

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com™

OFFICIAL USE

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage
\$

Total Postage
\$

Sent To
Leo Dibiasi
Agent For: Absolute Best Rate Rentals
12071 McGregor Blvd
Fort Myers, FL 33919

Street and Apt
City, State, Zip

PS Form 3800, April 2015 PSN 7530-02-000-9017 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Leo Dibiasi
Agent For: Absolute Best Rate Rentals
12071 McGregor Blvd
Fort Myers, FL 33919

2. Article Number (Transfer from service label)
7015 1660 0000 4352 0477

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X  ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery
1-16-16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ 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.

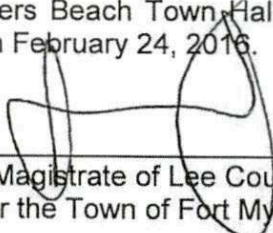
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

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.

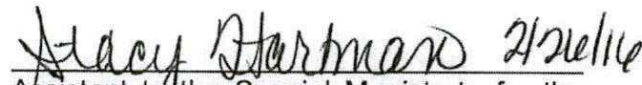
REHEARING: Either the Town or the violator may request a rehearing of the decision of the Special Magistrate. A request for rehearing will be made in writing, and will be filed with the clerk within ten (10) business days of the Special Magistrate's execution of the Order. A request for the rehearing 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

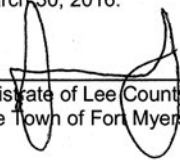
OF COMPLIANCE. RESPONDENT IS ADVISED THAT NUMEROUS PHONE CALLS MAY BE NECESSARY TO ENSURE CONTACT WITH THE CODE ENFORCEMENT OFFICER.

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

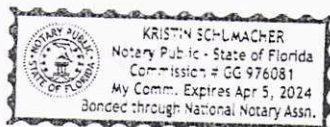
Printed Name: Bill STOUT

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

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

Case Number:	CE15-0167, CE14-0394, CE17-0065
Priority Mail:	EI 602 240 950 US
Regular Mail:	1/30/2024

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

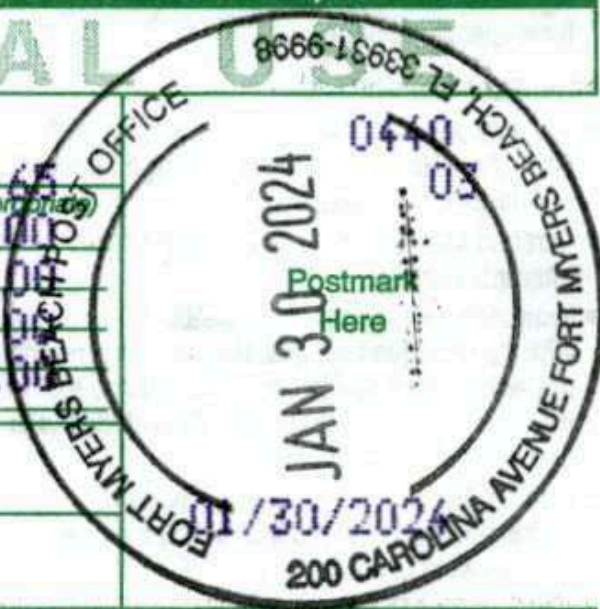
NOHFA

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.

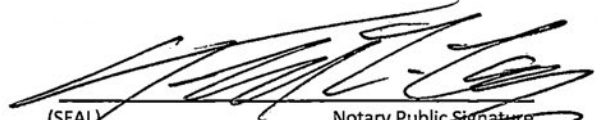
ORDERED this 12th day of February 2024, and executed this 27 day of February 2024.


Special Magistrate

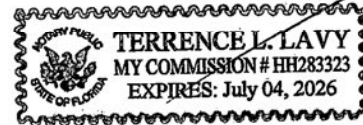
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution 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:

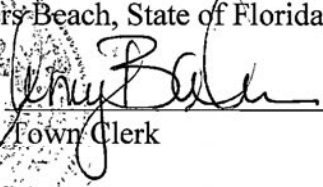
White Sand Properties of Fort Myers Beach, LLC
415 Palermo Cir.
Fort Myers Beach, FL 33931

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.

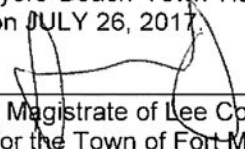
Payment of administrative costs and fines: Checks should be made payable to "Town of Fort Myers Beach" and mailed to:

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	\$
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	

Postmark
5/30/19
NoH Amend
80 Ave E
CE 17-0005

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**Track Another Package +****Tracking Number:** 70190160000097378462

Remove X

Your item was delivered to an individual at the address at 9:24 am on May 31, 2019 in FORT MYERS BEACH, FL 33931.

 Delivered

May 31, 2019 at 9:24 am
Delivered, Left with Individual
FORT MYERS BEACH, FL 33931

Feedback

Tracking History**May 31, 2019, 9:24 am**

Delivered, Left with Individual

FORT MYERS BEACH, FL 33931

Your item was delivered to an individual at the address at 9:24 am on May 31, 2019 in FORT MYERS BEACH, FL 33931.

May 31, 2019, 6:22 am

Departed USPS Regional Facility

FORT MEYERS FL DISTRIBUTION CENTER

May 30, 2019, 8:57 pm

Arrived at USPS Regional Facility

FORT MEYERS FL DISTRIBUTION CENTER

Product Information

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Feedback

The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

 **Town of Fort Myers Beach**
NOTICE OF CODE ENFORCEMENT HEARING
 2525 Estero Blvd Fort Myers Beach, Florida 33931
 Phone: 239-335-6282 Fax: 239-765-0305

5/30/2019

TOWN OF FORT MYERS BEACH
 Petitioner

Case Number:	CE17-0065
Certified Mail:	7319 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.

Page 1 of 2
 F:\Documents\VIOLATIONS\INSPECTIONS\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:

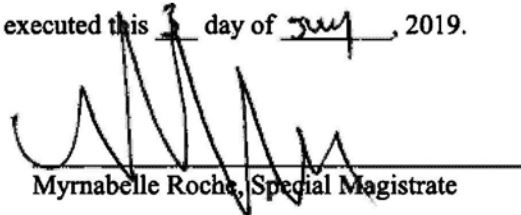
1. Respondent, by reason of the foregoing facts, was in violation of Town Code and took 310 days to comply with the Order of Enforcement.

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.

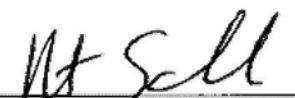
PAYMENT OF ADMINISTRATIVE COSTS AND FINES: Checks should be made payable to "Town of Fort Myers Beach," include the case number and mailed to:

Town of Fort Myers Beach
Attention: Code Enforcement
2525 Estero Boulevard
Fort Myers Beach, FL 33931

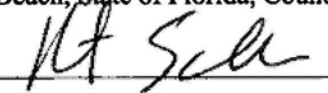
CERTIFICATE OF SERVICE

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



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3. Orlandini, Joseph B was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 26th day of July, 2017.

4. According to available records in possession of the Town of Fort Myers Beach, an inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024, and the Subject Property was found in compliance on the 28th day of September, 2022 due to Hurricane Ian and the property being Demoed.

5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.

6. Code Enforcement Case No. CE17-0065 will be closed upon payment of \$650.00 lien in full.

7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

FURTHER AFFIANT SAYETH NOT.

Signed on this 16 day of April, 2024.

Yozzo, Thomas W
Print Name

[Signature]
Code Enforcement Officer

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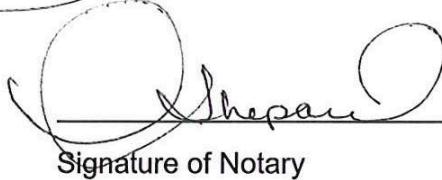
Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16th day of April, 2024 by Thomas Vozzo, as _____, who is personally known to me or has produced _____ as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026



Signature of Notary

Ashley Shepard

(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FORT MYERS BEACH ESTERO ISLAND

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**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION**

TOWN OF FORT MYERS BEACH,
FLORIDA,

Plaintiff,

v.

CASE NO. 25-CA-004261

WHITE SAND PROPERTIES OF FORT MYERS
BEACH, LLC,

Defendant.

**DEFENDANT/COUNTER-PLAINTIFF, WHITE SAND PROPERTIES OF
FORT MYERS BEACH, LLC'S, ANSWER AND AFFIRMATIVE DEFENSES,
COUNTERCLAIM, AND DEMAND FOR JURY TRIAL**

NOW COMES, Defendant/Counter-Plaintiff, White Sand Properties of Fort Myers Beach, LLC ("White Sand"), by and through the undersigned counsel, hereby files this Answer and Affirmative Defenses to Plaintiff, Town of Fort Myers Beach, Florida's ("Town"), Complaint to Foreclose Municipal Liens and in support thereof states as follows:

SUBJECT MATTER, PARTIES, AND VENUE

1. Admit that the Town seeks to foreclose on code enforcement liens, otherwise denied.
2. Admit.
3. Denied.
4. Admit that 80 Avenue E is the real property at issue. Denied that any personal property of White Sand is subject of this matter.
5. Admit.

6. Admit that White Sand owns 80 Avenue E.
7. Without knowledge and therefore, denied.
8. Without knowledge and therefore, denied.
9. Admit for venue purposes only.
10. Admit.
11. Admit.
12. Denied.
13. Admit.
14. Denied.
15. Denied.

BACKGROUND FACTS

16. Admit.
17. Without knowledge and therefore, denied.
18. Without knowledge and therefore, denied.
19. Denied.
20. Denied.
21. Admit.
22. Without knowledge and therefore, denied.
23. Denied.
24. Denied.
25. The statute speaks for itself.
26. Denied.
27. Admit.

28. Admit that White Sand offered \$50,000.00 to resolve liens based on 80 Avenue E,
denied that it was limited to I Street.

29. Denied as phrased.

30. Admit.

31. Admit.

32. Denied.

33. Denied that the Town's acceptance of the \$50,000.00 was limited to I Street.

Admit that the Town accepted a \$50,000.00 check from White Sand to resolve an
umbrella of liens related to 80 Avenue E.

34. Admit.

35. Denied.

36. Denied.

37. Admit.

38. Admit.

39. Denied.

40. Admit.

41. Without knowledge and therefore, denied.

42. Admit.

43. Denied as phrased.

44. Admit.

45. Denied.

46. Admit.

47. Denied.

48. The statute and code of ordinances speak for themselves.

- 49. Denied as phrased.
- 50. Denied.
- 51. Denied.
- 52. Denied.
- 53. Without knowledge and therefore, denied.
- 54. Denied.
- 55. Admit.
- 56. Admit.
- 57. Admit it is the same check. Denied that it was not delivered for 80 Avenue E.
- 58. Admit that White Sand offered \$15,000.00; otherwise denied.
- 59. Admit.
- 60. Without knowledge and therefore, denied.
- 61. The code ordinance speaks for itself.
- 62. Without knowledge and therefore, denied.

COUNT I
FORECLOSURE OF MUNICIPAL LIEN (CASE NO. CE15-0167)

- 63. White Sand incorporates by reference the responses to the allegations of paragraphs 1-62 of the Complaint.
- 64. Admit.
- 65. Denied.
- 66. Without knowledge and therefore, denied.
- 67. Without knowledge and therefore, denied.
- 68. Without knowledge and therefore, denied.
- 69. Without knowledge and therefore, denied.

70. Without knowledge and therefore, denied.
71. Without knowledge and therefore, denied.
72. Without knowledge and therefore, denied.
73. Without knowledge and therefore, denied.
74. Without knowledge and therefore, denied.
75. Without knowledge and therefore, denied.
76. Without knowledge and therefore, denied.
77. Without knowledge and therefore, denied.
78. Without knowledge and therefore, denied.
79. Denied.
80. Denied.
81. Admit that the Town issued compliance; denied that it is the correct compliance date.
82. Denied.
83. The statute speaks for itself.
84. Admit.
85. Admit.
86. Admit.
87. Admit.
88. Admit.
89. Denied.
90. Admit that White Sand offered \$15,000.00, otherwise denied.
91. Admit.
92. Without knowledge and therefore, denied.

93. The code ordinance speaks for itself.

94. Denied.

95. Denied.

96. Denied

97. Denied.

COUNT II
FORECLOSURE OF MINICIPAL LINE (CASE NO. CE17-0065)

98. White Sand incorporates by reference the responses to the allegations of paragraphs 1-62 of the Complaint.

99. Denied.

100. Denied.

101. Admit that Orlandini owned 80 Avenue E. in 2017, otherwise denied.

102. Without knowledge and therefore, denied.

103. Without knowledge and therefore, denied.

104. Without knowledge and therefore, denied.

105. Without knowledge and therefore, denied.

106. Without knowledge and therefore, denied.

107. Without knowledge and therefore, denied.

108. Without knowledge and therefore, denied.

109. Without knowledge and therefore, denied.

110. Without knowledge and therefore, denied.

111. Without knowledge and therefore, denied.

112. Without knowledge and therefore, denied.

113. Without knowledge and therefore, denied.

- 114. Without knowledge and therefore, denied.
- 115. Admit that the Town issues an Affidavit of Compliance; denied Hurricane Ian is the compliance date.
- 116. Denied.
- 117. Denied.
- 118. The statute speaks for itself.
- 119. Admit as to notice only, otherwise denied.
- 120. Admit.
- 121. Admit.
- 122. Admit.
- 123. Admit as to offer; otherwise denied.
- 124. Admit.
- 125. Without knowledge and therefore, denied.
- 126. The code ordinance speaks for itself.
- 127. Denied.
- 128. Denied.
- 129. Denied.
- 130. Denied.

AFFIRMATIVE DEFENSES

1. As illustrated by Plaintiff, Town of Fort Myers Beach, Florida's ("Town"), Complaint whether the Town accepted money from Defendant, White Sand Properties of Fort Myers Beach, LLC ("White Sand"), and/or Joseph Orlandini to resolve any liens on 80 Avenue E, Fort Myers Beach, Florida 33931 ("Property") is an issue in this case. To this end, White Sand raises as its first affirmative defense

of settlement. White Sand and Orlandini offered to pay the Town \$65,000.00 in return for the Town deeming all liens related to the Property satisfied. Those liens included what the Town's Complaint defines as Lien 1 and Lien 2. The Town accepted this offer. The \$65,000.00 was paid to the Town. The Town accepted this money.

2. As its second affirmative defense, White Sand alleges that it is entitled to a setoff for the sums it paid the Town concerning Lien 1 and Lien 2.
3. As its third affirmative defense, White Sand alleges that Lien 2 has been satisfied and the Property should be released from Lien 2. The Town affirmatively alleges that White Sand paid the Town \$50,000.00. The Town affirmatively alleges that the amount of Lien 2 is only \$500.00. The Town filed a release as it concerns Lien 2, which was entered in Code Enforcement Case No. CE17-0065 ("Release"). The Release identifies Instrument #2019000160404 (e.g. Lien 2) and states that the Town accepted \$50,000.00 from White Sand. Thus, because the Town admits it accepted the full amount of Lien 2 from White Sand and even released property based on this payment, Lien 2 has been satisfied.
4. As its fourth affirmative defense, White Sand alleges that the Town is equitably estopped from foreclosing on Lien 2 because the Town accepted the full amount of Lien 2 from White Sand. White Sand paid the Town this money because the Town represented that it would resolve the liens, including Lien 2. White Sand relied on this representation and paid the Town \$50,000.00, and then purchased the Property in reliance on this representation.
5. As its fifth affirmative defense, White Sand alleges that it brought the property into compliance no later than November 18, 2020. On November 18, 2020, the Town,

through its representative Carl Benge, wrote White Sand a letter that stated there were no active code enforcement cases on the Property. As such, the date the Property came into compliance thereby resulting in no active code enforcement cases is no later than November 18, 2020, rather than September 28, 2022. Thus, the amount of Lien 1 should be, without any setoff for White Sand's payments, \$424,750.00.

6. As its sixth affirmative defense, White Sand alleges that the Town is barred from enforcing Lien 1 because enforcement of these liens violates the excessive fines clause of the Eighth Amendment of the United States Constitution. White Sand did not commit any of the violations that underly Lien 1. Code enforcement liens, like Lien 1, constitute a fine for purposes of the Eighth Amendment of the United States Constitution. The Town seeks to foreclose on an aggregate lien in Lien 1. Indeed, the Town only recorded a single lien for Lien 1. \$594,650.00 is a grossly disproportionate as to White Sand considering that White Sand never actually committed a code violation. Indeed, Lien 1 was imposed at a time when White Sand did not even own the Property.
7. As its seventh affirmative defense, White Sand alleges that the Town is barred from enforcing Lien 2 because enforcement of these liens violates the excessive fines clause of the Eighth Amendment of the United States Constitution. White Sand did not commit any of the violations that underly Lien 2. Code enforcement liens, like Lien 2, constitute a fine for purposes of the Eighth Amendment of the United States Constitution. The Town seeks to foreclose on an aggregate lien in Lien 2. Indeed, the Town only recorded a single lien for Lien 2. \$500.00 is a grossly disproportionate as to White Sand considering that White Sand never actually

committed a code violation. Indeed, Lien 2 was imposed at a time when White Sand did not even own the Property.

DEMAND FOR JURY TRIAL

White Sand hereby demands a jury trial on all issues so triable.

COUNTERCLAIM

Plaintiff, White Sand Properties of Fort Myers Beach, LLC (“White Sand”), by and through the undersigned counsel, files this Complaint against Defendant, Town of Fort Myers Beach, Florida (“Town”), and Thomas Yozzo, in his official capacity as Code Enforcement Manager for the Town of Fort Myers Beach, Florida (“Yozzo”), and in support states:

THE PARTIES, JURISDICTION, VENUE AND CONDITIONS PRECEDENT

1. This is an action for declaratory relief pursuant to Chapter 86 Florida Statutes wherein the underlying amount in controversy exceeds \$50,000.00.
2. White Sand is a Florida limited liability company with its principal place of business in Lee County, Florida.
3. The Town is a body politic located within the State of Florida and has the ability to sue and be sued. The Town has the right, power, privilege, and authority to adopt and enforce the Town of Fort Myers Beach Code of Ordinances and apply the Town of Fort Myers Beach Code of Ordinances (“Code”) as well as perform all acts pertaining to local affairs. The Town has the right, power, privilege, and authority to train its officers, agents, and employees to interpret, enforce, and apply the Code, policies, and other regulations to obey the laws of the United States Constitution.

4. At all times relevant to this Counterclaim, Yozzo was the Code Enforcement Manager for the Town acting under color of law and is a resident of the State of Florida. As such, Yozzo was the manager of Jacobs and was responsible for their training, supervision, and conduct. Yozzo was also responsible for enacting, enforcing, and revising the Code, the Town's policies and regulations to ensure compliance with the laws of the United States, including the United States Constitution. Yozzo's edits and/or acts represent the official policy of the Town. *See Gilmore v. City of Atlanta, Ga.*, 737 F. 2d 854, 902 (11th Cir. 1984) (quoting *Monell v. Dept. of Social Svcs. Of City of New York*, 436 U.S. 658, 694 (1978)). Yozzo is a "final policymaker for" the Town. *See Greech v. Clayton Cnty., Ga.*, 335 F. 3d 1326, 1330 (11th Cir. 2003).
5. The centers on that certain piece of real property 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

("Property"). Additionally, the unlawful actions alleged herein were committed within the State of Florida, in Lee County. Thus, venue is appropriate in Lee County, Florida.
6. All conditions precedent have been complied with and/or have been waived.

GENERAL ALLEGATIONS

A. OWNERSHIP OF THE PROPERTY

7. From on or about December 2, 2015, to on or about July 15, 2016, Absolute Best Rate Rental, LLC, ("Absolute") owned the Property.

8. On or about July 15, 2016, Absolute conveyed the Property to Joseph Orlandini (“Orlandini”).
9. Orlandini owned the Property until approximately March 25, 2020.
10. On or about March 25, 2020, Orlandini conveyed the Property to White Sand.

B. OWNERSHIP OF 1560 I STREET, FT. MYERS BEACH

11. From on or about January 15, 2015, to March 20, 2020, Orlandini owned that certain piece of real property located at 1560 I Street, Fort Myers Beach, Florida 33931, which is legally described as follows:

Lot 9 and the East ½ of Lot 8, Block C, CRESCENT BEACH, according to the map or plat thereof as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida, together with that part of the vacated alley adjacent to the North side of said Lots, described as that part of alleyway lying between Lot 6, Block C, and the East ½ of Lot 8, and the Northwesterly ½ of Lot 9, Block C, Crescent Beach.

(“I Street”).

12. On or about March 20, 2020, Orlandini conveyed I Street to White Sand.

C. CODE ENFORCEMENT CASE NUMBER CE15-0167

13. While Absolute owned the Property, on or about April 12, 2016, the Town recorded a code enforcement order to impose lien dated March 30, 2016 (“Lien 1”). (A true and correct copy is attached as Exhibit A).

D. CODE ENFORCEMENT CASE NUMBER CE14-0394

14. On April 12, 2016, in Code Enforcement Case Number CE14-0394, while Absolute owned the Property, the Town recorded a second code enforcement order to impose lien dated March 30, 2016 (“Lien 2”). (A true and correct copy is attached as Exhibit B).

15. On March 12, 2019, however, Special Magistrate in Code Enforcement Case Number CE14-0394 entered an order that vacated Lien 2. (A true and correct copy is attached as Exhibit C).
16. That same day, the Special Magistrate issued a new code enforcement order imposing lien, this time while Orlandini owned the Property, which the Town recorded on March 27, 2019, and bears Instrument Number 2019000067137 (“Lien 3”).

E. CODE ENFORCEMENT CASE NUMBER CE17-0065

17. On July 9, 2019, in Code Enforcement Case Number CE17-0065, while Orlandini owned the Property, the Town recorded a code enforcement order imposing lien entered on June 20, 2019, and executed July 3, 2019 (“Lien 4”). (A true and correct copy is attached as Exhibit D).

F. THE TOWN AGREES TO SETTLE THE LIENS IN CODE ENFORCEMENT CASE NUMBERS CE15-0167, CE14-0394, AND CE17-0065 AND RELEASE THE PROPERTY FROM THE CORRESPONDING LIENS

18. On or about December 9, 2019, Orlandini and Jesse Schmid, the owner of White Sand, attended a Town of Fort Myers Beach council meeting.
19. At the council meeting, Orlandini and Mr. Schmid explained that White Sand wanted to buy I Street but needed to settle the liens (Lien 1, Lien 2, Lien 3, and Lien 4).
20. The Town’s manager, Roger Hernstadt, stated that he believed the Town could craft an agreement to satisfy the liens (Lien 1, Lien 2, Lien 3, and Lien 4).
21. The Town, through its council members, agreed and authorized Mr. Hernstadt to proceed.

22. Mr. Hernstadt, on behalf of the Town, Orlandini, and Mr. Schmid, on behalf of White Sand, entered into an agreement wherein: (1) White Sand would pay \$50,000.00; and (2) Orlandini would pay \$15,000.00 for a total of \$65,000.00. In return for the \$65,000.00 payment, the Town agreed to deem the liens associated with Code Enforcement Case Number CE15-0167, CE14-0394, and CE17-0065 (Lien 1, Lien 2, Lien 3, and Lien 4) satisfied and would release all properties, including the Property, under the collective umbrella of liens (the “Agreement”).
23. In furtherance of this agreement, \$50,000.00 was paid on behalf of White Sand on or about December 13, 2019. (A true and correct copy of is attached as Exhibit E).
24. The Town accepted the \$50,000.00 paid on White Sand’s behalf.
25. On January 29, 2020, the Town released I Street from the lien associated with Code Enforcement Case Number CE17-0065. (A true and correct copy is attached as Exhibit F).
26. Orlandini paid his \$15,000.00 to the Town in connection with a closing associated with the conveyance of Mojos to White Sand.
27. The Town accepted the \$15,000.00 paid on behalf of Orlandini.
28. Thereafter, the Town released the other properties owned by Orlandini, such as 1710/1740 Estero Blvd., Fort Myers Beach, FL 33931 (“MoJoe’s”) and 2890 Seaview St., Fort Myers Beach, FL 33931, from the liens associated with Code Enforcement Case Number CE14-0394 and CE17-0065.

29. Then on or about November 18, 2020, the Town sent White Sand a letter regarding the Property (“November Letter”). (A true and correct copy is attached as Exhibit G).

30. The November Letter stated “[t]here are no active Code Enforcement cases on this property.”

COUNT I: LIEN 1

31. White Sand alleges and incorporates by reference the allegations in paragraphs 1-30 as if fully set forth herein.

32. White Sand, Orlandini, and the Town entered into the Agreement.

33. As outlined above in paragraph 21, the Agreement called for the Town to release the Property from Lien 1 in return for a total payment of \$65,000.00 from Orlandini (\$15,000.00) and White Sand (\$50,000.00).

34. Orlandini and White Sand performed their respective obligations under the Agreement.

35. The Town accepted \$15,000.00 from Orlandini.

36. The Town accepted \$50,000.00 paid on behalf of White Sand.

37. As such, White Sand is of the position that Lien 1 is satisfied and the Property is released from Lien 1.

38. The Town, however, takes the Position that the Property is not released from Lien 1. Indeed, the Town has expressed a desire to foreclose on Lien 1.

39. The Town’s conduct has left White Sand in doubt as to whether Lien 1 encumbers the Property.

40. These differing positions have resulted in a disagreement between the Town and White Sand.

41. This disagreement and the corresponding doubt created as to White Sand, creates a real justiciable controversy between the Town and White Sand about whether Lien 1 still encumbers the Property.
42. White Sand and the Town have an actual and practical need for an adjudication of their rights as it concerns Lien 1 and the Property.
43. All parties having an actual, present, adverse, and/or antagonistic interest in Lien 1 and whether it still encumbers the Property have been joined.
44. The issues sought to be adjudicated are not merely theoretical.
45. White Sand is not seeking an advisory opinion from this Court.
46. Speedy relief is necessary to adjudicate the rights of all parties to this action.
47. White Sand has retained the law offices of Boyle, Leonard & Anderson, P.A. and Steven A. Ramunni, P.A., to represent it in this matter and has agreed to pay them a reasonable fee.

WHEREFORE, White Sand hereby requests this Court take jurisdiction over this matter and declare that Lien 1 no longer encumbers the Property, that Lien 1 is satisfied via settlement, the Property is released from Lien 1, award White Sand attorney's fees, award White Sand court costs, retain jurisdiction as may be necessary for further proceedings under section 86.061, Florida Statutes, and enter any other relief this Court deems just and proper.

COUNT II: LIEN 2

48. White Sand alleges and incorporates by reference the allegations in paragraphs 1-30 as if fully set forth herein.
49. The Town has sought to foreclose on Lien 2 and has taken the position that Lien 2 remains a valid lien.

50. White Sand takes the position that Lien 2 is no longer a valid lien because the Special Magistrate vacated Lien 2 on March 12, 2019.

51. As such, a disagreement exists between the Town and White Sand about whether Lien 2 still encumbers the Property.

52. This disagreement has left White Sand in doubt as to its right to possess the Property free and clear of Lien 2.

53. This aforementioned disagreement creates a real justiciable controversy between the Town and White Sand as to the validity of Lien 2 and whether it still encumbers the Property.

54. White Sand and the Town have an actual and practical need for an adjudication of their rights as it concerns Lien 2 and the Property.

55. All parties having an actual, present, adverse, and/or antagonistic interest in validity of Lien 2 and whether it still encumbers the Property have been joined.

56. The issues sought to be adjudicated are not merely theoretical.

57. White Sand is not seeking an advisory opinion from this Court.

58. Speedy relief is necessary to adjudicate the rights of all parties to this action.

59. White Sand has retained the law offices of Boyle, Leonard & Anderson, P.A. and Steven A. Ramunni, P.A., to represent it in this matter and has agreed to pay them a reasonable fee.

WHEREFORE, White Sand hereby requests this Court take jurisdiction over this matter and declare that Lien 2 is invalid and no longer encumbers the Property, award White Sand attorney's fees, award White Sand court costs, retain jurisdiction as may be necessary for further proceedings under section 86.061, Florida Statutes, and enter any other relief this Court deems just and proper.

COUNT III: LIEN 3

60. White Sand alleges and incorporates by reference the allegations in paragraphs 1-30 as if fully set forth herein.

61. White Sand, Orlandini, and the Town entered into the Agreement.

62. As outlined above in paragraph 21, the Agreement called for the Town to release the Property from Lien 3 in return for a total payment of \$65,000.00 from Orlandini (\$15,000.00) and White Sand (\$50,000.00).

63. Orlandini and White Sand performed their respective obligations under the Agreement.

64. The Town accepted \$15,000.00 from Orlandini.

65. The Town accepted \$50,000.00 paid on behalf of White Sand.

66. As such, White Sand is of the position that Lien 3 is satisfied, and the Property is released from Lien 3.

67. The Town, however, takes the Position that the Property is not released from Lien 3. Indeed, the Town has made efforts to foreclose on Lien 3.

68. The Town's conduct has left White Sand in doubt as to whether Lien 3 encumbers the Property.

69. These differing positions have resulted in a disagreement between the Town and White Sand.

70. This disagreement and the corresponding doubt created as to White Sand, creates a real justiciable controversy between the Town and White Sand about whether Lien 3 still encumbers the Property.

71. White Sand and the Town have an actual and practical need for an adjudication of their rights as it concerns Lien 3 and the Property.

72. All parties having an actual, present, adverse, and/or antagonistic interest in Lien 3 and whether it still encumbers the Property have been joined.

73. The issues sought to be adjudicated are not merely theoretical.

74. White Sand is not seeking an advisory opinion from this Court.

75. Speedy relief is necessary to adjudicate the rights of all parties to this action.

76. White Sand has retained the law offices of Boyle, Leonard & Anderson, P.A. and Steven A. Ramunni, P.A., to represent it in this matter and has agreed to pay them a reasonable fee.

WHEREFORE, White Sand hereby requests this Court take jurisdiction over this matter and declare that Lien 3 no longer encumbers the Property, that Lien 3 is satisfied via settlement, the Property is released from Lien 3, award White Sand attorney's fees, award White Sand court costs, retain jurisdiction as may be necessary for further proceedings under section 86.061, Florida Statutes, and enter any other relief this Court deems just and proper.

COUNT IV: Lien 4

73. White Sand alleges and incorporates by reference the allegations in paragraphs 1-30 as if fully set forth herein.

74. White Sand, Orlandini, and the Town entered into the Agreement.

75. As outlined above in paragraph 21, the Agreement called for the Town to release the Property from Lien 4 in return for a total payment of \$65,000.00 from Orlandini (\$15,000.00) and White Sand (\$50,000.00).

76. Orlandini and White Sand performed their respective obligations under the Agreement.

77. The Town accepted \$15,000.00 from Orlandini.

78. The Town accepted \$50,000.00 paid on behalf of White Sand.

79. As such, White Sand is of the position that Lien 4 is satisfied, and the Property is released from Lien 4.

80. The Town, however, takes the Position that the Property is not released from Lien 4.

81. The Town's conduct has left White Sand in doubt as to whether Lien 4 encumbers the Property.

82. These differing positions have resulted in a disagreement between the Town and White Sand.

83. This disagreement and the corresponding doubt created as to White Sand, creates a real justiciable controversy between the Town and White Sand about whether Lien 4 still encumbers the Property.

84. White Sand and the Town have an actual and practical need for an adjudication of their rights as it concerns Lien 4 and the Property.

85. All parties having an actual, present, adverse, and/or antagonistic interest in validity of Lien 4 and whether it still encumbers the Property have been joined.

86. The issues sought to be adjudicated are not merely theoretical.

87. White Sand is not seeking an advisory opinion from this Court.

88. Speedy relief is necessary to adjudicate the rights of all parties to this action.

89. White Sand has retained the law offices of Boyle, Leonard & Anderson, P.A. and Steven A. Ramunni, P.A., to represent it in this matter and has agreed to pay them a reasonable fee.

WHEREFORE, White Sand hereby requests this Court take jurisdiction over this matter and declare that Lien 4 no longer encumbers the Property, that Lien 4 is satisfied

via settlement, the Property is released from Lien 4, award White Sand attorney's fees, award White Sand court costs, retain jurisdiction as may be necessary for further proceedings under section 86.061, Florida Statutes, and enter any other relief this Court deems just and proper.

COUNT V: VIOLATION OF 42 U.S.C. §1983
(AS TO YOZZO)

90. White Sand alleges and incorporates by reference the allegations in paragraphs 1-30 as if fully set forth herein.
91. White Sand has a well-established constitutional right to be free of excessive fines under the excessive fines clause of the Eighth Amendment of the United States Constitution.
92. All of the actions alleged herein taken by Yozzo were pursuant to section 162, Florida Statutes, the Code, at his direction and the Town's policies enforced by Yozzo.
93. The Town has recorded Lien 1, Lien 2, and Lien 3 on the Property.
94. Lien 1 is a \$594,650 fine based on a single code violation committed by Absolute Best Rate Rentals, LLC ("Absolute") by failing to obtain a permit for replacing the main ingress/egress on the Property.
95. The imposition of a \$594,650 fine through Lien 1 for a single code violation violates White Sand's right not to be subjected to excess fines in violation of the Eighth Amendment of the United States Constitution.
96. Lien 2 is a \$594,650 fine based on a single code violation committed by Absolute for performing work on the Property without a permit.

97. Lien 3 is a \$500 fine based on a single code violation committed by Orlandini for placing pavers on the Property without a permit.
98. At all times material hereto, White Sand has not committed any code violations with respect to the Property.
99. White Sand had no responsibility for any of the code violations that resulted in Lien 1, Lien 2, or Lien 3.
100. The Town knows that White Sand has no responsibility for any of the code violations that resulted in Lien 1, Lien 2, or Lien 3.
101. The Town knows that at all times material hereto, White Sand has not committed any code violations with respect to the Property.
102. The Town seeks to foreclose on the Property for the full amount of the fine set forth in Lien 1.
103. The Town seeks to foreclose on the Property for the full amount of the fine set forth in Lien 2.
104. The Town seeks to foreclose on the Property for the full amount of the fine set forth in Lien 3.
105. The imposition of a \$594,650 fine through Lien 1 for a single code violation not committed by White Sand and foreclosing on the Property based on Lien 1 violates White Sand's well-established right not to be subjected to excess fines in violation of the Eighth Amendment of the United States Constitution because it is grossly disproportionate to the alleged code violation offense.
106. The imposition of a \$594,650 fine through Lien 2 for a single code violation not committed by White Sand and foreclosing on the Property based on Lien 2 violates White Sand's well-established right not to be subjected to excess fines in

violation of the Eighth Amendment of the United States Constitution because it is grossly disproportionate to the alleged code violation offense.

107. Imposing Lien 3 on the Property and foreclosing on the Property based on Lien 3 violates White Sand's well-established right not be subjected to excess fines in violation of the Eighth Amendment of the United States Constitution because it is grossly disproportionate to the alleged code violation offense.

108. Not only does the Town impose Lien 1 and Lien 2 on the Property as a fine, the Town takes the position that fine embodied in Lien 1, Lien 2, and Lien 3 encumbers other real property that has no association with the code violation. Specifically, the Town takes the position the fines embodied by Lien 1, Lien 2, and Lien 3 encumbered that piece of real property located at 1560 I Street, Fort Myers Beach, FL 33931 ("I Street Property").

109. The fines embodied by Lien 1, Lien 2, and lien 3 have no connection to the I Street Property, and are therefore, unconstitutionally excessive in violation of the excessive fines provision of the Eighth Amendment to the United States Constitution.

110. The imposition of these excessive fines has damaged White Sand.

111. Yozzo's conduct led directly to White Sand's damage caused by the excessive fines imposed by the agents acting under Yozzo's control and supervision.

WHEREFORE, White Sand hereby demands judgment for damages against Yozzo, along with attorney's fees, court costs, and any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

White Sand hereby demands a jury trial on all issues so triable.

Respectfully submitted,

By: /s/ Alexander Brockmeyer
Alexander Brockmeyer, Esq.
Fla. Bar No.: 105758
BOYLE, LEONARD &
ANDERSON, P.A.
9111 W. College Pointe Dr.
Fort Myers, FL 33919
Telephone: (239) 337-1303
Facsimile: (239) 337-7674
Primary Email:
Eservice@Insurance-Counsel.com
Secondary Email:
ABrockmeyer@Insurance-Counsel.com
Secondary Email:
ADeBouwer@Insurance-Counsel.com
Counsel for Defendant/Counter-Plaintiff,
White Sand
Properties of Fort Myers Beach, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the below for service and all parties listed on the Florida E-Filing Portal on October 3, 2025:

Gretchen R.H. Vose, Esq.
Nancy Stuparich, Esq.
Chloe Berryman, Esq.
Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, Florida 32789
Telephone: (407) 645-3735
Facsimile: (407) 628-5670
bvose@voselaw.com
nstuparich@voselaw.com
cberryman@voselaw.com
cdarcy@voselaw.com
mguidone@voselaw.com
Counsel for Plaintiff, Town of
Fort Myers Beach, Florida

Steven A. Ramunni, Esq.
Steven A. Ramunni, P.A.
P.O. Box 1118
LaBelle, FL 33975
Telephone: (863) 230-2268
steve@sramunnipa.com
kerensa@sramunnipa.com
Counsel for Defendant, White Sand
Properties of Fort Myers Beach, LLC

By: /s/ Alexander Brockmeyer
Alexander Brockmeyer, Esq.
Fla. Bar No.: 105758

[Reminder of Page Intentionally Left Blank]

EXHIBIT A

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 BEACH
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**

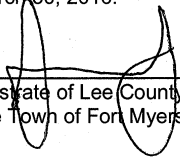
OF COMPLIANCE. RESPONDENT IS ADVISED THAT NUMEROUS PHONE CALLS MAY BE NECESSARY TO ENSURE CONTACT WITH THE CODE ENFORCEMENT OFFICER.

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

EXHIBIT B

INSTR # 2016000076146, Doc Type LI, Pages 2, Recorded 04/12/2016 at 12:32 PM,
Linda Doggett, Lee County Clerk of Circuit Court, Rec. Fee \$18.50 Deputy
Clerk ALUCKEY

INSTR # 2016000076125, 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.: CE14-0394

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 BEACH
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) Sections 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 East, Bldg A, 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.



INSTR # 2016000076146 Page Number: 2 of 2

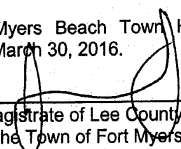
INSTR # 2016000076125 Page Number: 2 of 2

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.

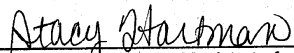
DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida on March 30, 2016.


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



I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
JINDA DOGGETT, CLERK OF CIRCUIT COURT,
STATE OF FLORIDA, COUNTY OF LEE

☐ REDACTED COPY PER F.S.119.071

BY: 
DATED: Deputy Clerk

APR 12 2016

EXHIBIT C

Linda Doggett, Lee County Clerk of Circuit Court

INSTR. # 2019000067137, Doc Type LI, Pages 3, Recorded 3/27/2019 at 9:02 AM, Deputy Clerk LHINSPETER 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

**BEFORE THE SPECIAL MAGISTRATE OF
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

CASE NO. CE14-0394

JOSEPH B ORLANDINI,

Respondent.

CODE ENFORCEMENT ORDER IMPOSING LIEN

THIS CAUSE came on for public hearing on January 17, 2019, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Joseph B 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, Joseph B 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 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 February 24, 2016, 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

INSTR. # 2019000067137 Page Number: 2 of 3

of Enforcement finding the Property/Respondent in violation of Section 6-111, adopting Florida Building Code Section 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 January 17, 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 not complied with the Order of Enforcement, not paid the accrued fine in the amount of \$257,150.00, which continues to accrue in the amount of \$250.00 per day, nor paid the administrative fee/cost of prosecution in the amount of \$150.00.

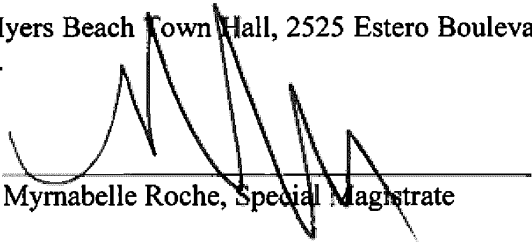
B. CONCLUSION OF LAW:

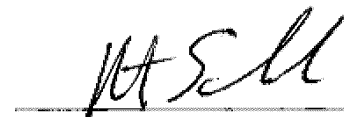
1. Respondent, by reason of the foregoing facts, is in violation of Town Code and has not complied with the Order of Enforcement.

C. ORDER/IMPOSITION OF LIEN:

1. The Special Magistrate vacates the previous order imposing lien and certifies that a fine in the amount of \$257,150.00, has accrued and continues to accrue in the amount of \$250.00 per day for every day that Respondent is in non-compliance with the Order of Enforcement previously entered in this case.
2. 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.
3. **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 of Fort Myers Beach Code Enforcement Department.**

DONE AND ORDERED at Town of Fort Myers Beach Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida on ~~12~~th of ~~January~~^{MARCH} 2019.


Myrnabelle Roche, Special Magistrate


~~Rhonda Payne Administrative Assistant~~

Kristin Schumacher
Code Enforcement Coordinator

INSTR. # 2019000067137 Page Number: 3 of 3

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.

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 must 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 the decision will be made at a public meeting. If the Special Magistrate grants a rehearing, it shall be scheduled as soon as practicable – but no later than the next regularly scheduled Special Magistrate hearing, at which 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 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.

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 true and correct copy of the Order was sent by U.S. Mail on the 22nd day of March, 2019 to:

Joseph B Orlandini
281 Palermo Circle
Fort Myers Beach, FL 33931



Kristin Schumacher
Code Enforcement Coordinator

EXHIBIT D

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:

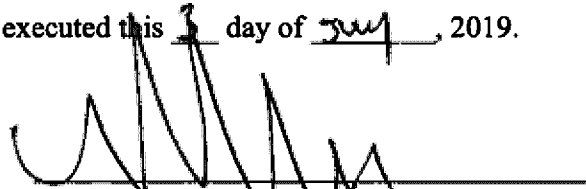
1. Respondent, by reason of the foregoing facts, was in violation of Town Code and took 310 days to comply with the Order of Enforcement.

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 a 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

EXHIBIT E



Account Number: 100056382
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 70-7161/2711	2265
PAY <i>Fifty thousand and 00/100</i>		DATE <i>12-12-19</i>	AMOUNT <i>\$50,000.00</i>
TO THE ORDER OF <i>Town of Fort Myers Beach</i>		<i>Godwin Hannon</i> AUTHORIZED SIGNATURE	
<i>Partial Release for 1560 I Street</i>			
⑈002265⑈ ⑆271171616⑆ 010005638218⑈			

Details on Back
Security Features Included

PAY TO THE ORDER OF
FIRST FLORIDA INTEGRITY BANK
067016325
FOR DEPOSIT ONLY
TOWN OF FORT MYERS BEACH
OPERATING ACCT 1101666

EXHIBIT F

This instrument prepared by:
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

Parcel #: 19-46-24-W4-0070C.0090

PARTIAL RELEASE OF LIEN

This is to certify that the lien filed by the undersigned, Town of Fort Myers Beach, Lee County, Florida, recorded on 3/27/2019, as Instrument #2019000067137, and as Doc. Type LI in the Lee County Clerk of Courts, Florida, in respect to Town of Fort Myers Beach Code Enforcement Case No. CE14-0394 was filed against 80 Avenue E, Fort Myers Beach, FL, 33931 and attached to the following described real property:

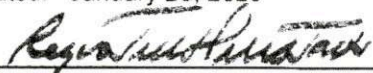
Lot 9 and the East ½ of Lot 8, Block C, CRESCENT BEACH, according to the map or plat thereof as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida, together with that part of the vacated alley adjacent to the North side of said Lots, described as that part of alleyway lying between Lot 6, Block C, and the East ½ of Lot 8, and the Northwesterly ½ of Lot 9, Block C, CRESCENT BEACH.

Property Owner's Name: KLINE LYLE L TR
FOR LYLE L KLINE TRUST + ORLANDINI JOSEPH B T/C
Parcel # 19-46-24-W4-0070C.0090
1560 I Street
Fort Myers Beach, FL 33931

In accordance to the decision by Town Council on December 9, 2019, to release the above mentioned 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 above-described real property, and consents that the same be discharged of record.

This Partial Release of Lien releases only the property mentioned herein. All other properties attached as a result of DOC TYPE LI, Instrument #2019000067137 remain.

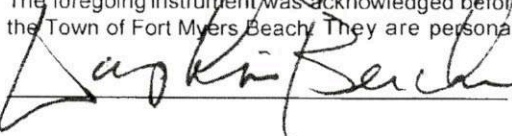
Dated: January 28, 2020



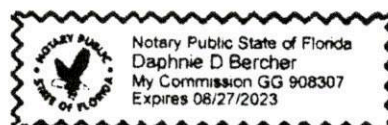
Town Manager,
In and for the Town of Fort Myers Beach

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 28th day of Jan, 2020 in and for the Town of Fort Myers Beach. They are personally known to me. They did not take an oath.



My Commission Expires:



Initials



EXHIBIT G



November 18, 2020

White Sands Properties of FT Myers
415 Palermo Cir
Fort Myers Beach, FL 33931

Re: ZVL20-0099, 80 Avenue E, Ft. Myers Beach

Dear White Sands Properties of FT Myers,

The Community Development Department has reviewed the zoning verification letter request for 80 Avenue E and can provide the following responsive information:

- 80 Avenue E is in the *Downtown* Zoning District. Permitted uses are included in the attached document:
 - Use Groups Permitted: OPEN
 - Residential
 - Lodging
 - Office
 - Retail
 - Civic
 - Use Groups Permitted: LIMITED
 - Marine
- The primary structure setbacks for properties, in accordance with the land development code, in the Downtown zoning, are as follows:
 - Right-of-Way property line 5-10 feet,
 - Side property line 5 feet
 - Rear property line 25 feet.
- It appears that the structure existing on this lot is nonconforming in regard to setbacks. The overall parcel is nonconforming for size.
- The property is located in the Pedestrian Commercial Future Land Use district, allows 6 dwelling units per acre.
- The property is currently located within the VE-15 flood zone.
- There are no active Code Enforcement cases on this property.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



This letter is responsive to the zoning verification application submitted 11/05/2020. Information provided in this letter may expire upon changes to zoning, maps, or policies.

Sincerely,

Carl Bengé
Assistant Community Development Director
Town of Fort Myers Beach
Community Development