



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Monday, November 3, 2025**

Agenda

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. PRESENTATION**
- VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Marine and Environmental Resources Task Force (MERTF)
Appoint a member to the FY26 Marine and Environmental Resources Task Force
- IX. APPROVAL OF MINUTES**
- X. CONSENT AGENDA**
 - A. Resolutions 25-307 through 25-310; Extension of Local Emergency - Tropical Storm Debby
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.
 - B. Resolutions 25-311 through 25-314; Extension of Local Emergency - Hurricane Helene

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

- C. Resolutions 25-315 through 25-318; Extension of Local Emergency - Hurricane Milton

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

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Ordinance 25-17: First Baptist Home Rule DA

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-17.

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

LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. Ordinance 25-18; Expedited Special Exceptions

This legislative agenda item is a Second Reading Public Hearing on proposed Ordinance 25-18.

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.

C. Rescinding and Revoking Resolution 25-305; VAR20230162, 21391 Widgeon Terrace

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RESCINDING AND REVOKING WITHOUT PREJUDICE VARIANCE 2023016Z21391, WHICH APPROVED TWO VARIANCES WITH CONDITIONS FROM TABLE 34-3 OF THE LAND DEVELOPMENT CODE TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE TO ALLOW FOR THE CONSTRUCTION OF AN ENCLOSED SWIMMING POOL; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

A. Accept FY2024 Audit Report

Accept FY2024 Audit Report Prepared by Mauldin & Jenkins

B. Special Event: The Whale is Back - Sneak Peek Bash.

APPROVAL OF A SPECIAL EVENT REQUESTED BY THE WHALE RESTAURANT, LOCATED AT 1249 ESTERO BLVD FOR "*The Whale is Back-Sneak Peek Bash*" CELEBRATING THE REOPENING OF THE WHALE RESTAURANT ON SATURDAY, NOVEMBER 8, 2025 STARTING AT 1:00 PM TO 1:00 AM (NOVEMBER 9, 2025, INCLUDING A WAIVER OF THE TOWN'S NOISE ORDINANCE.

C. 25-299, First Amendment to the Water Meter Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT APPROVED BY RESOLUTION 25-235 WITH NATIONAL METERING SERVICE FOR THE WATER METER REPLACEMENT PROGRAM IN AN AMOUNT NOT TO EXCEED \$1,619,790.00, TO AUTHORIZE A METER MODEL CHANGE FROM A RADIO FREQUENCY (RF) MODEL TO A CELLULAR (CELL) MODEL FOR BOTH THE 5/8- AND 1-INCH METER SIZES AND METER ANTENNAS, WHICH WILL INCREASE THE PRICE BY \$204,162.00 FOR A NEW TOTAL COST OF \$1,823,952.00 TO UTILIZE CELLULAR TECHNOLOGY TO: 1) ASSURE 100% COVERAGE OF THE ISLAND FOR DISTRIBUTION MONITORING, METER READING, AND CUSTOMER INTERFACE; AND 2) RETAIN A RELIABLE, SAFE AND EFFICIENT METER AND DISTRIBUTION MONITORING SYSTEM; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

D. Resolution 25-319; Amended Utility Easement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH ACCEPTING AN AMENDED UTILITY EASEMENT FROM THE LEO JAMES DIBIASI LIVING TRUST, UTD 08/20/2025; AND PROVIDING FOR AN EFFECTIVE DATE.

XIV. FINAL PUBLIC COMMENT**XV. TOWN MANAGER'S ITEMS****XVI. TOWN ATTORNEY'S ITEMS****XVII. COUNCILMEMBERS ITEMS AND REPORTS****XVIII. ADJOURNMENT**

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

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



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

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

1. **Request:**

Meeting Date: November 3, 2025

Appoint a member to the FY26 Marine and Environmental Resources Task Force

Why the action is necessary:

Three seats on the Marine and Environmental Resources Advisory Board expired September 30, 2025. Two vacancies were filled at the Town Council meeting of October 6, 2025, leaving (1) one vacancy.

What the action accomplishes:

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

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Qualifications and Appointment of Members:

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

Committee Purpose

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

Current Status

There is currently **(1) one vacancy** on the Marine and Environmental Resources Task Force. The Town Clerk's Office has received a total of (1) one application for appointment to the committee.

Public Notice

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

Council Consideration

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

committees to increase effectiveness and reduce overlap.

Council Consideration

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

Attachments:

1. Zaccanelli, Todd

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

Created/Initiated - 10/22/2025
Approved - 10/23/2025
Approved - 10/24/2025
Final Approval - 10/27/2025

OCT 16 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: 10/15/25

Name: Zaccanelli Todd B
Last First Middle initial

Telephone Number: (616) 540-5335

Email Address: madzac@comcast.net

Home Address: 235 Tropical Shores Way

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?

To help preserve the environmental resources of the island.

Community Involvement:

Beach cleanup, volunteer at non-profit events, attend town council meetings.

Interests / Activities:

Golfing, biking, walking, and boating.

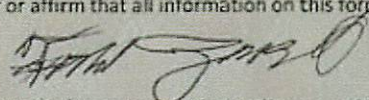
You may attach a resume in addition to the above information.

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

10/15/20

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

1. **Request:**

Meeting Date: November 3, 2025

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

Why the action is necessary:

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

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

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

Attachments:

1. 25-307, Extension of Local Emergency - Debby 11.04.25 - 11.10.25
2. 25-308, Extension of Local Emergency - Debby 11.11.25 - 11.17.25
3. 25-309, Extension of Local Emergency - Debby 11.18.25 - 11.24.25
4. 25-310, Extension of Local Emergency - Debby 11.25.25 - 12.01.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/24/2025
Approved - 10/24/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025

RESOLUTION NUMBER 25-307

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-308

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-309

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-310

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

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

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

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

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

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

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

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

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

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

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
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7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: November 3, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Helene

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

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

Attachments:

1. 25-311, Extension of Local Emergency - Helene 11.04.25 - 11.10.25
2. 25-312, Extension of Local Emergency - Helene 11.11.25 - 11.17.25
3. 25-313, Extension of Local Emergency - Helene 11.18.25 - 11.24.25
4. 25-314, Extension of Local Emergency - Helene 11.25.25 - 12.01.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/24/2025
Approved - 10/24/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025

RESOLUTION NUMBER 25-311

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

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

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

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

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

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

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2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
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- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-312

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-313

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-314

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

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

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

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

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

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

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

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

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

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
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7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: November 3, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Milton

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

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

Attachments:

1. 25-315, Extension of Local Emergency - Milton 11.04.25 - 11.10.25
2. 25-316, Extension of Local Emergency - Milton 11.11.25 - 11.17.25
3. 25-317, Extension of Local Emergency - Milton 11.18.25 - 11.24.25
4. 25-318, Extension of Local Emergency - Milton 11.25.25 - 12.01.25

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/24/2025
Approved - 10/24/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025

RESOLUTION NUMBER 25-315

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-316

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-317

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

RESOLUTION NUMBER 25-318

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

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

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2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

1. **Request:**

Meeting Date: November 3, 2025

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-17.

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

Why the action is necessary:

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

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA for DA20250176, a home rule development agreement to allow a church facility and 12 single-family homes for the property located at 110-130 Connecticut Street and 134/138 Connecticut Street.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has split the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). The Development Agreement would also approve the rezoning of Parcel 1 from Institutional to Residential Conservation, in accordance with the application of the required criteria in the Land Development Code and evidence in the record.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement containing restrictions to address possible future adverse impacts on the neighborhood.

On September 9, 2025, the LPA unanimously voted (6-0) to recommend approval with conditions for the proposed home rule development agreement request to allow a church facility and 12 single-family homes for the property located at 110-130 Connecticut Street and 134/138 Connecticut Street.

Attachments:

1. Final Ord 25-17 Development Agreement (1)
2. NS comments FBC Dev. Agreement REVISED JG 10.27.2025 Final 731PM without Exhibits
3. Exhibit A to DA Parcel 1 Sketch and Description
4. Exhibit B to DA Parcel 2 Sketch and Description
5. Exhibit C to DA Excerpt of Agreement
6. Exhibit D to DA Rezoning Criteria and Findings
7. Exhibit E to DA Deviations
8. Exhibit F to DA Master Concept Plan
9. TC Staff Report DA Beach Baptist-UPDATED Second
10. Ordinance 25-17 Business Impact Estimate - FMB Baptist Church HR Development Agreement
11. Ft Myers Beach Response Letter no. 2
12. DA Narrative - First Baptist Church of Ft. Myers Beach
13. Title Certification -combined
14. Affidavit of Authorization
15. 9-7-25 Power point First Baptist_FMB
16. PRESENTATION - Public Hearing E - Applicant 10.6.25

Financial Impact:

Unknown

6. Alternative Action

Approve/ Approve with conditions/ Deny the request for a home rule development agreement to allow a church facility and 12 single-family homes for the property located at 110-130 Connecticut Street and 134/138 Connecticut Street.

7. Management Recommendations:

Contingent upon all code violations being addressed

8. Recommended Approval:

Uma Sarmistha, Senior Planner
Georgina Cid, Community Development Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/28/2025
Final Approval - 10/28/2025

ORDINANCE NO. 25-17

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

WHEREAS, Section 2-100 of the Town's Land Development Code ("LDC"), authorizes the Town to enter into a Home Rule Development Agreement pursuant to Article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, First Baptist Church of Fort Myers Beach, Inc. ("Property Owner") has requested approval of this Home Rule Development Agreement pursuant to Section 2-96 of the LDC and Resolution 24-73, as amended by Resolution 24-247; and

WHEREAS, Fort Myers BBC Residential, LLC, a Delaware limited liability company (hereinafter "BBC Residential") is the contract purchaser of approximately 2.05 +/- acres of land owned by Property Owner and located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" as Parcel 1; and

WHEREAS, Parcel 2 is approximately 1.10 +/- acres and located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "B" attached hereto as Parcel 2. Parcel 1 and Parcel 2 are collectively referred to as the "Property"; and

WHEREAS, the Property Owner seeks to rezone Parcel 1 of the Property from Institutional to Residential Conservation (RC) to permit the construction of 12 single-family dwelling units by its BBC Residential or its related company; and

WHEREAS, Property Owner seeks to redevelop Parcel 2 as a Place of Worship (church) to serve its existing and future church adherents as well as the residents of Fort Myers Beach; and

WHEREAS, Property Owner has authorized S.J. Collins Development LLC to act as its agent for purposes of securing the Development Agreement with the Town; and

WHEREAS, First Baptist Church of Fort Myers Beach and S.J. Collins Development LLC have entered into that certain Development Agreement, dated May 28, 2024, as amended by that certain First Amendment to Development Agreement, dated June 11, 2024 (the “S.J. Collins Development Agreement”) that sets forth the rights and obligations of Property with respect to redevelopment of the Place of Worship (church) on Parcel 2 as set forth in Exhibit C to the Home Rule Development Agreement; and

WHEREAS, Parcel 2 is the prior location of the Place of Worship, which sustained significant damage from Hurricane Ian; and

WHEREAS, Parcel 2 is currently zoned IN, which permits a Place of Worship as defined in Section 34-2, LDC as a permitted use; and

WHEREAS, the Town and the Property Owner desire to enter into this Home Rule Development Agreement to provide for the approval and a comprehensive understanding of the redevelopment parameters for Parcels 1 and 2, consistent with the Town’s Land Development Code and Comprehensive Plan as set forth in the Home Rule Development Agreement; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency(“LPA”) on the 9th day of September, 2025, and the LPA reviewed the proposed Home Rule Development Agreement and by a vote of 6-0 to recommend approval with conditions to the Town Council; and

WHEREAS, the Town Council held its first reading and public hearing of Ordinance 25-17 containing the Home Rule Development Agreement at its October 6th , 2025 Town Council meeting, during which the Town Council heard testimony from Town staff, the Property Owner and interested parties as well as review of the agenda materials and thereafter voted ___ to ___ to schedule a Second Reading and adoption hearing on the ___ day of _____, 2025; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the ___ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, Ordinance 25-17 was advertised in the _____ on the ___ day of _____, 2025; and

WHEREAS, thereafter the Town Council held the second and final reading and public hearing to adopt of Ordinance 25-17, containing the Home Rule Development Agreement on _____, 2025 and **approved/approved with conditions/denied** the request by a vote of ___ to ___; and

WHEREAS, the Town Council determined that adoption of the ordinance, as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

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

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

Section 2. The Town Council hereby formally approves the Home Rule Development Agreement attached hereto as Exhibit “A” to Ordinance 25-17 and authorizes the Property Owner to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record an executed copy of the Development Agreement in the Official Records of Lee County, Florida.

Section 4. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 5. This Ordinance shall take effect as of the date of adoption.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Vose Law Firm, Town Attorney

Exhibits:

Exhibit A: Development Agreement

DRAFT

HOME RULE DEVELOPMENT AGREEMENT

(As Approved _____(date))

THIS HOME RULE DEVELOPMENT AGREEMENT (hereinafter “Agreement” or “Development Agreement”) is entered into this _____ day of _____, 2025, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter “Town”), having its principal office at 6231 Estero Blvd, , Fort Myers Beach, FL, and **FIRST BAPTIST CHURCH OF FORT MYERS BEACH, INC.**, a Florida corporation, whose address is 130 Connecticut Street, Fort Myers Beach, Florida 33931 (“Property Owner”) Property Owner and the Town may hereinafter be individually referred to as “Party” and collectively referred to as the “Parties.”

WHEREAS, Section 2-100 of the Town’s Land Development Code (“LDC”) authorizes the Town to enter into a home rule development agreement pursuant to Article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166, and 380, and specifically recognized by the State Legislature in F.S. §163.3220(5); and

WHEREAS, the Property Owner has requested approval of this Development Agreement pursuant to Section 2-96 of the LDC and Resolution 24-73, as amended by Resolution 24-247 regarding its real property located at 110-130 Connecticut Street and 134/138 Connecticut Street Fort Myers Beach, FL, (collectively referred to as “the Property”); and

WHEREAS, Fort Myers BBC Residential, LLC, a Delaware limited liability company (hereinafter “BBC Residential”) is the contract purchaser of Parcel 1, approximately 2.05 +/- acres of the Property, located landward of the 1978 Coastal Construction Control Line (hereinafter “CCCL”), and more specifically described in Exhibit “A” (“Parcel 1”) and

WHEREAS, BBC Residential is owned by S. J. Collins Enterprises, LLC, a Georgia limited liability company authorized to do business in the State of Florida, who will be the developer of Parcel 1 (“Developer”); and

WHEREAS, the remainder of the Property is approximately 1.10 +/- acres in size and is located within the Town directly adjacent to Parcel 1, and landward of the 1978 Coastal Construction Control Line (hereinafter “CCCL”), being legally described in Exhibit "B" attached hereto (hereinafter, “Parcel 2,” with Parcel 1 and Parcel 2 being collectively referred to as the “Property”); and

WHEREAS, the Property Owner is requesting a rezoning of Parcel 1 in the Home Rule Development Agreement from Institutional to Residential Conservation (RC) zoning, subject to conditions and deviations which will permit the construction of 12 single-family dwelling units by Developer subsequent to acquisition of Parcel 1 by BBC Residential; and

WHEREAS, Property Owner seeks to redevelop its Place of Worship (“Church”) on Parcel 2 of the Property to serve existing and future members of the Church, which previously had sustained extensive damage from Hurricane Ian in 2022, and residents of the Town; and

WHEREAS, Property Owner has authorized Developer, to serve as its agent for purposes of securing the Development Agreement with the Town; and

WHEREAS, Property Owner and Developer have entered into that certain Development Agreement, dated May 28, 2024, as amended by that certain First Amendment to Development Agreement, dated June 11, 2024, which sets forth the rights and obligations of Property Owner and Developer with respect to redevelopment of Parcel 2, the relevant provisions of which are attached hereto as Exhibit C; and

WHEREAS, Parcel 2 is currently zoned IN, which will continue to allow use of Parcel 2 as a church as defined in Section 34-2, LDC; and

WHEREAS, as of the date of approval of this Development Agreement all outstanding fees for water service due to the Town have been paid and the pending code violation in Case No. 20241086 has been brought into compliance; and

WHEREAS, the Town and the Property Owner desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the proposed redevelopment of Parcels 1 and 2 of the Property, in a manner consistent with Sections 2-96 and 2-100 of the Town's Land Development Code, Resolution 24-73, as amended by Resolution 24-247, and the Town's Comprehensive Plan ("Applicable Regulations"), as set forth herein due to the unified nature of the proposed redevelopment of the Property; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 9th day of September, 2025, and the LPA reviewed the proposed Agreement and by a vote of 6 to 0 recommended approval of the Agreement, subject to conditions; and to the Town Council; and

WHEREAS, the Town Council conducted two public hearings on the 6th day of October, 2025, and the 3rd day of November, 2025, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Property Owner, Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of the Town Fort Myers Beach.

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the 27th day of October, 2025, 10 days prior to Second Reading as required by Section 166.041(4), Florida Statutes; and

WHEREAS, Ordinance 25-17 was advertised on the 24th day of October, 2025 in the News-Press; 10 days prior to Second Reading; and

WHEREAS, the Town Council determined that adoption of Ordinance 25-17, containing the Development Agreement, was in the best interests of the health, safety, welfare, and morals of the Town's

residents.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein as authorized by and consistent with the Applicable Regulations, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Property Owner agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference as legislative findings in further support of the approvals contained herein. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. Parcels 1 and 2 as described in Exhibits A and B are subject to the terms and conditions of this Agreement.

3. Ownership. Property Owner is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 456803 recorded in Book 445, Page 536 on January 25, 1968, and Instrument No. 500060 recorded in Book 519, Pages 363-65 on March 11, 1969, both in the Official Records of Lee County, Florida. Developer hereby represents and warrants to the Town that it is lawfully authorized to represent the Property Owner as its agent pursuant to the S.J. Collins Development Agreement, relevant provisions of which are attached hereto as Exhibit C. The Town has received a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Property Owner and Developer's representations.

4. Proposed Development and Use of the Property. The proposed uses and development of Parcels 1 and 2 as set forth in the recitations hereof (hereinafter the "Proposed Development") will be consistent with the following as shown on the Master Concept Plan (Site Plan) attached as Exhibit F:

A. Parcel 1 – Residential Development

(1) Primary Use.

Parcel 1 is hereby rezoned to Residential Conservation (RC), which will allow the construction of 12 single family homes, based on the Town Council's approval and acceptance of competent and substantial evidence as set forth in Exhibit D consistent with and as required by Applicable Regulations.

(2) Other Permitted and Prohibited Uses.

The permitted uses of Parcel 1 will be limited to the uses permitted in the Residential Conservation (RC) zoning district, and normal accessory uses such as a thrift shop or food pantry, unless otherwise explicitly approved at a public hearing by amendment to this Agreement.

The following uses shall be prohibited unless otherwise mandated by Florida law:

(a) Bed and Breakfast

(b) Community Residential home

(c) Home Care

(d) Daily rental of dwelling unit

(e) No buildings in excess of the height permitted in the RC zoning district.

~~(d)~~(f) Overnight Recreational Vehicle parking

(3) Building Setbacks.

- (a) For lots that are adjacent to Estero Blvd, building setbacks shall be a minimum of 25 feet from the public street right of way.
- (b) For lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of ~~15~~ 11 feet from the public street right of way.
- (c) Building setbacks from Alleys shall be a minimum of 10 feet from the alley easement/right-of-way line.
- (d) Building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
- ~~(e) Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.~~

(4) Alleys.

- (a) Alleys shall have a minimum pavement width of 20 feet with 2' gutters on each side.
- ~~(b)~~ Alleys up to ~~250~~ 179 feet shall not be required to have a cul-de-sac or hammerhead turn around if serve ~~10~~ 3 or fewer lots.
- ~~(b)(c)~~ Alleys up to 233 feet shall not be required to have a cul-de-sac if a hammerhead turn around is provided and if the alley serves 9 or fewer lots.
- ~~(d)~~ Minimum alley separation from Parcel 2 driveway shall be 25 feet.
- ~~(e)(c)~~ Alley shall be privately maintained by a Homeowners association

(5) Drainage. Parcels 1 and 2 will have a shared stormwater management system.

B. Parcel 2 – Place of Worship

(1) Definition.

The term of “Place of Worship” shall be defined as in Section 34-2 of the LDC.

(2) Primary Use.

The primary use of Parcel 2 will be for a Place of Worship facility, inclusive of religious worship and fellowship and traditional church activities, including but not limited to worship services, Sunday school, youth meetings, and other related religious gatherings.

(3) Other Permitted and Prohibited Uses.

- (a) Parcel 2 will retain the Institutional (IN) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing by amendment to this Agreement.
- (b) No temporary or permanent living quarters or dwelling unit(s) will be provided on-site.
- (c) No overnight parking of Recreational Vehicles.
- (d) No social services, or rehabilitation programs will be conducted on-site.

(4) Building Setbacks.

- (a) For buildings that are adjacent to a public street right of way, building setbacks shall be a minimum of 20 feet from the public street right of way.
- (b) Building setbacks from side lot lines shall be a minimum of 7 feet from side lot lines,
- (c) Building setbacks from rear lot lines shall be a minimum of 20 feet from the rear lot line.

(5) Parking. Parking will be provided per the requirements in Section 34- 2052 of the LDC, as it may be amended.

(6) Maximum Sanctuary Square Footage.

- (a) Gross Floor Area: The Gross Floor Area is 7,000 square feet.
- (b) Height: The structure will be limited to a maximum height of 35 feet as measured pursuant to Section 34-631, LDC. The structure is limited to 3 habitable floors.
- (c) Elevation: The building will meet the one foot above base floor or other applicable FEMA and Standard Building Code elevations.

C. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.

D. Threatened and Endangered Species. There are no threatened or endangered species on-site.

E. Conflicts. Any conflict between the matters set forth in this paragraph and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this Paragraph. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended.

F. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

- (a) Potable Water: Potable water will be supplied by the Town of Fort Myers Beach. The Town presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a development order application. The Developer is responsible for improvements to the utility system required to service the proposed development.

(b) Sanitary Sewer: Wastewater services will be provided by Lee County Utilities (LCU). LCU presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the Proposed Development.

(c) Solid Waste: Developer will coordinate solid waste services with Lee County, the Town, or a third-party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a building permit.

(d) Drainage: Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer will provide plans related to storm water run-off into the Town's system to the Town. The Developer is responsible for improvements to the drainage system required to service the proposed development.

(e) Fire and Rescue: Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. The applicant for a building permit will be required to pay Fire and EMS impact fees.

(f) Public Schools: Parcel 2 does not include any residential development and will have no impact on the School District. The Developer of Parcel 2 will not be required to provide a letter of capacity from Lee County School District.

In the event new or additional facilities are needed to serve the project, the Developer will bear the burden of the cost of such facilities to be constructed consistent with the dual rational nexus test, and provide a schedule to the Town to assure that the public facilities and services will be available concurrent with the impact of the development project for those facilities subject to concurrency consistent with Section 163.3180, F.S.

5. Impact Fees. Impact fees, when adopted by Town Ordinance for all new development and change in use, will be calculated at time of issuance of a building permit and payment will be required consistent with Section 163.31801, F.S. Site-related improvements will be evaluated by the Town during the review of the development order application.

6. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development
Order/[Subdivision Plat](#)

Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit

South Florida Water Management District Water Use Permit (dewatering) South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit
Lee County Limited Review Development Order pursuant to LDC Section 10-297
Lee County Right-of-Way Permit

The failure of this Agreement to address a particular permit, condition, term or restriction will not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer will be responsible at its sole cost for obtaining any required approval and will not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuit of its terms or any rights accruing to the Developer will not vest any development right in the Developer or the project to a continuation of this Agreement.

7. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations, and associated public benefits which are deemed to be in the public interest:

- (a) Vehicular access to and from Parcel 2 from Connecticut Street will be limited to a single access for the north side; and
- (b) On-site traffic management will be provided by the First Baptist Church of Fort Myers Beach during peak hours of use; and
- (c) Maintenance of the sidewalks along Connecticut Street on Parcel 2; and
- (d) Redevelop the Connecticut Street frontages on Parcel 2 consistent with landscape requirements set forth for the IN zoning district as set forth in the LDC; and
- (e) Provide a buffer zone in accordance with the standards set forth in Section 10-416, LDC between the place of worship and the existing adjacent single- family residences to the northwest and southwest of Parcel 2.
- (f) Allow the use of the parking lot by governmental entities as a staging area post storm event or other Act of God.

8. Deviations. The Deviations set forth in Exhibit E to this Agreement are incorporated by reference as if fully set forth herein, and are granted pursuant to this Agreement.

9. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Applicable Regulations, including but not limited to the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the Property that is the subject of this Agreement. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required for a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining

consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

10. Development Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- (a) Utilities, which include water, sewer, gas, electricity, cable television, and other utilities will be reviewed during the development order review process; and
- (b) Drainage plans will be reviewed in accordance with Section 10-321, LDC; and
- (c) Grading plans and elevation requirements of the Town, including, but not limited to those related to the National Flood Insurance Program, will be reviewed during the Development Order review; and
- (d) The developer will provide a traffic impact statement as required by Section 10-286, LDC; and
- (e) Parking will be provided as required by Section 34-2020; and
- (f) All other Town requirements necessary for the initial building permits to build the proposed project on the Property shall have been satisfied.
- (g) Any matter or thing required to be performed under existing ordinances of the Town will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

11. Amendment.

- (a) This Agreement may be amended with the Parties' mutual consent, in writing signed by both Parties.
- (b) This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council.

12. Notices. All notices required or permitted under this Agreement will be in writing and will be personally delivered or mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer:

Stephen J. Collins
S.J. Collins Enterprises, LLC
P.O.Box 214
Fairburn, Georgia 30213

with a copy to:

Jeffrey F. Montgomery, Esq.

Cushing, Morris, Armbruster & Montgomery, LLLP 191
Peachtree Street, NE
Suite 4500
Atlanta, Georgia 30303

If to the Town:

Town Manager
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL
~~XXXXXX~~33931

Town Manager

With a copy to:

Town Attorney
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL
~~XXXXXX~~33931

If to Property Owner:

First Baptist Church of Fort Myers Beach
~~Address~~130 Connecticut Street
City, StateFort Myers Beach, FL, ZIP33931

13. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period will be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period reasonably required to complete such cure.

14. Governing Law. This Agreement will be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement will be exclusively in Lee County, Florida.

15. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees will be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event will the Town be liable for payment of the Developer's attorney fees.

16. Post Development Agreement Liability. The parties acknowledge that the Town will not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

17. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement will not be affected or impaired, each remaining provision will remain in full force and effect, and the rights and obligations of the Parties

will be construed and enforced as if the Agreement ~~did not~~didn't contain the particular part, term, or provision held to be invalid.

18. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

19. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement will run with the Property and bind Developer's successors and assigns to the covenants as set forth in this Agreement and will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or property owners associations, and the Developer will thereafter be relieved of all obligations hereunder.

20. Third Party Beneficiaries. The Parties acknowledge that BBC Residential and its respective successors and assigns are intended third party beneficiaries hereof and are entitled to the enforcement of applicable provisions and rights hereunder.

21. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 23 below. The Developer must apply for a development order for at least a portion of the development contemplated herein within five (5) years of the effective date. In the event no building permits are applied for by the Developer within five (5) years of the effective date, the Agreement will terminate. If requested by the Developer, the term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases, with the redevelopment of the church to precede construction of the 12 residential dwelling units in any sequence. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement will run with the Property will be enforceable by and against the Parties hereto, the First Baptist Church of Fort Myers Beach, the BBC Residential and each of their respective personal representatives, heirs, successors, grantees, and assigns.

22. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

23. Representation and Warranties. The parties make the following representations to each other as stated herein:

(a) The execution, delivery and performance of this Agreement by the Developer and a third party will not violate any law, or the terms of any agreement by which they are bound.

(b) The Town and Developer have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.

(c) This Agreement constitutes a valid and legally binding obligation of the Developer and the

Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

FIRST BAPTIST CHURCH OF FORT MYERS BEACH, INC.

Witness: _____

Print Name: _____

Address: _____

City/State: _____

Witness: _____

Print Name: _____

Address: _____

City/State: _____

Print Name: _____

Title: _____

(Corporate Seal)

**STATE OF FLORIDA
COUNTY OF LEE**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared _____ to me known to be _____ and that he acknowledged executing the same, freely and voluntarily, and who [] is personally known to me, or [] produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2025.

(NOTARY SEAL)

Signature of Notary

Print Name: _____

ATTEST:

**TOWN OF FORT MYERS BEACH,
FLORIDA**, a Florida municipal corporation

Amy Baker, Town Clerk

Date: _____

Dan Allers, Town Mayor

Date: _____

**Approved as to form and legality for use and reliance
only by the Town of Fort Myers Beach, Florida:**

Vose Law Firm, LLP, Town Attorney

Exhibits:

- A. Legal Description and ~~of~~ Sketch of Parcel 1
- ~~A-1~~ ~~Sketch of Parcel 1~~
- B. Legal Description and Sketch of Parcel 2
- ~~B-2~~ ~~Sketch of Parcel 2~~
- C. Excerpt of Agreement between Developer and the First Baptist Church
of Fort Myers Beach
- D. Rezoning Criteria and Findings
- E. Deviations
- F. Master Concept Plan (Site Plan)

SKETCH AND DESCRIPTION
EXHIBIT "A"
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

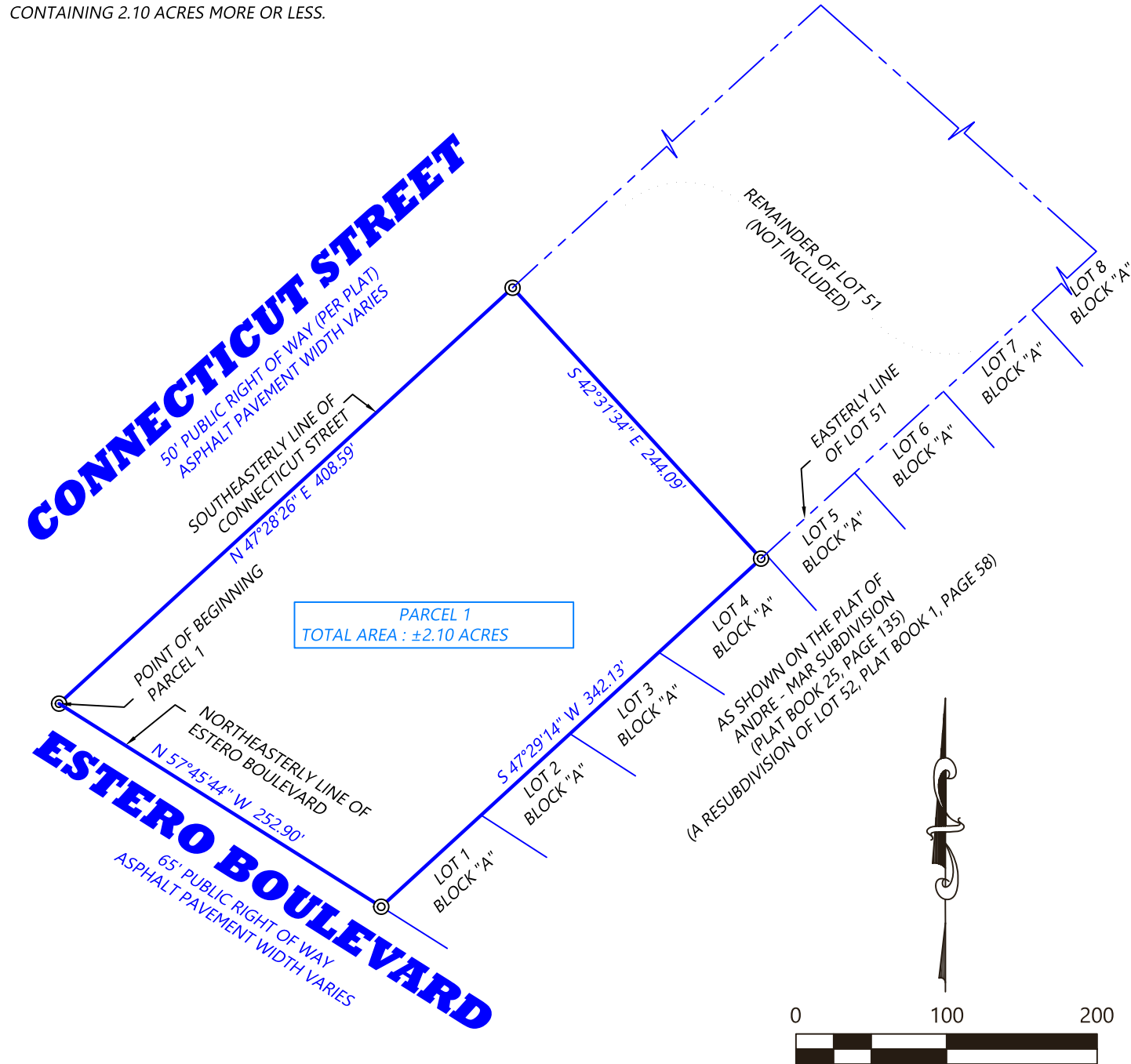
LEGAL DESCRIPTION

PARCEL 1:

A LOT OR PARCEL OF LAND LYING IN LOT 51 OF THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 1 AT PAGE 58 WHICH IS DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET RUN S 42°31'34" E, A DISTANCE OF 244.09 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 342.13 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE RUN N 57°45'44" W, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD, A DISTANCE OF 252.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 1.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

- L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

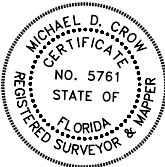
DWG:

240313-P1-SD



Michael D. CROW & ASSOCIATES INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 1



MICHAEL D
CROW
2024.10.15
15:47:39
-04'00'

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

SKETCH AND DESCRIPTION
EXHIBIT "A"

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

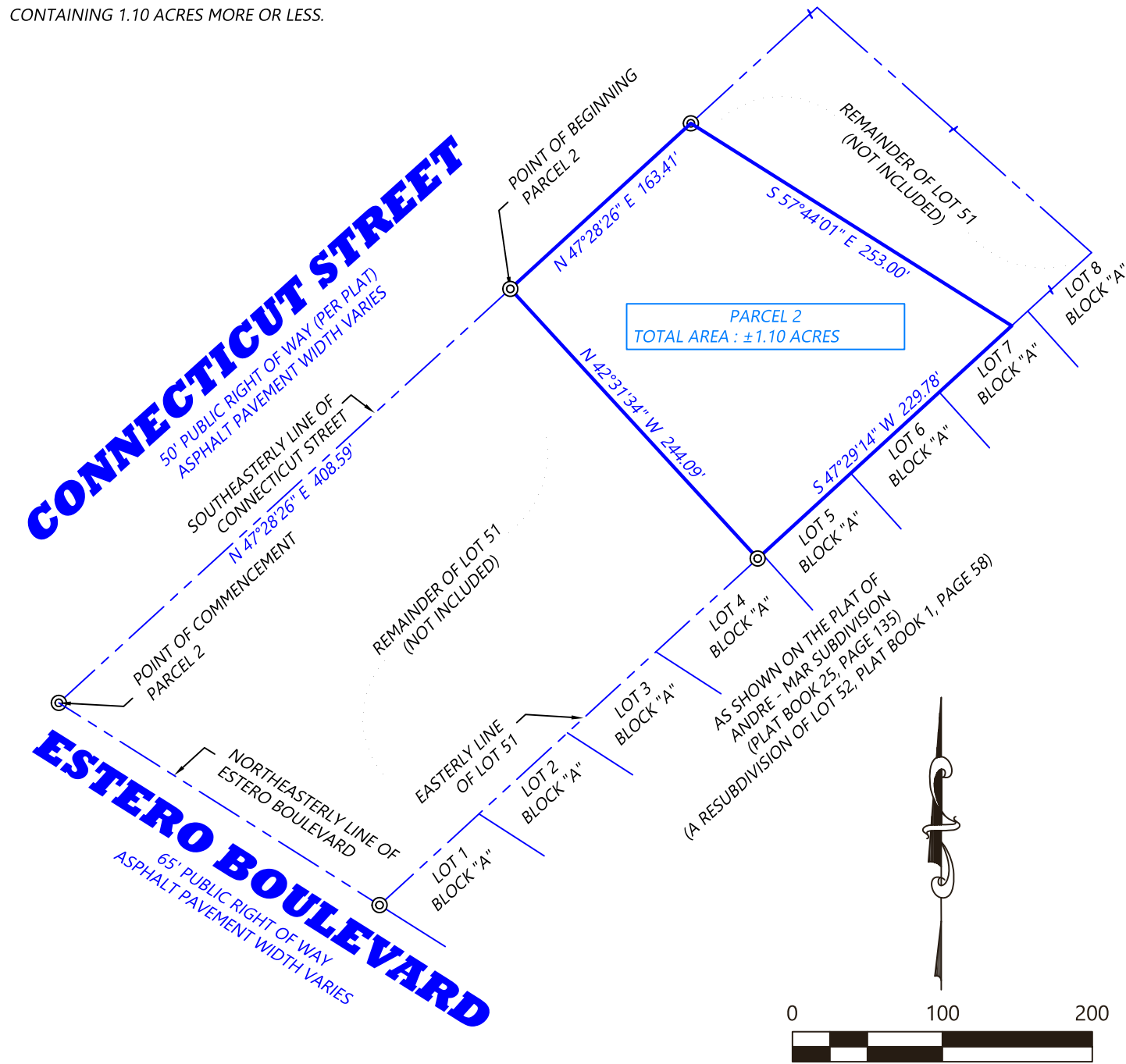
LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF LOT 51 IN THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, N 47°28'26" E, A DISTANCE OF 163.41 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, RUN S 57°44'01" E, A DISTANCE OF 253.00 FEET TO A THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 229.78 FEET; THENCE DEPARTING SAID EASTERLY LINE OF LOT 51, RUN N 42°31'34" W, A DISTANCE OF 244.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 2.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

- L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:

240313-P2-SD



Michael D. CROW & ASSOCIATES INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 2



MICHAEL D
CROW
2024.10.15
15:48:14
-04'00'

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

Exhibit C

S.J. Collins Development Agreement Excerpt

Developer will subsequently seek to obtain: (a) the proper zoning and plan approval for the Project, (b) all required platting and subdivision of the Church Property from the remainder of the Property, (c) all final and unappealable permits, licenses, approvals, rezonings or variances by all public authorities and/or applicable third parties, upon terms and conditions acceptable to Owner in its sole discretion, as may be necessary for the construction and use of the Project as a church and supporting activities. Developer will also provide pre-, during- and post-construction consulting, administration and management services to further the design and develop the Property according to the Development Requirements and shall oversee the performance of services by the architect, general contractor, engineers and contractors under the Major Contracts and assist in the negotiation of same, which services are further detailed in the Scope of Work attached hereto as Exhibit C. The foregoing Developer duties set forth in this Section 2.2 are herein referred to as the “**Services**.” Notwithstanding any provision herein to the contrary, Developer’s discretion or obligations with respect to material development activities shall be subject to Owner’s reasonable approval.

Exhibit D

Parcel 1 – Rezoning IN to Residential Conservation

Rezoning procedures are governed by LDC sec. 34-85 which requires that the Town Council hear and decide all applications for changes in zoning district boundaries. The following criteria was considered and reached based on competent and substantial evidence presented to the Town Council in reaching its decision to rezone Parcel 1. The 12 dwelling units proposed for Parcel 1 is consistent with FLU1-A-1 in seeking to develop twelve homesites at a maximum floor area ratio of 40%. The homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood. The Development Agreement allows for reduced setbacks for these homes in order to provide access alleyways. The alleyways ensure that there are no driveways along Estero Boulevard. The access alleys add two curb cuts on Connecticut Street, which will minimally impact the neighborhood. The design also allows for common green space and appropriate stormwater collection areas.

Accompanying each item is the applicant response following by Staff determination.

- (1) There is no error or ambiguity in the record that must be corrected.
- (2) Whether there exist changed or changing conditions which make approval of the request appropriate.
 - a. Applicant response: The site was a fully developed site prior to the 2022 Hurricane Ian event; it featured 4343 sf of religious facilities owned and operated by the Baptist Church. The entire religious facility was destroyed during the 2022 hurricane event. The 2.1 acre rezoning is to support the reconstruction of the Baptist church by selling off the Estero Blvd. portion of the land to provide funding for church reconstruction on the remaining portion. The pending reconstruction of the site's church makes the request appropriate.
 - b. Staff determination: [There are changing conditions of the community.](#) In 2022 Hurricane Ian impacted all of Fort Myers Beach. The site could continue to be appropriately utilized as a Church or other institutional uses. As the surrounding neighborhood has remained the same or similar composition as prior to the hurricane Ian the conditions that would impact zoning rules are unchanged.
- (2) The impact of a proposed change on the intent of this chapter.
 - a. Applicant response: Based on compliance with the Mixed Residential Future Land Use designation and the adjoining and adjacent RC zoned and developed properties, there is no impact on the intent of LDC Chapter 34.
 - b. Staff determination: There is no impact on the intent of LDC Chapter 34.
- (3) The testimony of any applicant.
- (4) The recommendation of staff and of the local planning agency.
- (5) The testimony of the public.
- (6) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
 - a. Applicant response:
The RC zoning request is consistent with Town of Fort Myers Beach Comprehensive Land Use Plan's objectives, policies, intensities and uses. The increase in single-family houses within an existing neighborhood, as well as the reduction in land utilized for a commercial-like facility comply with the Comprehensive Plan. The consistency assessment is as follows:

Land Use Element

Policy FLU-1-A-1 *Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights. The Land Development Regulations shall ensure that improvements which potentially impact the appearance of Estero Boulevard, as well as major activity centers such as Times Square and Villa Santini, the mixed-use districts, the town's shoreline, scenic views of the waterfront and tidal waters, public parks and other public grounds and institutions are managed and enhanced through application of the site plan review process. Community character is reflected in Floor to Area Ratios (FAR), lot sizes, house sizes, site placement, height, architectural features and existing vegetation. The Town shall strive to stabilize and preserve neighborhoods and establish urban design standards which protect and promote quality of life, in order to prevent tear downs, encourage re-use, infill and new development.*

Response: The RC zoning is consistent with FLU1-A-1 in seeking to develop approximately eight 4,000 sf homesites at a maximum floor area ratio of 40%. The small homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood.

Policy FLU-1-A-4. *Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable. The Town shall not vacate, diminish, or otherwise impair publicly owned pathways, sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan unless there is documented evidence that physical public access is destabilizing unaltered shorelines.*

Response: The RC zoned parcel will require sidewalk construction and Type D 15-ft wide landscaping along Estero Blvd and Connecticut Street frontage. New sidewalk construction will facilitate public beach access. The zoning is consistent with FLU 1-A-4.

Policy FLU-1-B-4 MIXED RESIDENTIAL *Designed for subdivisions with mixed-housing types on smaller lots, newer high-rise buildings, and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre except those developments previously vested with 10 units under the "platted overlay" may continue.*

Response: The zoning is consistent with FLU 1-B-4 Medium Density Residential (formally Mixed Residential) and its density maximum limit of 6 units per acre. The resulting small homes on small lots maintain the town's neighborhood and housing type variety.

There is a cap of 12% of land to be utilized for non-residential activities within the Mixed Residential future land use category. The land area being utilized for the church is being reduced and not increased, which does comply with the goals of the Comp. Plan.

Policy FLU1-C-4 BUILDING HEIGHTS *The Land Development Code shall limit the height of new buildings under most conditions to three stories or 30 feet above flood elevation except where otherwise noted in this Comprehensive Plan Land Use categories and to provide for workforce housing units protected by a minimum 30- year covenant.*

Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height Town of Fort Myers Beach rules. The rezoning is consistent with FLU 1-C-4.

Housing Element

Goal HOU-1 *Ensure adequate levels of attainable housing within FMB for residents of all ages.*

Objective HOU-1-A *Maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working in town.*

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out.*

Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 405- ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes. The rezoning is consistent with Objective HOU 1-A and Policy HOU 1-A-2.

- b. Staff determination: The application for rezoning complies with the following section of the Town of Fort Myers Beach Comprehensive Plan:
 - Policy FLU-1-A-4
 - Policy FLU-1-B-4 MEDIUM RESIDENTIAL
 - Policy FLU1-C-4 BUILDING HEIGHTS
 - Goal HOU-1 and Objective HOU-1-A and Policy HOU-1-A-

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

- a. Applicant response: The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The request will meet all performance and locational standards identified within the LDC and without the need for code variances. The subject parcel is of the size and configuration that allows for a small 12 unit subdivision that conforms to RC zoning performance standard identified within page one of this Request Statement.
- b. Staff determination: Staff concurs

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

- a. Applicant response: All required urban services are available to adequately serve the new fire station and future phase mixed uses.
- b. Staff determination: Staff concurs

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

- a. Applicant response: The site was comprehensively developed to support a Religious Facility. The site is currently characterized by almost 100% impervious with no onsite natural systems. The request does not include any impact to the environmentally critical areas.
- b. Staff determination: Staff concurs

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

- a. Applicant response: The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The new RC 12 unit subdivision will be compatible with the adjacent and adjoining RC Connecticut Street and Andre Mar Dr neighborhoods. The requested 12 unit subdivision will meet all FBC and FEMA regulations. The RC subdivision will not cause any damage, hazards or nuisances to surrounding land uses since it will contain the identical land use.
- b. Staff determination: Staff concurs

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

- a. Applicant response: A summary Estero Blvd LOS analysis is as follows. The former Church generated a weekend AM Peak 2.12 trips (Church - Code 560 ITE 11th Ed.; AM Peak Hour Sunday 0.49 per 1000 GFA for 4343 sf; general urban/suburban). The proposed 12-unit subdivision will generate a weekday PM Peak 7.52 trips (SF Detached - Code 210 ITE 11th Ed.; PM Peak Hr 0.94 Per Unit urban/suburban). The difference between the former church use and the new SF use is 5.39 peak hour trips. Based upon the 2023 Lee County Concurrency Report, the subject Estero Boulevard road segment, between Pescadora Avenue and Voorhis Street, has a regulatory capacity of 726 peak hour trips. The report projects 637 future 2027 peak hour trips with a projected LOS C. The RC zoning's 7.52 trips will not have an impact on the current level of service of Estero Boulevard existing or future Level of Service. Finally, the project will have direct access onto Connecticut Street, which will reduce potential service speeds and volume along Estero Blvd.
- b. Staff determination: Staff concurs that addition of 12 homes should not have an impact on the Level of Service (LOS) for Estero Boulevard.

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

- a. Not Applicable

Exhibit -E

The following Deviation Request for Parcel 1 are consistent with the surrounding properties and neighborhood:

- ~~1. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of 15 feet from the public street right of way.~~
- ~~2.1.~~ Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for Building setbacks from Easement ROW line shall be a minimum of 10 feet from the alley easement/right-of-way line.
- ~~3.2.~~ Relief from Sec 34-638 Minimum Setbacks which requires a Rear Setback of 20 ft to allow building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
- ~~4. Relief from Sec 34-638 Minimum Setbacks which requires a Side-Non Waterfront Setback of minimum 6.5 ft for lots less than 50 ft wide, 7.5 ft for lots 50 ft up to 75 ft and 10 ft for lots wider than 75 ft to allow for Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.~~
- ~~5.3.~~ Relief from Sec 34-285 which requires a minimum setback for Local Street of 125 ft to allow a Minimum alley separation from Parcel 2 driveway shall be 25 feet.

Neighborhood Compatibility:

The subject parcel is located 1.7 miles south of Time Square and along Estero Blvd. The future land use map classification is Mixed Residential and is within the designated Quiet Center portion of Fort Myers Beach. The subject parcel features 250-ft +/- LF of frontage along Estero Blvd and 409-ft +/- frontage along Connecticut Street. It is noted that Connecticut Street is the primary access for the FMB Mound House recreational complex. The property adjoins and is adjacent to 7,000 sf to 8,000 sf + RC zoned homesites. These homesites support single-family and two-family homes. The subject site was cleared and developed for the Baptist Church. It has no natural site features. The church was destroyed by Hurricane Ian in 2022.

Additionally, the applicant has offered to allow the Town or County to utilize the parking lot of the church for staging during a state of emergency. Staff recommend the drafting of an agreement regarding the terms of this arrangement.

Findings and Conclusions:

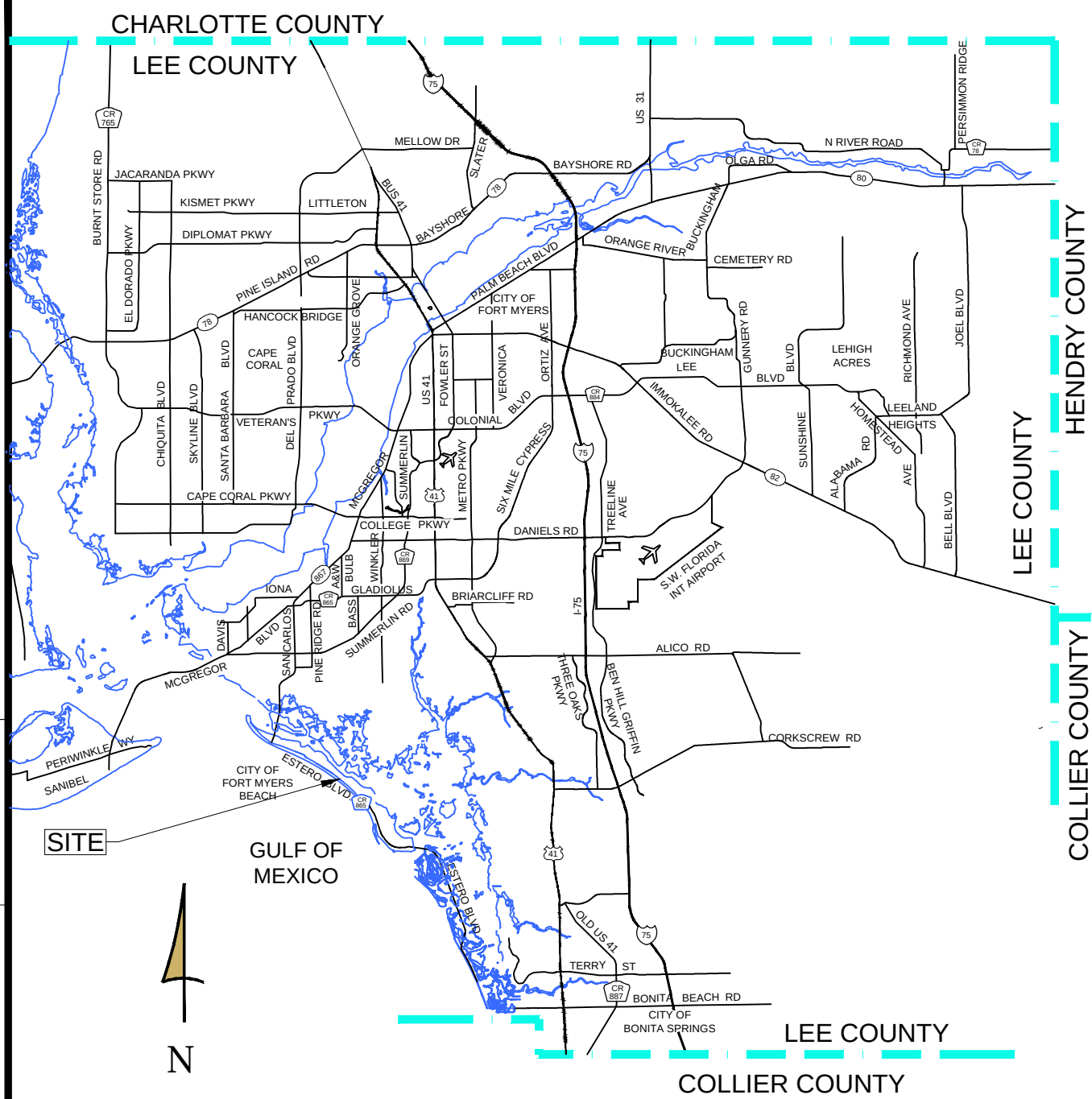
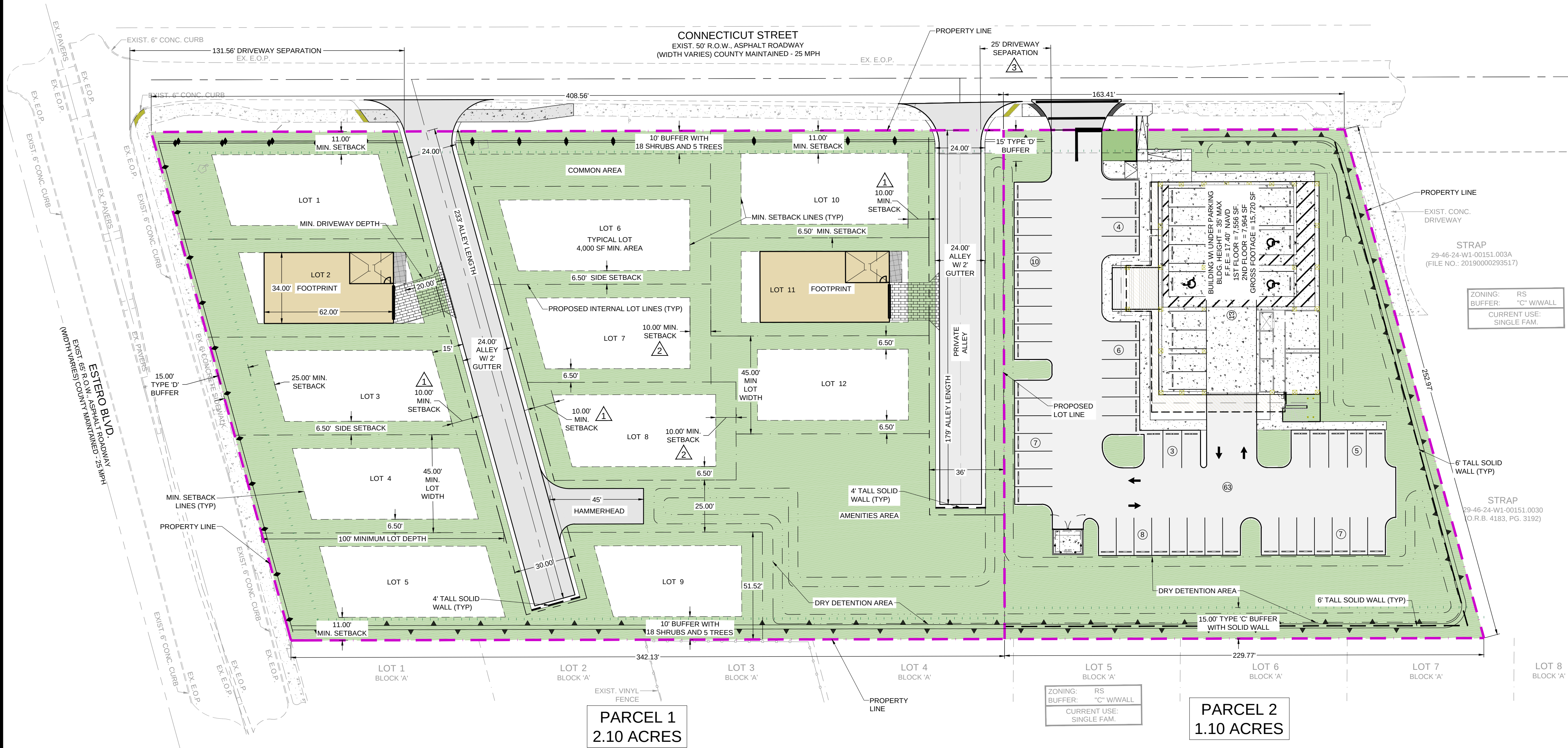
The applicant has provided a DA meeting the minimum ~~statutory~~ requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code.

FORT MYERS BEACH BAPTIST CHURCH

LOCATED IN SECTION 29, TOWNSHIP 46-S, RANGE 24-E, LEE COUNTY, FLORIDA

DEVELOPMENT AGREEMENT PLAN

P:\2024 Projects\240603 FIRST BAPTIST CHURCH FMB01-CADD FILES\00-QA\CADD -CONCEPTS\2025 MASTER CONCEPT PLAN\240603-DEVELOPMENT AGREEMENT PLAN



PROJECT SUMMARY:

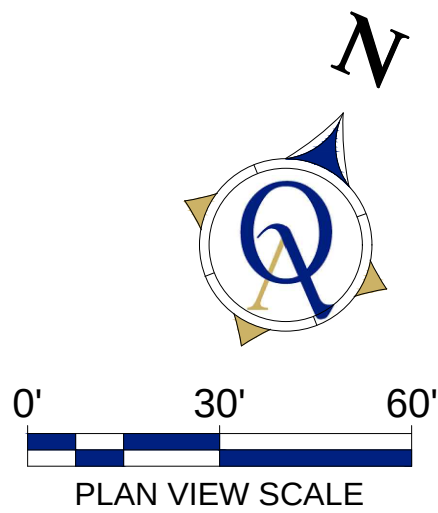
ZONING/REZONING
IN- Institutional

STRAP #s
29-46-24-w1-00151.0010

PROJECT ACREAGE
LOT 1= 2.10 ACRES
LOT 2= 1.10 ACRES

PARKING
LOT 2
PROVIDED: 63 SPACES (INCLUDING 3 H.C. SPACES)
PER PARKING CAN ACCOMMODATE 189 SEATS

F.A.R. CALCULATIONS
LDC REQUIRED = 0.8
PROVIDED = (15,520 / 47,916) = 0.32





Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA 20250176

CASE NAME: 110-130 and 134-138 Connecticut Street; Development Agreement to regulate the development of 12 single-family homes and a religious institution.

TOWN COUNCIL HEARING DATE: October 6, 2025 (first reading); November 3, 2025 (second)

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

I. APPLICATION SUMMARY

Applicant/Owner: Al Quattrone of Quattrone and Associates (Applicant)/First Baptist Church of Fort Myers (Owner)

Request: Development Agreement for a residential development of 12 single-family dwelling units and a Church

Subject property: See attached Site Plan

Physical Address: 110-130 and 134-138 Connecticut Street

STRAP #: 29-46-24-W1-00151.0010 and 29-46-24-W1-00151.001A

FLU: Mixed Residential

Zoning: Institution (IN)

Adjacent Zoning, Future Land Use, and Current Uses:

North: Residential Conservation, Mixed Residential

South: Residential Conservation, Mixed Residential

East: Residential Conservation and Residential Single-Family, Mixed Residential

West: Residential Conservation, Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has split the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). Under a separate application, the applicant is requesting to rezone parcel 1 from Institutional to Residential Conservation.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement.

Analysis:

Parcel 1 - Residential:

The 12 dwelling units proposed for Parcel 1 is consistent with FLU1-A-1 in seeking to develop twelve homesites at a maximum floor area ratio of 40%. The homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood. The Development Agreement allows for reduced setbacks for these homes in order to provide access alleyways. The alleyways ensure that there are no driveways along Estero Boulevard. The access alleys add two curb cuts on Connecticut Street, which will minimally impact the neighborhood. The design also allows for common green space and appropriate stormwater collection areas.

List of Uses

(1) Primary Use. The primary use of Parcel 1 will be to construct 12 single family homes.

(2) Other Permitted Uses. Other permitted uses of Parcel 1 will be limited to the uses permitted in the Residential Conservation (RC) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing.

The Comprehensive Plan Review

Policy FLU-1-A-1 *Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights. The Land*

Development Regulations shall ensure that improvements which potentially impact the appearance of Estero Boulevard, as well as major activity centers such as Times Square and Villa Santini, the mixed-use districts, the town's shoreline, scenic views of the waterfront and tidal waters, public parks and other public grounds and institutions are managed and enhanced through application of the site plan review process. Community character is reflected in Floor to Area Ratios (FAR), lot sizes, house sizes, site placement, height, architectural features and existing vegetation. The Town shall strive to stabilize and preserve neighborhoods and establish urban design standards which protect and promote quality of life, in order to prevent tear downs, encourage re-use, infill and new development.

Response: The RC zoning is consistent with FLU1-A-1 in seeking to develop approximately twelve min. 4,000 sf homesites at a maximum floor area ratio of 40%. The small homes contextually fit into the surrounding Connecticut Street and Andre Mar Drive community character and neighborhood.

Policy FLU-1-A-4. *Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable. The Town shall not vacate, diminish, or otherwise impair publicly owned pathways, sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan unless there is documented evidence that physical public access is destabilizing unaltered shorelines.*

Response: The RC zoned parcel will require sidewalk construction and Type D 15-ft wide landscaping along its Estero Blvd and Connecticut Street frontage. The new sidewalk construction will facilitate public beach access. The zoning is consistent with FLU 1-A-4.

Policy FLU-4-B-4 MIXED RESIDENTIAL *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. **This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre** (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Response: The zoning request is consistent with FLU 1-B-4 Medium Density Residential (formally Mixed Residential) and its maximum density limit of 6 units per acre. The resulting small homes on small lots maintain the town's neighborhood and housing type variety.

Policy FLU1-C-4 BUILDING HEIGHTS *The Land Development Code shall limit the height of new buildings under most conditions to three stories or 30 feet above flood elevation except where otherwise noted in this Comprehensive Plan Land Use categories and to provide for workforce housing units protected by a minimum 30-year covenant.*

Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height Town of Fort Myers Beach rules. The rezoning is consistent with FLU 1-C-4.

Goal HOU-1 *Ensure adequate levels of attainable housing within FMB for residents of all ages.*

Objective HOU-1-A *Maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working in town.*

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out.*

Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 45-ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes. The rezoning is consistent with Objective HOU 1-A and Policy HOU 1-A-2.

Deviation Requests for Parcel 1

1. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for lots that are adjacent to Connecticut Street, building setbacks shall be a minimum of 15 feet from the public street right of way.
2. Relief from Sec 34-638 Minimum Setbacks which requires a Street Setback of 25 ft to allow for Building setbacks from Easement ROW line shall be a minimum of 10 feet from the alley easement/right-of-way line.
3. Relief from Sec 34-638 Minimum Setbacks which requires a Rear Setback of 20 ft to allow building setbacks from rear lot lines shall be a minimum of 10 feet from the rear lot line.
4. Relief from Sec 34-638 Minimum Setbacks which requires a Side-Non Waterfront Setback of minimum 6.5 ft for lots less than 50 ft wide, 7.5 ft for lots 50 ft up to 75 ft and 10 ft for lots wider than 75 ft to allow for Building setbacks from side lot lines shall be a minimum of 5.0 feet from the side lot line.
5. Relief from Sec 34-285 which requires a minimum setback for Local Street of 125 ft to allow a Minimum alley separation from Parcel 2 driveway shall be 25 feet.

Parcel 2- Place of Worship

The proposed re-zoning and redevelopment will ensconce the remaining Institutional zone within a residential area. While Institutional is not the same as a commercial use many of the potential nuisances (traffic, noise, parking) are similar and staff find that this would constitute “commercial intrusions into residential areas” which limited by the Comprehensive Plan. Policy 4-B-4 states, “Commercial activities are limited to lower

impact uses such as offices, motels, churches and public uses and must be sensitive to nearby residential uses...” The history of the Church use of the property has included conflict with the abutting residential neighborhood. Therefore, without limitations on the development of the Institutional use, the proposed rezoning would not be compliant with the Town of Fort Myers Beach Comprehensive Plan. However, through the restriction of this Development Agreement the applicant is seeking to address potential nuisances and develop a facility in compliance with the Comprehensive Plan.

List of Uses

(1) Primary Use. The primary use of Parcel 2 will be a place of worship facility. The primary function of this facility is for religious worship and fellowship and traditional church activities, including but not limited to worship services, Sunday school, youth meetings, and other related religious gatherings.

(2) Other Permitted Uses. Other permitted uses of Parcel 2 will be limited to the uses permitted in the Institutional (IN) zoning district, and normal accessory uses, unless otherwise explicitly approved at a public hearing. No housing, social services, or rehabilitation programs will be conducted on-site.

(3) Prohibited Uses: No temporary or permanent living quarters or dwelling unit(s) will be provided on-site. No overnight parking for Recreational Vehicles.

Comprehensive Plan Review

Policy FLU-4-B-4 MIXED RESIDENTIAL *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). **Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.** These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Response: This Future Land Use category calls for commercial activities, which church are included, to be sensitive to the surrounding residential neighborhood. At the time the Comprehensive Plan was approved the Town did not have a Development Agreement process.

Deviation Requests for Parcel 2: None

Applicant Proposed Public Benefits

1. Vehicular access to and from Parcel 2 from Connecticut Street will be limited to single access for the north side;
2. On-site traffic management will be provided by the First Baptist Church of Fort

- Myers Beach during peak hours of use;
3. Applicant will provide maintenance of the sidewalks along Connecticut Street on Parcel 2;
 4. Redevelop the Connecticut Street frontages on Parcel 2 consistent with landscape requirements set forth in the IN zoning district as set forth in the LDC;
 5. Provide a buffer zone in accordance with the standards set forth in Section
 6. 10- 416, LDC between the place of worship and the existing adjacent single-family residences to the northwest and southwest of Parcel 2.

Additionally, the applicant has offered to allow the Town or County to utilize the parking lot of the church for staging during a state of emergency. Staff recommend the drafting of an agreement regarding the terms of this arrangement.

Neighborhood Compatibility:

The subject parcel is located 1.7 miles south of Time Square and along Estero Blvd. The future land use map classification is Mixed Residential and is within the designated Quiet Center portion of Fort Myers Beach. The subject parcel features 250-ft +/- LF of frontage along Estero Blvd and 409-ft +/- frontage along Connecticut Street. It is noted that Connecticut Street is the primary access for the FMB Mound House recreational complex. The property adjoins and is adjacent to 7,000 sf to 8,000 sf + RC zoned homesites. These homesites support single-family and two-family homes. The subject site was cleared and developed for the Baptist Church. It has no natural site features. The church was destroyed by Hurricane Ian in 2022.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code.

III. RECOMMENDATION

The development agreement in your agenda packet is the product of preliminary negotiations between the applicant and Town staff, in compliance with the processes and procedures of the administrative code section (Ordinance 24-247). The proposed uses and the proposed public benefits are encouraged through the comprehensive plan policies. The history of the Church use of parcel has included conflict with the neighboring residential neighborhood. Therefore, without limitations on the development of the Institutional use, the proposed rezoning would not be compliant with the Town of Fort Myers Beach Comprehensive Plan. However, through the restriction of this development agreement the applicant is seeking to address potential nuisances and develop a facility in compliance with the Comprehensive Plan.

In making a recommendation the LPA should consider if the restrictions and public benefits of the Development Agreement and Site Plan are sufficient to reduce the impact of commercial-like use of a place of worship on a residential neighborhood.

IV. CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

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

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;

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

- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the zoning district map for the Town of Fort Myers Beach. This serves the public health, safety and orderly development of the Town. The First Baptist Church of Fort Myers, locally known as Beach Baptist Church, is proposing a development agreement (DA) for two parcels that were previously developed as 4,343 SF religious facility for the church. The applicant has split the lot into two parcels with the intent to sell 2.1 acres of land fronting Estero Blvd. (Parcel 1: 110-130 Connecticut Street) in order to finance the reconstruction of the Church on the remaining 1.1 acre of land (Parcel 2: 134-138 Connecticut Street). Under a separate application, the applicant is requesting to rezone parcel 1 from Institutional to Residential Conservation.

The applicant is aware of concerns about the reconstruction of the place of worship. These concerns regarding reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. Prior issues included use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx.

Ordinance 25-2xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

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

This Development Agreement does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.



August 21, 2025

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

RE: **First Baptist Church of Fort Myers
130 Connecticut St
Fort Myers Beach, FL 33931**

Please find attached revisions for the above-mentioned project per your comments dated August 7, 2025. Below are written responses to the comments.

1. Building intensity/ FAR calculations: Provide detailed FAR calculations. The site plan indicates a footprint of 6000 square feet for the place of worship where the FAR calculations indicate 15,520 square feet of gross floor area. Revise the calculations for consistency.

Note: As per LDC Section 34-633, Gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid.

Response: Please see the attached revised Site Plan

2. Development Agreement: Please revise the agreement to reference and incorporate the deviations as Attachment D within the body of the agreement.

Response: Please see revised Development Agreement attached.

3. Title of opinion: Provide a title of opinion prepared by a Florida attorney. The title of opinion shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. Please note that as of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

Response: Please see the Title Opinion

If you have any questions regarding the above responses or any of the attachments, please contact our office at (239) 936-5222.

Sincerely,
Quattrone & Associates, Inc.

Sharon Hrabak
Permitting Manager
Email: Sharon@qainc.net
Attachments: Site Plan, Development Agreement, Title of Opinion

NARRATIVE – APPLICATION FOR PUBLIC HEARING FIRST BAPTIST CHURCH OF FT. MYERS BEACH

The subject property has Institutional (IN) zoning. The property was developed with a place of worship. The structures on the site were damaged during Hurricane Ian. Pursuant to Objective 4.D. the structures on the site could be replaced with the same uses, intensity, and size. The applicant plans to purchase a portion of the property and has filed an application to rezone a portion of the property to Residential Single Family (RS) to permit 12 single-family homes. While the IN district permits two family dwelling units and live/work units, the applicant submits that the 12 single-family homes are a better form of development for the area.

The applicant is aware of concerns about the reconstruction of the place of worship. Since the applicant is not acquiring all of the property including the place of worship, concerns about reconstruction of the church cannot be addressed in the context of the conventional zoning for the single-family residences. To address the concerns about the place of worship, the applicant has agreed to enter into a development agreement and to coordinate with the place of worship to ensure a place of worship that is a benefit to the community. The property is currently vacant. Prior to Hurricane Ian, the site did not have modern water management and did not meet SFWMD current water quality, attenuation, or other district standards. Under the development agreement, the applicant will coordinate with the sellers and provide a unified water management system for the place of worship and the dwelling units that will be required to meet state water quality standards. A modern and unified water management system will eliminate the direct run off from the site into the main thoroughfare.

The area in question has numerous vacant lots. There are three vacant lots immediately abutting the property to the south. There are another four vacant lots on the other side of Andre Mar Drive. There are three vacant parcels north of the property on Connecticut and three empty parcels to the west of the property across Estero Boulevard. Twelve of the vacant parcels in the area are owned by corporations, predominantly Limited Liability Corporations. Most of the parcels have been acquired since Hurricane Ian. However, the Town has held several acrimonious zoning hearings as new owners seek a more dense or intense form of development to defray the cost of meeting current elevation and construction standards. The establishment of this area for single-family residences will provide a benefit in re-establishing the residential community and a desired form of development for the vacant parcels.

The town has experienced a loss of the FEMA discount. The FEMA discount is important for the redevelopment of the island. The rise in insurance rates in the State of

Florida has been a problem and definitely the cost of flood insurance is an issue for prospective home buyers and developers. The development on the subject property will meet FEMA elevations and resiliency requirements. Development that has occurred since the November 2022 adoption of the FEMA maps in accordance with the new elevations did not experience the destructive impacts of storm surge from Helene and Milton. The proposed development on the property pursuant to the development agreement in conformance with current FEMA elevations and resiliency requirements should contribute to the longevity of the proposed uses and stability of the neighborhood and tax base.

A review of the property appraiser's website indicates that there has been a loss of taxable value for many of the properties in the area. The redevelopment of the site will assist the neighborhood by helping to solidify property values, and it will provide a benefit to the Town by helping to restore ad valorem revenues.

The place of worship has a right to redevelop. There are concerns about permitting the place of worship to redevelop due to previous operational issues, including use of the site by recreational vehicles for overnight stays and social services provided on-site that had a negative impact on the neighborhood. The applicant will further coordinate with the place of worship as set forth in the development agreement to ensure the operation of the place of worship provides a benefit to the neighborhood and not a detriment. The sale and development of the residential parcel is an essential component of the proper redevelopment of the place of worship. The applicant will communicate with Ben Abes, Director of the Lee County Department of Public Safety, to determine if the county needs to use a portion of the place of worship parking lot post natural disaster.

TITLE CERTIFICATION

FIRST BAPTIST CHURCH OF FT MYERS BEACH, INC.
130 Connecticut Street
Fort Myers Beach, FL 33931
(239) 463-6452

Pavese Law Firm (as Agent/Title Company)

Plat Number: TBD

Development Order Number: TBD

Effective Date of Title Certification: August 11, 2025

Certified To: Town of Fort Myers Beach and Lee County Board of County Commissioners

I have searched the Public Records of Lee County, Florida and have examined the title to the real property more particularly described in the metes and bounds description attached hereto as Exhibit "A." I have made a careful examination of the Public Records of Lee County, Florida, with respect to the real property described in attached Exhibit "A." Based on the foregoing, we hereby certify Record Title to the above described real property, as of the Effective Date of the Title Certification set forth above, is vested in:

Title to the property is vested in:

First Baptist Church of Ft. Myers Beach, Inc., a Florida corporation not-for-profit, the successor by merger to First Baptist Church of Fort Myers Beach Inc. by virtue of that certain Deed recorded in Official Records Book 445, Page 536 and Warranty Deed recorded in Official Records Book 519, Page 363, all of the Public Records of Lee County, Florida.

The following persons or entities hold a mortgage secured by the property:

Mortgage in favor of S.J. Collins Enterprises, LLC, a Georgia limited liability company recorded in Official Records Instrument No. 2023000248528, Public Records of Lee County, Florida.

Property Taxes due and owing have been paid in full as of the effective date of this certification.

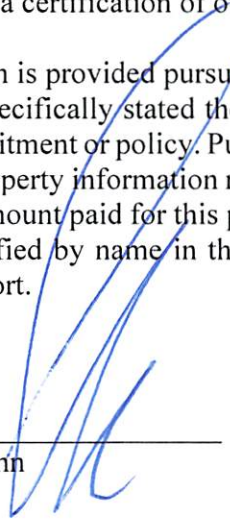
The following are all easements and rights of way affecting the property to be platted, whether recorded or unrecorded:

1. Matters contained on the Plat of Case Subdivision recorded in Plat Book 1, Page 58, as affected by instrument recorded in Deed Book 131, Pages 300 through 304, Public Records of Lee County, Florida.
2. Grant of Easement to South Florida Cable Television recorded in Official Records Book 1679, Page 613, Public Records of Lee County, Florida (note: this easement is blanket in nature and is not plottable).

All Recording references are to the public records of Lee County, Florida.

Note, this is not a certification of ownership of any oil, gas, and mineral rights or interests.

This certification is provided pursuant to the requirements of § 177.041, Florida Statute, for the uses and purposes specifically stated therein and is not to be used as the basis for the issuance of a title insurance commitment or policy. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report.

By: 
Charles Mann
Partner

SKETCH AND DESCRIPTION
EXHIBIT "A"
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

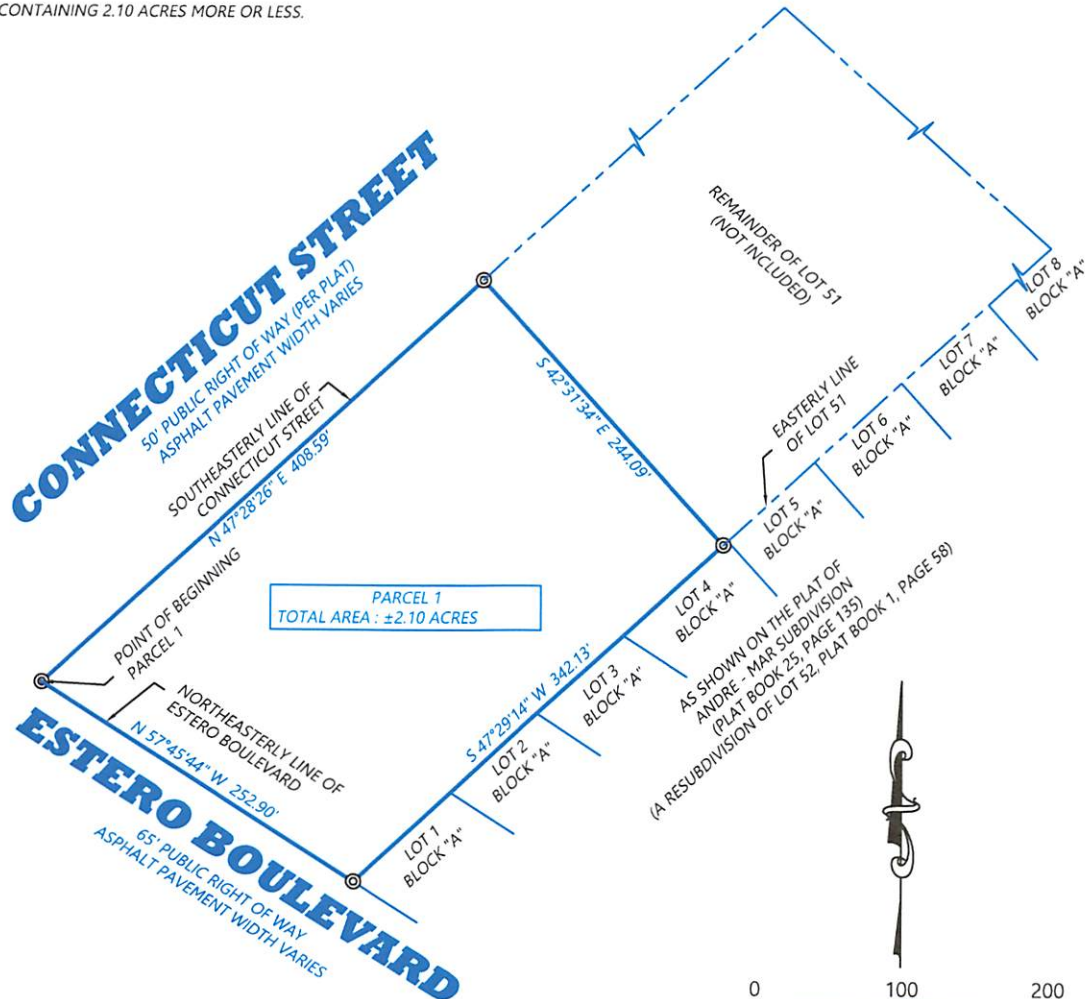
LEGAL DESCRIPTION

PARCEL 1:

A LOT OR PARCEL OF LAND LYING IN LOT 51 OF THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 1 AT PAGE 58 WHICH IS DESCRIBED AS FOLLOWS:

FROM THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET RUN S 42°31'34" E, A DISTANCE OF 244.09 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 342.13 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE RUN N 57°45'44" W, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD, A DISTANCE OF 252.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
3. SEE LEGEND FOR SYMBOLS AND/OR ABBREVIATIONS USED HEREON.
4. BEARINGS SHOWN HEREON ASSUMED (W. LINE SUBJECT LOT BEING N 47°28'26" E).
5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 1.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR
AND MAPPER
--- LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:

240313-P1-SD



Michael D. CROW & ASSOCIATES, INC.

CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 1



MICHAEL D. CROW
CROW
2024.10.15
15:47:39
-04'00"

MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

SKETCH AND DESCRIPTION

EXHIBIT "A"

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

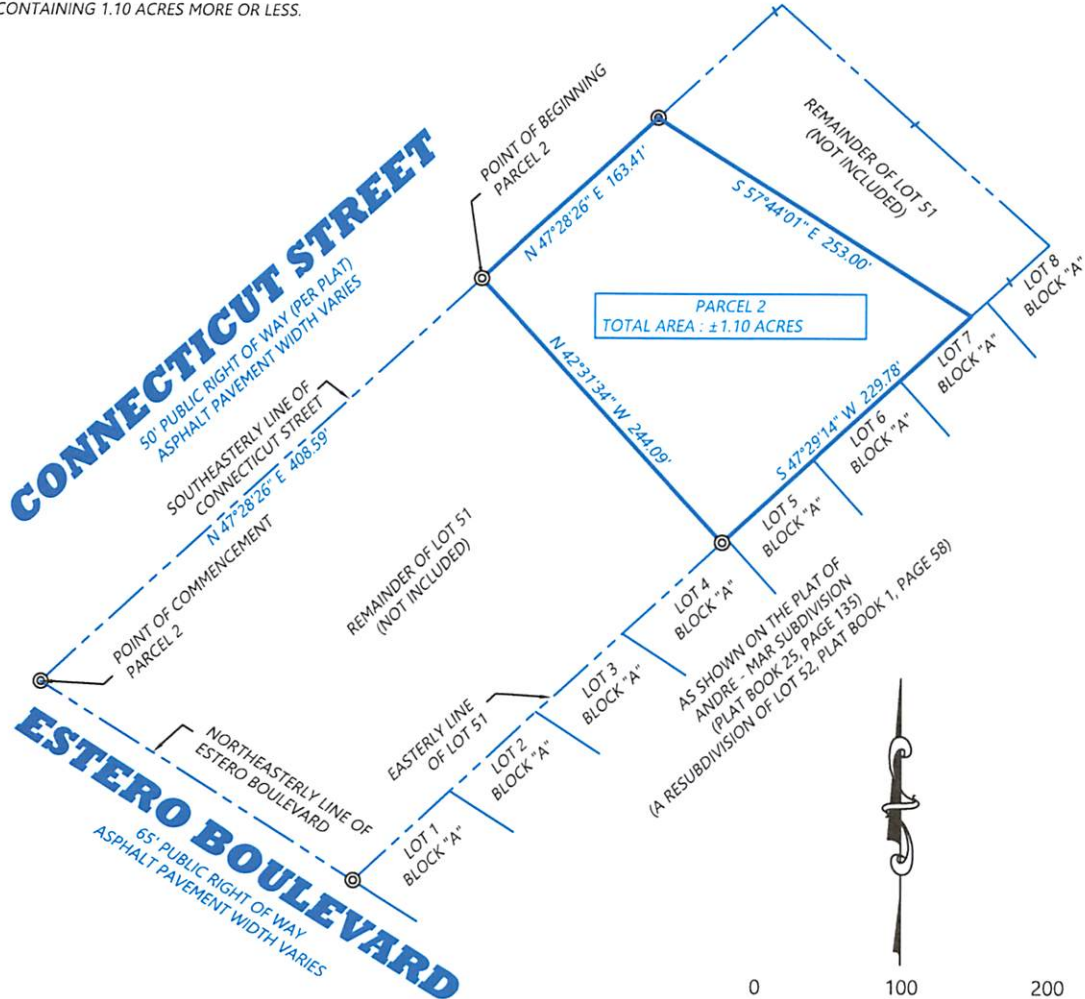
LEGAL DESCRIPTION

PARCEL 2:

THAT PART OF LOT 51 IN THAT CERTAIN SUBDIVISION KNOWN AS CASE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, AS SHOWN ON SAID PLAT, RUN N 47°28'26" E, ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, A DISTANCE OF 408.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, N 47°28'26" E, A DISTANCE OF 163.41 FEET; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT OF WAY LINE OF CONNECTICUT STREET, RUN S 57°44'01" E, A DISTANCE OF 253.00 FEET TO THE EASTERLY LINE OF SAID LOT 51; THENCE RUN S 47°29'14" W, ALONG SAID EASTERLY LINE OF LOT 51, A DISTANCE OF 229.78 FEET; THENCE DEPARTING SAID EASTERLY LINE OF LOT 51, RUN N 42°31'34" W, A DISTANCE OF 244.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.10 ACRES MORE OR LESS.



SURVEYORS NOTES:

1. NO UNDERGROUND FOUNDATIONS, STRUCTURES, INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
2. THIS SKETCH & DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, NO INSTRUMENTS OF RECORD REFLECTING OWNERSHIP, EASEMENTS OR RIGHTS OF WAY WERE FURNISHED TO THE UNDERSIGNED, UNLESS OTHERWISE SHOWN HEREON.
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5. THIS SKETCH & DESCRIPTION IS NOT VALID, UNLESS ACCOMPANIED BY AN AUTHENTICATED ELECTRONIC DIGITAL SIGNATURE WITH DATE AND DIGITAL SEAL OR ORIGINAL SIGNATURE AND ORIGINAL RAISED SEAL THIS DOCUMENT HAS NOT BEEN AUTHORIZED AND IS FOR INFORMATIONAL PURPOSES ONLY.
6. PURPOSE OF SURVEY: SKETCH & DESCRIPTION FOR PARCEL 2.
7. THIS SKETCH & DESCRIPTION DOES NOT REFLECT NOR DETERMINE OWNERSHIP.
8. NO WETLAND JURISDICTIONAL AREAS OR OTHER TOPOGRAPHIC FEATURES HAVE BEEN LOCATED UNLESS OTHERWISE SHOWN HEREON.
9. THIS SKETCH & DESCRIPTION WAS PREPARED EXPRESSLY FOR THE NAMED ENTITIES. NO OTHER PERSON OR ENTITY IS ENTITLED TO RELY UPON THIS SURVEY FOR ANY PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT FROM MICHAEL D. CROW & ASSOCIATES, INC. OR THE CERTIFYING LAND SURVEYOR.

LEGEND:

L.B. LICENSED BUSINESS
P.S.M. PROFESSIONAL SURVEYOR
AND MAPPER
— LAND / PLAT LINE

SHEET NO.: 1 OF 1

DATE PREPARED: 10/03/2024

SCALE: 1" = 100'

DRAWN BY: JB

REVISIONS:

DWG:
240313-P2-SD



CROW & ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION # 7936
509-B W. ALEXANDER STREET, PLANT CITY, FL 33563
PHONE: (813) 754-0505 * EMAIL: CROWSURVEYING@GMAIL.COM

SKETCH & DESCRIPTION
FOR
PARCEL 2



MICHAEL D. CROW, P.S.M., L.S. 5761
FLORIDA PROFESSIONAL SURVEYOR & MAPPER

MICHAEL D
CROW
2024.10.15
15:48:14
-04'00'

AFFIDAVIT OF AUTHORIZATION

We/I, First Baptist Church of Ft. Myers Beach being first duly sworn, depose and say that we/I am/are the property owners of the property described herein and which is the subject matter of the proposed hearing; that all the answers in this application, including the disclosure of interest information, all sketches, data, and other supplementary matter attached to and made part of this application, are honest and true to the best of our knowledge and belief. We/I understand that the information requested on this application is complete and accurate.

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

***Notes:**

- If the applicant is a corporation, then it is usually executed by the corp. pres. Or v. pres.
- If the applicant is a Limited Liability Company (L.L.C) or Limited Company (L.C), then the documents should typically be signed by the company's "Managing Member."
- If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.
- If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.
- If the applicant is a trustee, then they must include their title of "trustee."
- In each instance, first determine the applicant's status, e.g., individual, corporate, trust partnership, estate, etc, and then use the appropriate format for that ownership.

As property owner, we/I further authorize Neale Montgomery, Pavese Law Firm to act as our/my representative in any matters regarding this application.

FIRST BAPTIST CHURCH OF
FT. MYERS BEACH

By: K. Shawn Critser
Print Name: K. Shawn Critser
Its: Director

The foregoing instrument was certified and subscribed before me by means of _____ physical presence OR online notarization, this 17 day of July, 2025, by K. Shawn Critser as Director of First Baptist Church of Ft. Myers Beach, who _____ is personally known to me OR ✓ who has produced DRIVERS LICENSE (type of identification) as identification and that he is authorized to execute this Affidavit on behalf of the said corporation.

(SEAL)



[Signature]
Notary Public Signature

FORT MYERS BEACH ESTERO ISLAND



Engineers, Planners & Development Consultants

First Baptist Church

Approval of Development Agreement and Rezoning to Residential Conservation (RC)

**Town of Fort Myers Beach
Local Planning Agency**

September 9, 2025

THE PROJECT TEAM

APPLICANT/DEVELOPER

S.J. Collins Enterprises, LLC
Jonathon Thomas, Developer

NEALE MONTGOMERY as LAND USE ATTORNEY

Partner-Pavese Law Firm

AL QUATTRONE, P.E.

Engineer/Land Use Consultant - Quattrone & Associates, Inc.

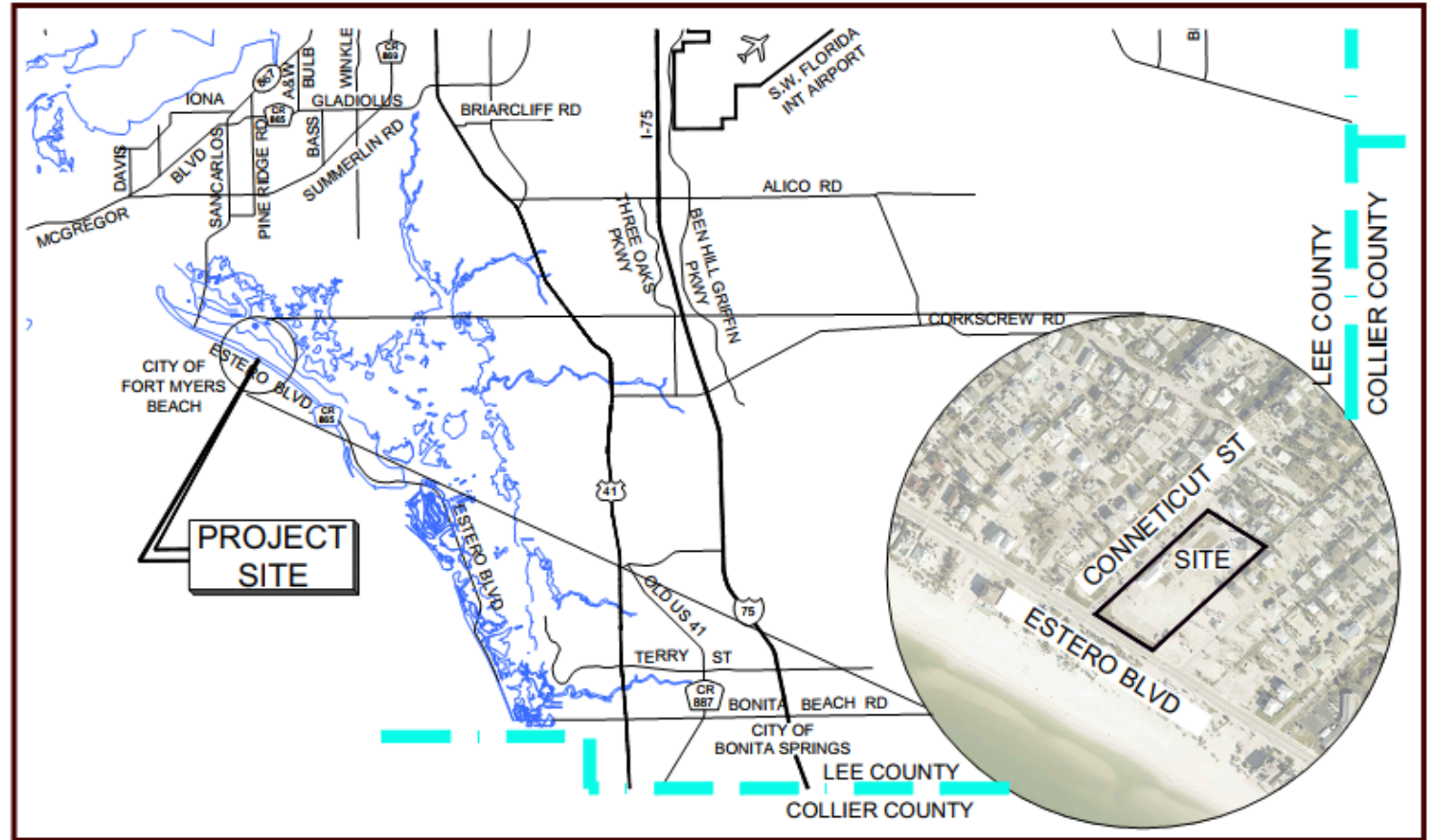
PROJECT REQUEST

REQUESTS:

- Approval of a Development Agreement to Regulate the Development of 12 Single-Family Homes and a Religious Institution on an Overall 3.20 Acre Parcel.
- Rezoning Approval of 2.1 Acres of the Overall Parcel from Institutional (IN) Zoning to Residential Conservation (RC) to Allow Residential Uses by Right.

LOCATION:

- Approximately 1.7 miles South of Time Square.
- Parcel 1: Single Family RC Subdivision Located at 110/138 Connecticut Street.
- Parcel 2: Church Located at 134–138 Connecticut Street.



DEVELOPMENT AGREEMENT

OBJECTIVE:

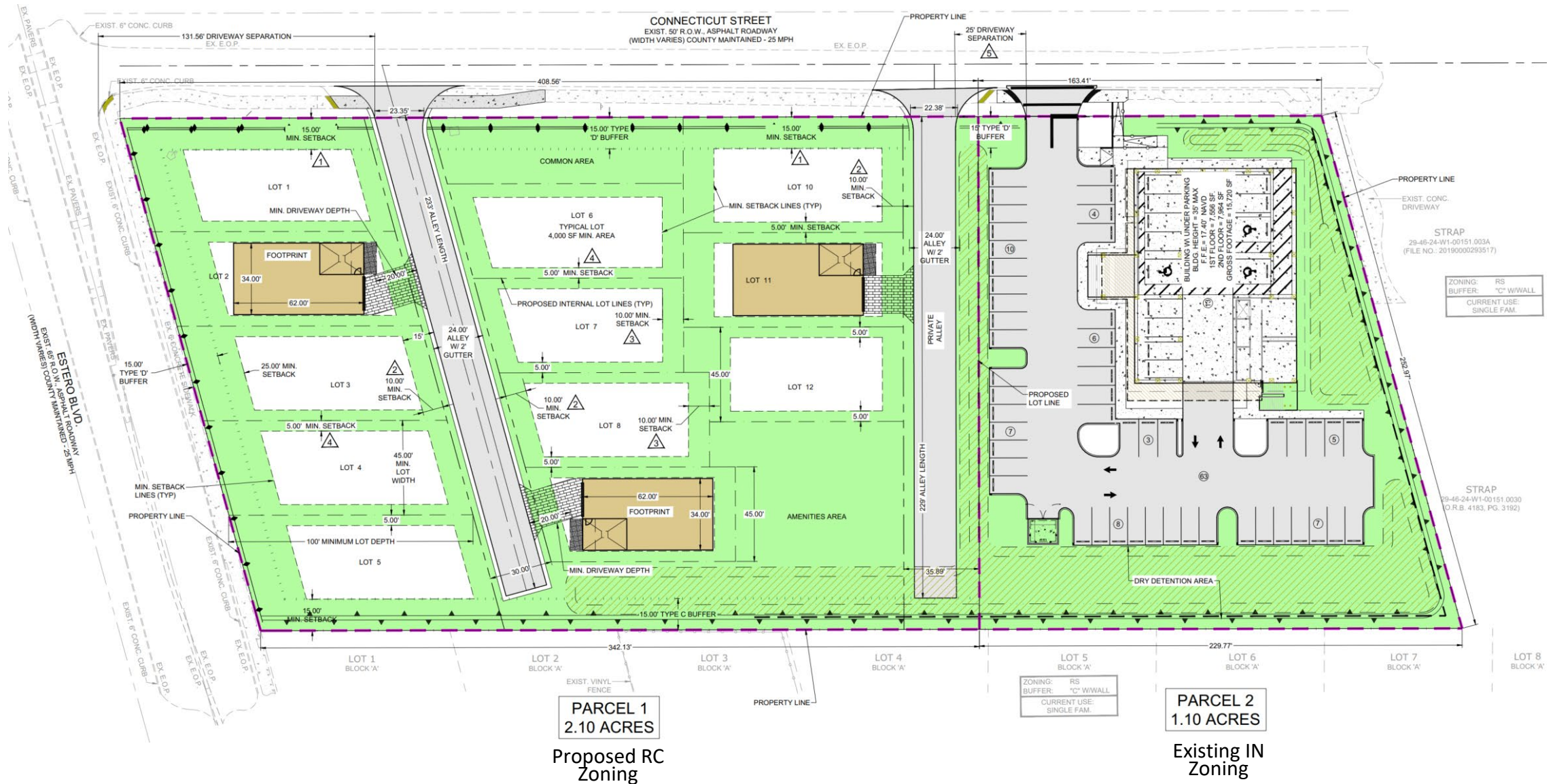
Given the Constraints of Conventional Zoning Districts, The Development Agreement Provides the Single-Family Development (Parcel 1) with Flexibility on the Layout and Provides Additional Conditions on the Church (Parcel 2) to Ensure Adjoining Neighborhood Compatibility and Livability and Provide Public Benefits.

PUBLIC BENEFITS:

- Vehicular Access for Church Limited to Single Driveway on Connecticut Street.
- On-Site Traffic Management by First Baptist Church.
- Maintenance of sidewalks along Connecticut Street on Parcel 2.
- Redevelop the Connecticut St Frontages Consistent with Current Landscape Requirements.
- Provide Buffers in Accordance with Section 10-416 between Church and Existing Adjacent Residential
- Allow Town or County to Utilize Parking Lot of Church for Staging during State of Emergency.



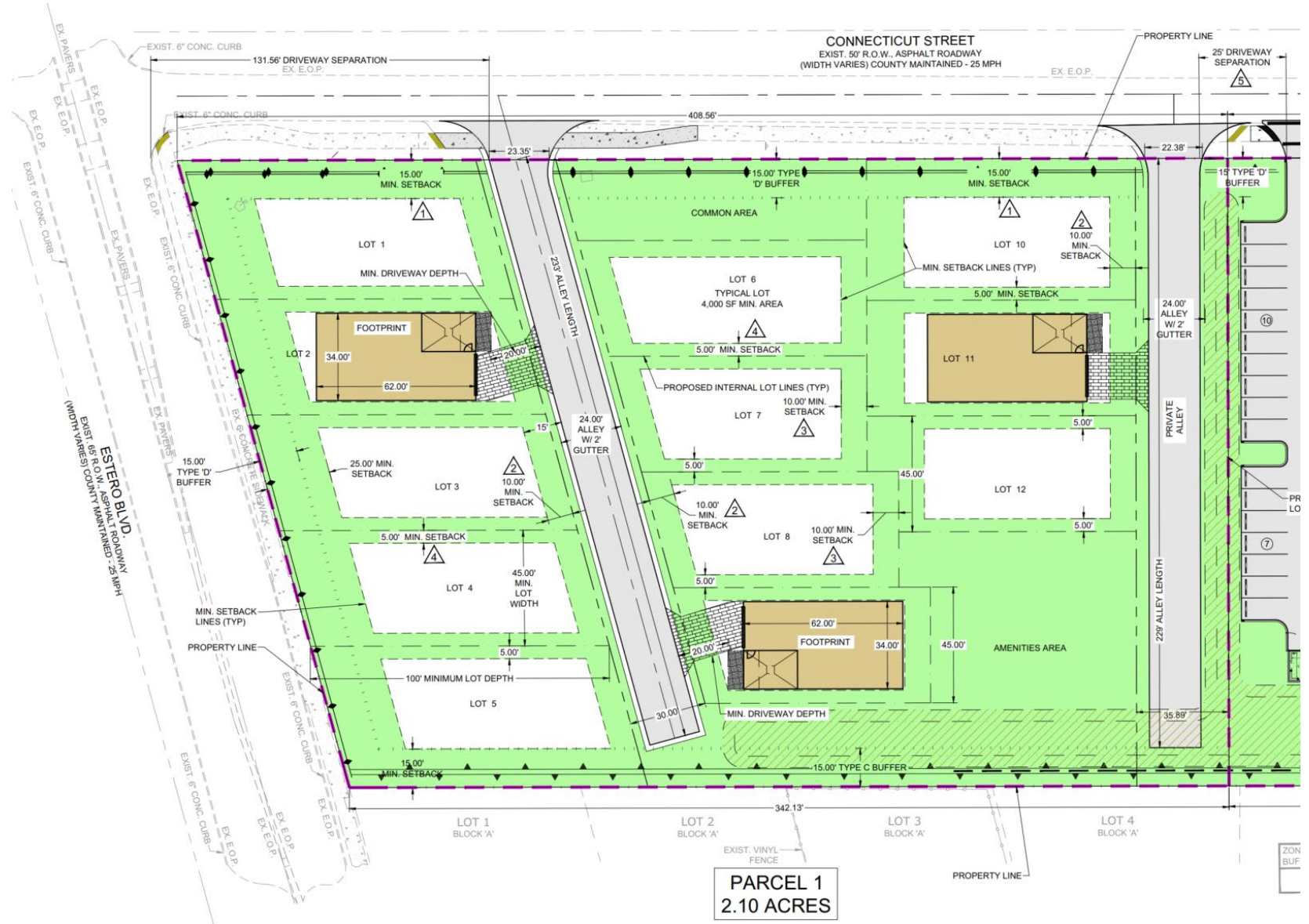
OVERALL SITE PLAN



SITE PLAN – PARCEL 1 - SINGLE-FAMILY

FEATURES:

- Proposed Rezoning to RC
- Two Internal Access Alley-Ways With No Direct Estero Blvd. Access
- Common Code Compliant Open Space
- Contemporary Stormwater Management System For Water Quality & Drainage
- Limited to SF and Residential Accessory Uses
- Creates Family-friendly, Pedestrian Oriented Community
- Lot Split & Rezoning Funds Church Reconstruction

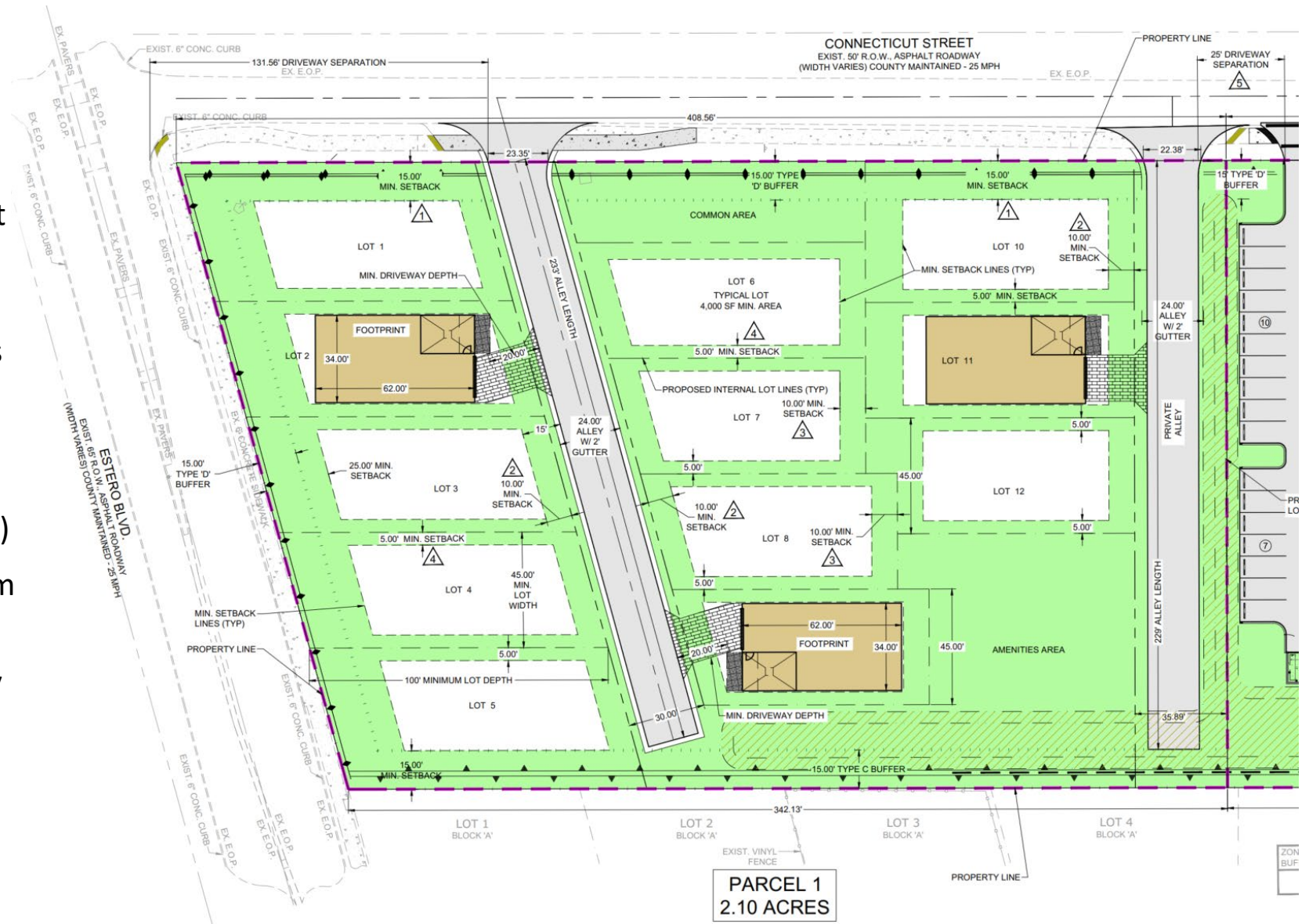


DEVIATIONS – SINGLE-FAMILY

DEVELOPMENT AGREEMENT DEVIATIONS:

PARCEL 1:

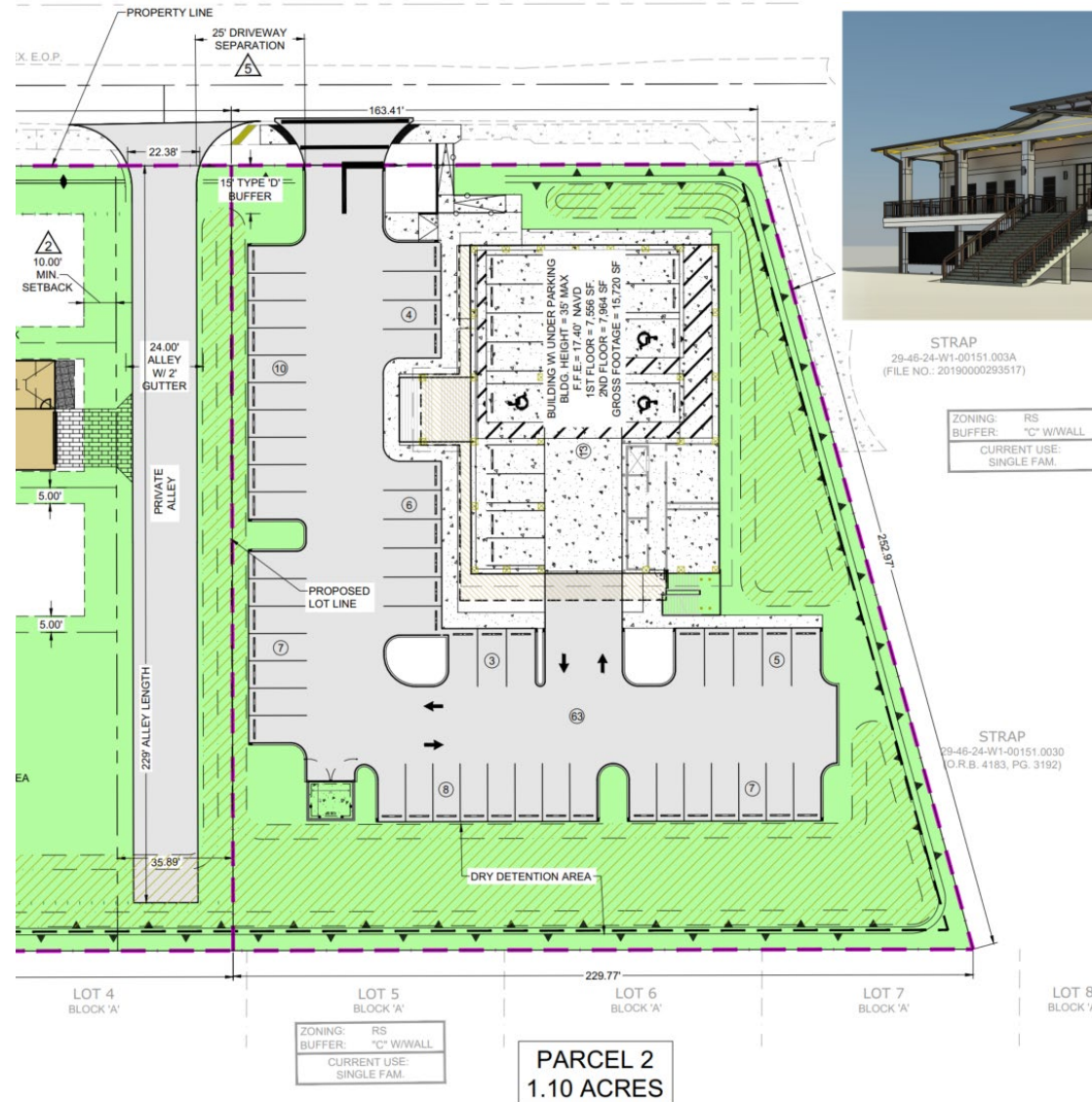
1. Street Setbacks from Connecticut St Reduced from 25' to 15' (§34-638 Table 34-3)
2. Street Setbacks from Internal Alleys Reduced from 25' to 10' (§34-638 Table 34-3)
3. Internal Rear Setbacks Reduced from 20' to 10' (§34-638 Table 34-3)
4. Internal Side Setbacks Reduced from 6.5' to 5.0' (§34-638 Table 34-3)
5. Driveway Separation Between Alley and Church Entrance Reduced from 125' to 25' (§10-285)



SITE PLAN – PARCEL 2 - CHURCH

FEATURES:

- Maintain Existing IN Zoning
- Post Hurricane Ian Redevelopment
- New Place of Worship Facility for First Baptist Church.
- Single Access on Connecticut Street
- Code Compliant Open Space
- Code Compliant Commercial to Residential Type C Buffers 18 feet to 40 feet wide with a Wall.
- Code Compliant R/W Buffer
- Contemporary Stormwater Management System For Water Quality & Drainage
- Floor Area Ratio of 0.32 is Below Max Allowed of 0.80 FAR
- No Temporary or Permanent Housing
- No RV Overnight Parking
- No Residential, Social Services or Rehabilitation Programs



DEVELOPMENT AGREEMENT COMPREHENSIVE PLAN CONSISTENCY

Policy FLU-1-A-1:

- The RC Rezoning Request in Conjunction with this Development Agreement to allow 12 Single-Family, Min. 4,000 SF Homesites with Maximum FAR's of 40% makes the Project Consistent with FLU-1-A-1 which emphasizes preserving Fort Myers Beach's "human scale" by requiring new development to fit neighborhood character, support walkability, protect scenic and community features, and encourage reuse, infill, and quality urban design rather than oversized or isolating projects.

Policy FLU-1-A-4:

- The proposed Single-Family Community and the Redeveloped Church when built in accordance with the Development Agreement will Provide Sidewalks and R/W Buffers Along Connecticut Street making the Project Consistent with FLU-1-A-4 which requires that easy walking access to the beach must always be protected, with public pathways, sidewalks, roads, and shoreline access points preserved and not diminished by development.

Policy FLU-1-B-4 (FLU-4-B-4) Mixed Residential:

- The proposed Single-Family Community when built in accordance with the Development Agreement will be consistent with FLU-1-B-4 in that the Single-Family Development does not exceed the Maximum Density of 6 units per acre and the resulting small homes on small lots provides the towns housing type variety.

Policy FLU-1-C-4 Building Heights:

- The RC Request and Existing Redevelopment of the Church when built in accordance with the Development Agreement will be consistent with FLU-1-C-4 in that both projects will comply with Maximum Height requirements of 30' above flood elevation.

DEVELOPMENT AGREEMENT COMPREHENSIVE PLAN CONSISTENCY (Cont.)

Goal HOU-1 - Policy HOU-1-A-2:

- The RC Rezoning Request in Conjunction with this Development Agreement supports the development of smaller, more affordable homes making the project consistent with Policy HOU-1-A-2.

Policy FLU-1-B-4 (FLU-4-B-4) Mixed Residential:

- The proposed Church when built in accordance with the Development Agreement will be consistent with FLU-1-B-4 in that the Development Agreement allows for conditions and restrictions that would otherwise not be required for IN zoned parcels.

DEVELOPMENT AGREEMENT CONCLUSION

Conclusion:

- The Development Agreement has been prepared pursuant to Section 2-96 and 2-100, and Resolution 24-73.
- The Development Agreement, when approved in conjunction with the RC Zoning, will give the Town the ability regulate the redevelopment of the Church and to give the Residential portion greater flexibility to meet the intent of the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code.
- The Development Agreement provides for a Public Benefit by allowing the Town or County to utilize the parking lot of the church for staging during a state of emergency.
- Staff is Recommending Approval of the Development Agreement.

We ask for a Motion to Recommend Approval of the Proposed Development Agreement to Town Council.



Engineers, Planners & Development Consultants

First Baptist Church

Parcel 1

Rezoning to Residential Conservation (RC)

Town of Fort Myers Beach
Local Planning Agency

September 9, 2025

REQUEST

- The application requests to rezone the subject 2.1-acre parcel from Institution (IN) to Residential Conservation (RC).
- The requested RC district will permit by right the following uses:
 - Community Residential Homes
 - Dwelling unit, Single-Family & 2-Family
 - Accessory apartments
 - Residential accessory uses
 - Home Care Facility
 - Residential Accessory Uses

BACKGROUND

- The subject parcel is located approximately 1.7 miles South of Times Square.
- Future Land Use Classification FLUM Designation: Mixed Residential
- Primary Frontage: ±250 feet along Estero Boulevard, a key arterial road.
- Secondary Frontage: ±409 feet along Connecticut Street
- Adjacent Zoning: Surrounding properties are zoned RC (Residential Conservation).
- Lot Characteristics: Most surrounding lots are between 7,000 – 8,000+ sq ft, supporting single-family and two-family homes.
- The subject property itself is within the Case Subdivision (Plat Book 1, Page 58)
- The Subject Parcel was the Home of the First Baptist Church of Fort Myers Beach until it was destroyed by Hurricane Ian in September 2022.

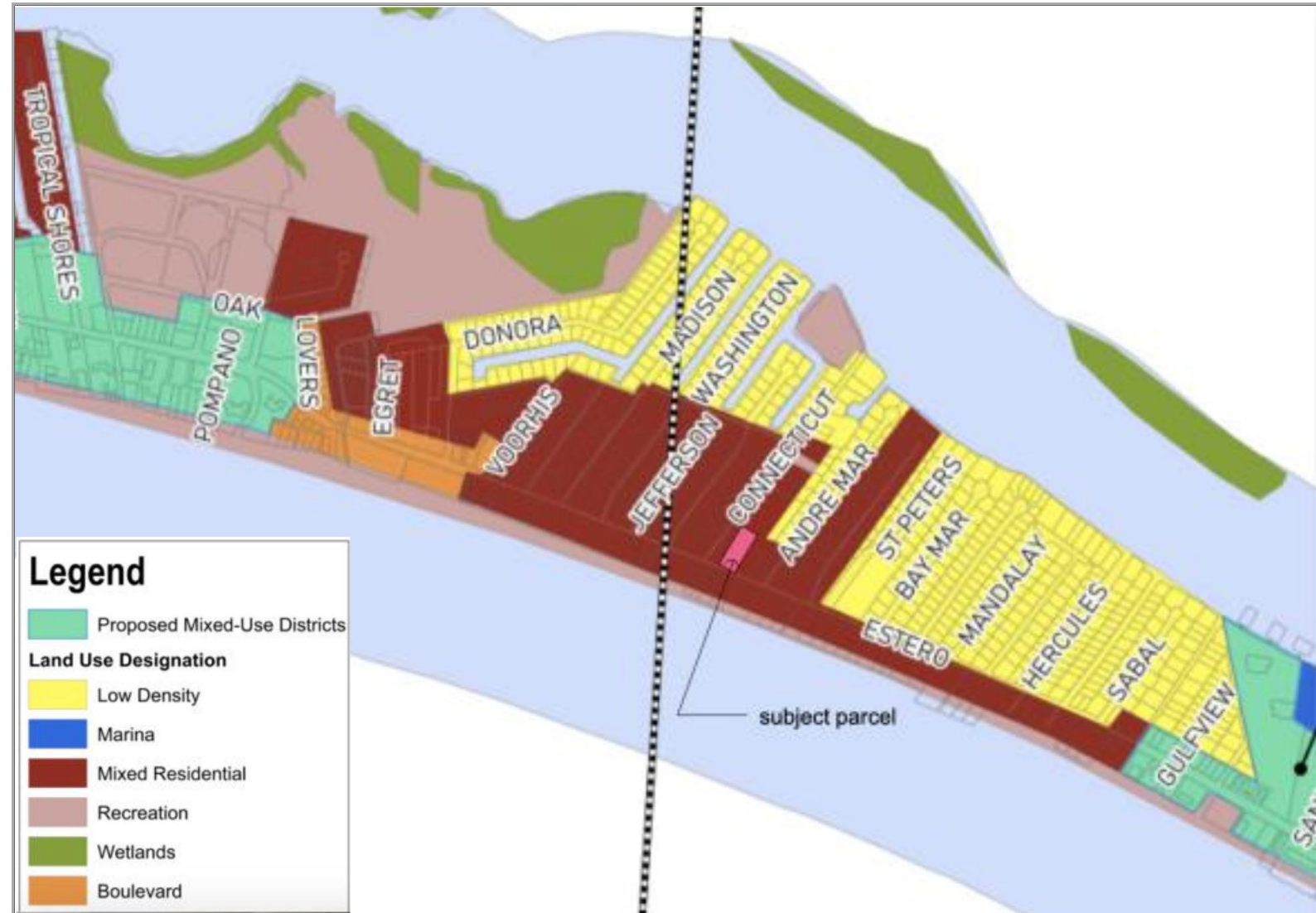
AERIAL PRIOR TO HURRICANE IAN



FUTURE LAND USE

FUTURE LAND USE:

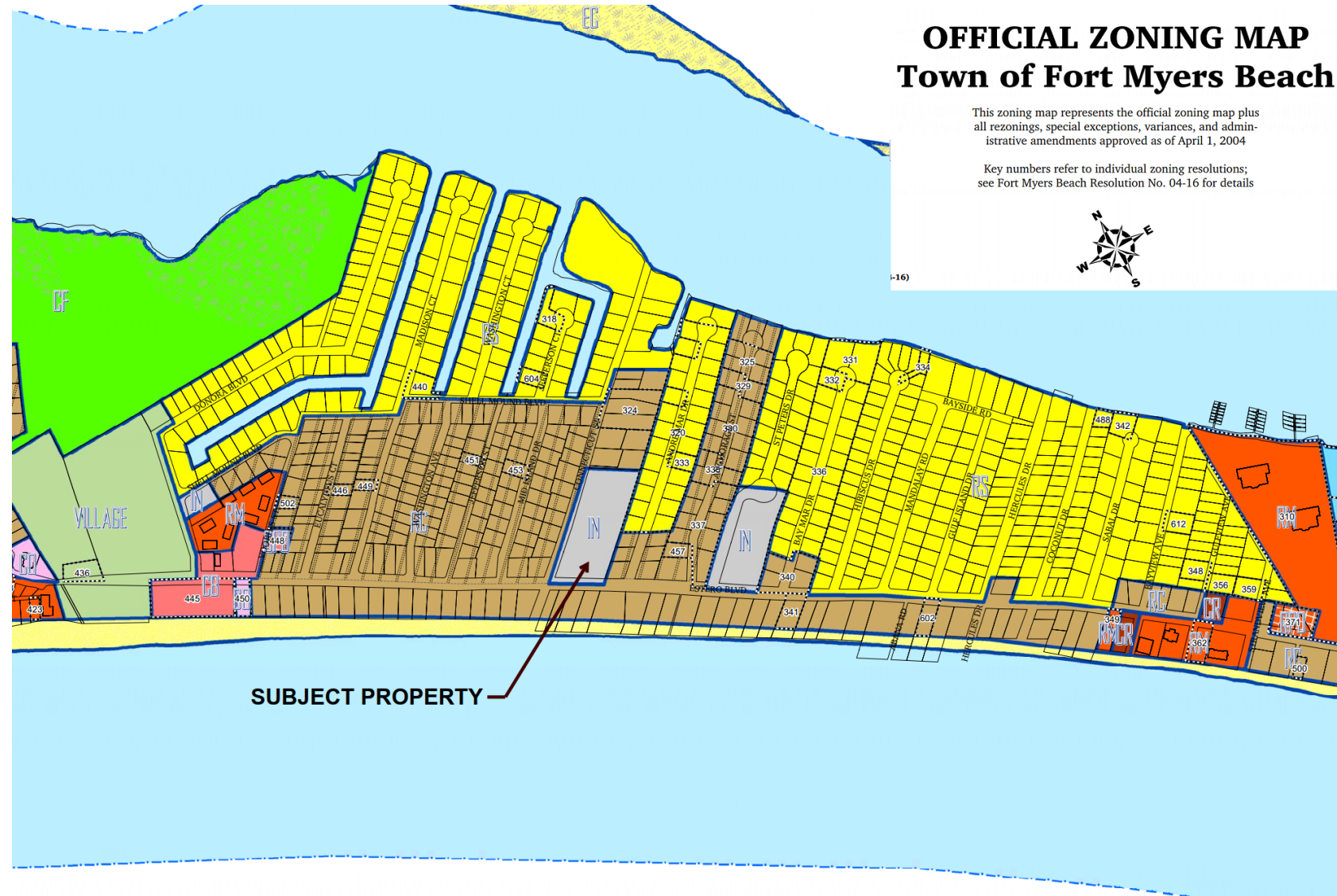
- MIXED RESIDENTIAL
(6 Dwelling Units / Acres)



ZONING MAP

ZONING MAP:

- EXISTING ZONING
Institutional (IN)
- PROPOSED ZONING
Residential Conservation (RC)



LDC 34-85 RC REZONING CRITERIA

1. Whether there exists an error or ambiguity that must be corrected;
There is no error or ambiguity in the record that must be corrected.
2. Whether there exist changed or changing conditions that make approval of the request appropriate.
The site was a fully developed site that was destroyed in 2022 by Hurricane Ian. The rezoning, parcel split and selling of the new RC Zoned Parcel 1 to support the reconstruction of the First Baptist Church is an appropriate change in condition that makes the request appropriate.
3. The impact of the proposed change on the intent of LDC Chapter 34;
Based on compliance with the Mixed Residential Future Land Use designation and adjoining RC zoned properties, there is no adverse impact on the intent of LDC Chapter 34.
4. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan;
The RC zoning request is consistent with Town of Fort Myers Beach Comprehensive Land Use Plan's objectives, policies, intensities and uses.

LDC 34-85 RC REZONING CRITERIA (cont.)

Policy FLU-1-A-1 Maintaining the town's current "human scale" and "stabilize and preserve neighborhoods".

- **Response: The RC zoning is consistent in that a maximum of 12 Single-Family Lots will be allowed with a minimum of 4,000 sf homesites at a maximum floor area ratio of 40%; contextually fit into the surrounding Connecticut Street and Andre Mar Drive neighborhood.**

Policy FLU-1-A-4. "Easy walking access to the beach".

- **Response: The RC zoned parcel will provide sidewalk construction and Type D 15-ft wide landscaping along its Estero Blvd and Connecticut Street frontage to facilitate public beach access.**

Policy FLU-1-B-4 MEDIUM RESIDENTIAL *"Ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre'.*

- **Response: The zoning in conjunction with the Development Agreement for 12 Single-Family Homesite results in a density of 5.7 Units/Ac which is consistent with FLU 1-B-4.**

LDC 34-85 RC REZONING CRITERIA (cont.)

Policy FLU-1-C-4 BUILDING HEIGHTS *Three stories or 30 feet above flood elevation”.*

- **Response: The RC request and building height complies with the 30-ft above flood elevation/3 story maximum height.**

Policy HOU-1-A-2 *The plans Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate forecasted housing needs through build-out*

- ***Response: The rezoning from Institutional to RC advances the objective of maintaining an adequate supply of land to meet housing needs. The minimum 45-ft lot width and minimum 80-ft lot depth supports the development of smaller, more affordable new homes.***

LDC 34-85 RC REZONING CRITERIA (cont.)

5. Whether the request meets all performance and locational standards for the proposed use.

Response: Agree with Staff - The RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The request will meet all performance and locational standards identified within the LDC. The subject parcel is of the size and configuration that allows for a small 12-unit subdivision that conforms to RC zoning performance standard identified within the LDC.

6. Whether Urban Services are, or will be, available to serve a proposed land use change.

Response: All required urban services are available to adequately serve residential subdivision

7. Whether the request will protect, conserve or preserve environmentally critical area and natural resources.

Response: The request does not include any impacts to the environmentally critical areas. The site was comprehensively developed to support a Religious Facility. The site is currently characterized by almost 100% impervious with no onsite natural systems.

LDC 34-85 RC REZONING CRITERIA (cont.)

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

Response: Agree with Staff that the RC zoning requests proposed uses and intensities are identical to the surrounding neighborhood. The new RC 12-unit subdivision will be compatible with the adjacent and adjoining RC Connecticut Street and Andre Mar Dr neighborhoods. The requested 12-unit subdivision will meet all new buildings and FEMA rules. As such the RC subdivision will not cause any damage, hazards or nuisances to surrounding land uses.

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

Response: The former Church generated a weekend AM Peak entry 89 trips/exit 93 trips. The proposed redevelopment of the Church generated a weekend peak AM entry 38 trips/exit 39 trips. Trip Comparison for the Church has a net peak hour decrease of 105 trips. The proposed 12-unit subdivision will generate a weekday PM Peak 11.25 trips. There is no anticipated negative impact in the Level of Service for Estero Blvd, based on the estimated trip reduction. Therefore, the roadway is adequate to accommodate the volume from the proposed project.

FINDINGS AND CONCLUSION

Applicant Agrees with the Town of Fort Myers Beach's Staff Reports for the Development Agreement (DA2025-0176) and the Rezoning (REZ20240264).

When both the RC zoned Single-Family Parcel and existing IN zoned Church Parcel are developed in accordance with the Deviations and Conditions of the Development Agreement the project will be developed in accordance with the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code. It is consistent with the intensity set forth in the Town Plan and LDC, is compatible with existing and planned uses, has adequate services and infrastructure required to service the project.

The planning and zoning land use findings presented demonstrate entitlement to the requested Baptist Church Residential Conservation (RC) zoning request.



First Baptist Church Development Agreement



**Town of Fort Myers Beach
City Council**

October 6, 2025



THE PROJECT TEAM

APPLICANT/DEVELOPER

S.J. Collins Enterprises, LLC
Jonathon Thomas, Developer

NEALE MONTGOMERY as LAND USE ATTORNEY

Partner-Pavese Law Firm

JENNIFER SAPEN, AICP

Land Planner – Sapen Site Planning, LLC.

About S.J. Collins Enterprises

- Founded in 2007 by Steve Collins
- Experienced developer in retail, restaurant, residential, and mixed-use projects
- Proven track record transforming underutilized land into thriving community assets
- Focus on design quality, sustainability, and community impact



Featured Developments

- The Interlock (Atlanta, GA): Urban mixed-use lifestyle center with retail, office, boutique hotel, rooftop entertainment, and apartments
- The Kelly (Panama City, FL): 300 upscale apartment homes with resort-style amenities including pool, clubhouse, fitness, and pickleball
- Daniels Marketplace Whole Foods (Fort Myers, FL): Grocery-anchored shopping destination enhancing access and walkability



The Proposed Project

- - Original church destroyed by hurricane Ian in 2022
 - - Site: 3 acres total

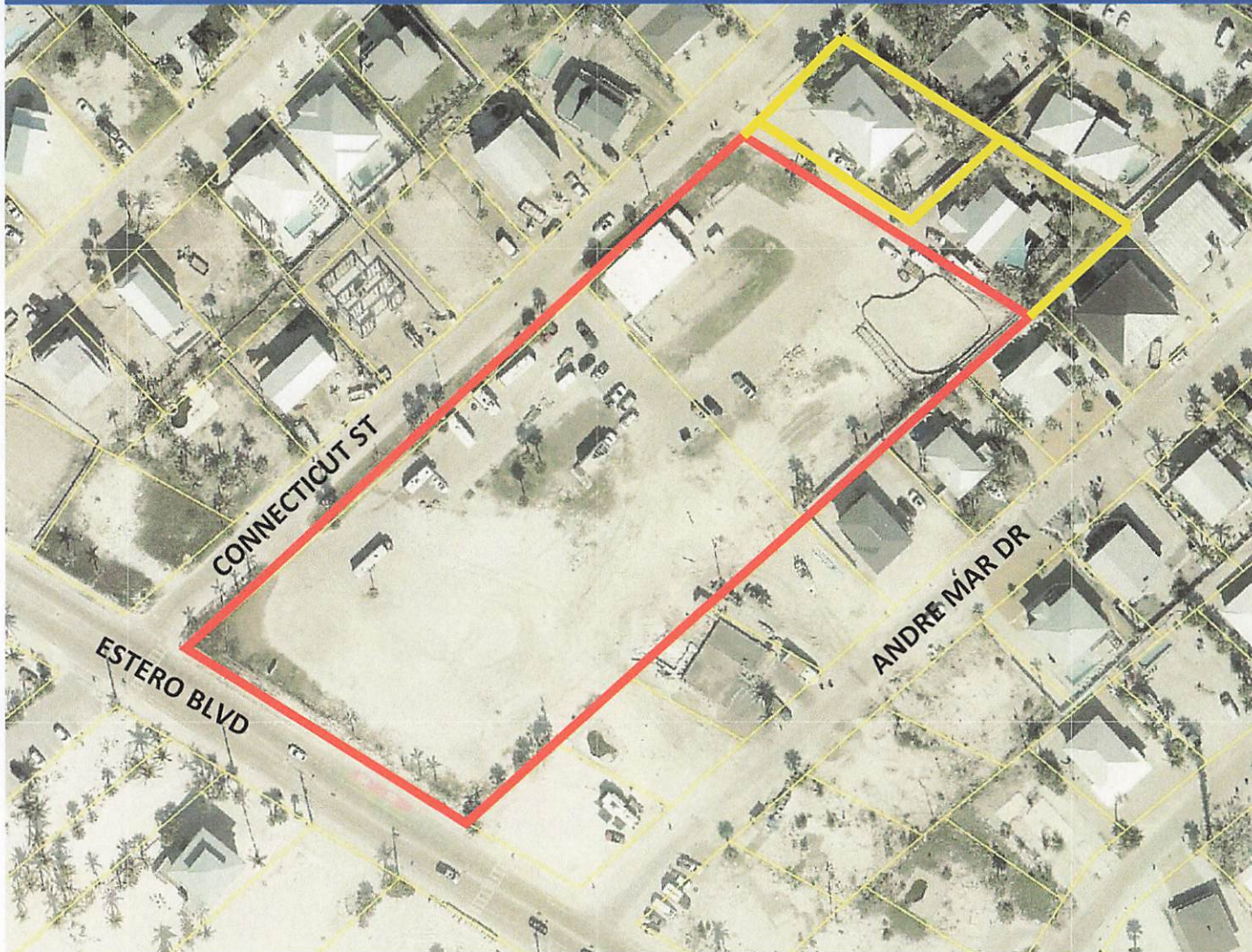
 - Plan:
 - - 1 acre: new modern church facility
 - - 2 acres: development of 12 single-family residential lots

 - Community Benefits
 - Restores a place of worship and community gathering
 - Adds thoughtfully designed homes to strengthen neighborhood fabric
 - Balances faith, housing, and smart land use
-

Conceptual Renderings



LOCATION & SURROUNDING USES



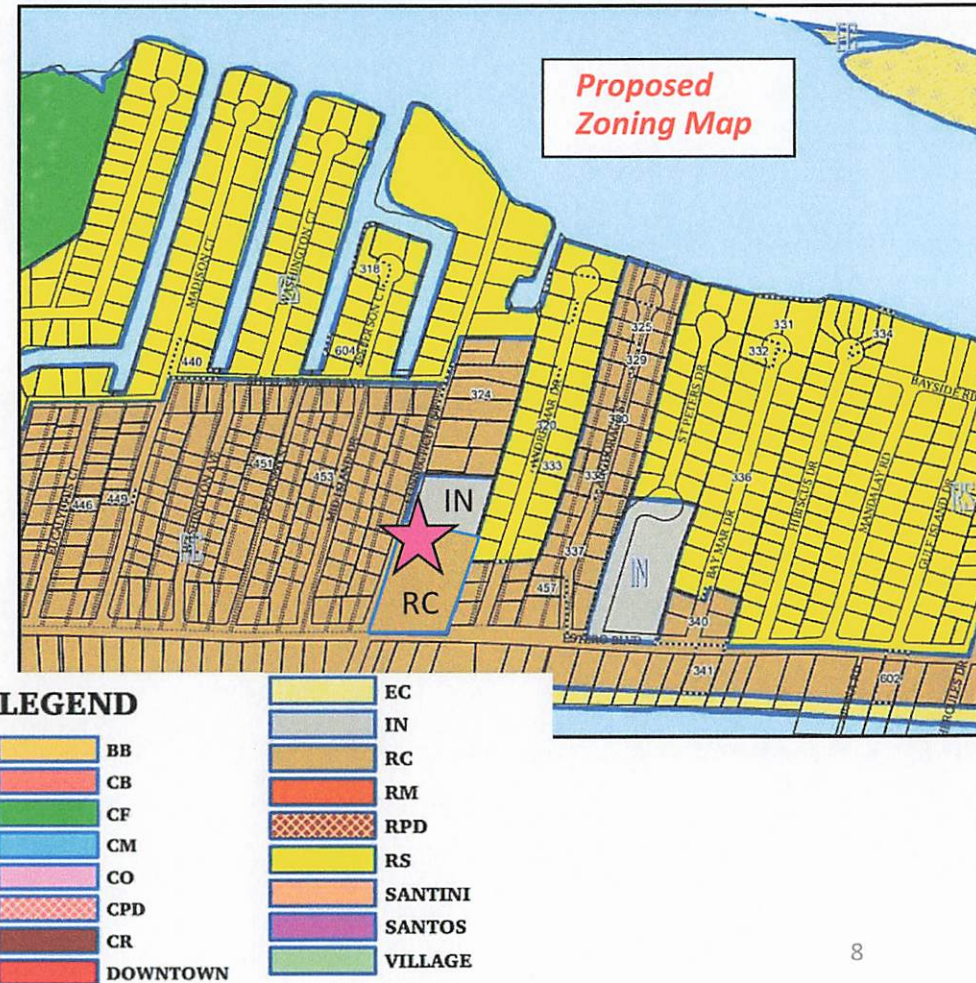
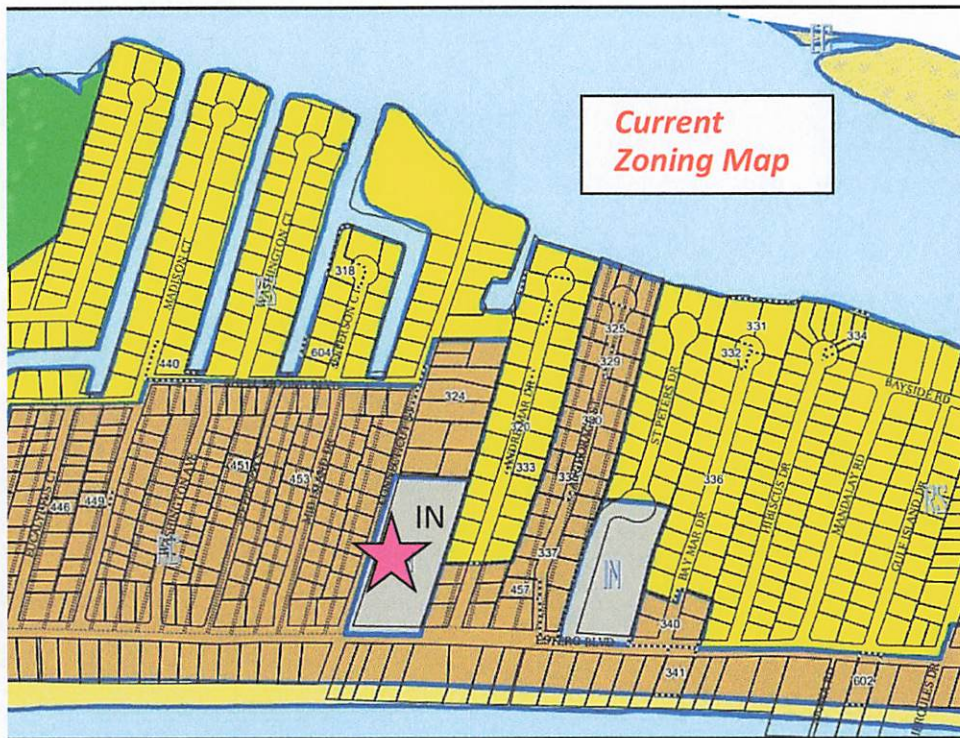
Location: Southeast corner of Estero Blvd and Connecticut St.

Surrounding Uses

- North: Connecticut Street & RC single family
- East: RC single family, driveway of flag lot directly abutting property
- South: RC and RS single family
- West: Estero Blvd & RC single family

ZONING

- IN zoning to remain on 1.1 ac parcel for church redevelopment
- Proposed RC zoning on 2.1 acres along Estero Blvd
 - Allows a single family use
 - Continuation of RC zoning to the north, south and west



FUTURE LAND USE

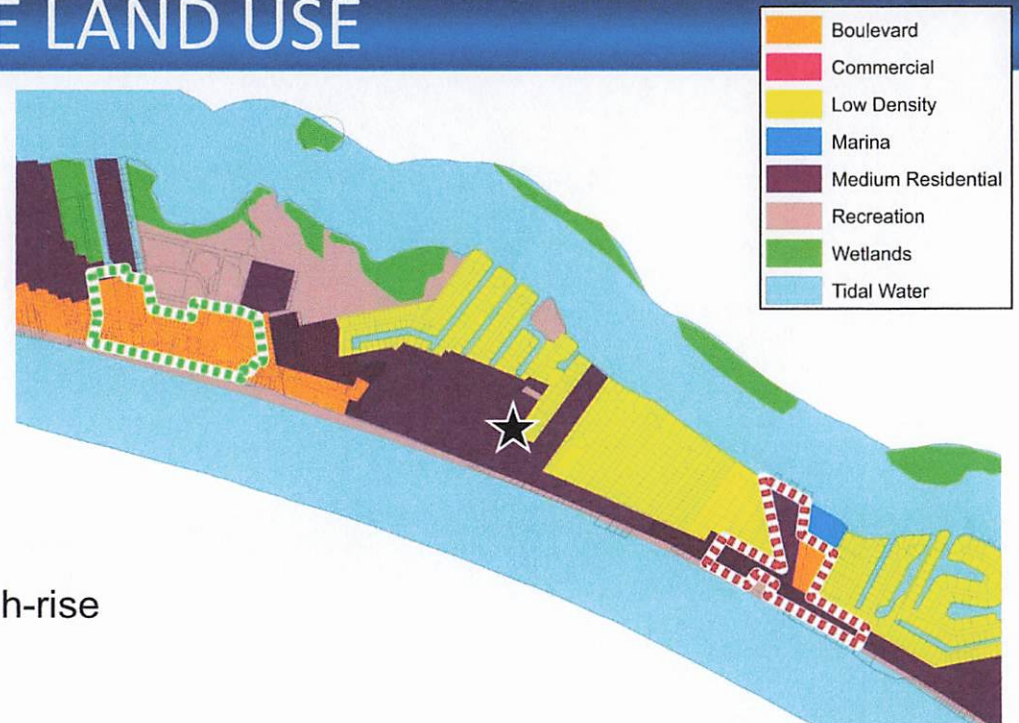
MEDIUM RESIDENTIAL

Allows three residential types

1. Smaller lots
2. High-rise buildings
3. RV parks

- ✓ Proposed development agreement eliminates high-rise and RV uses
- ✓ 15 letters of support / no objection

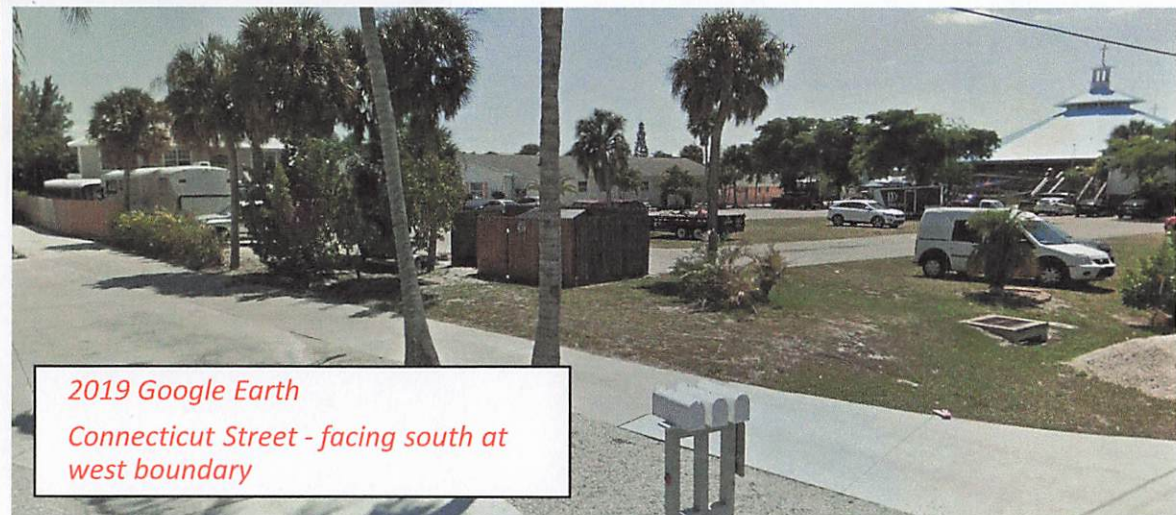
Designed for subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre.

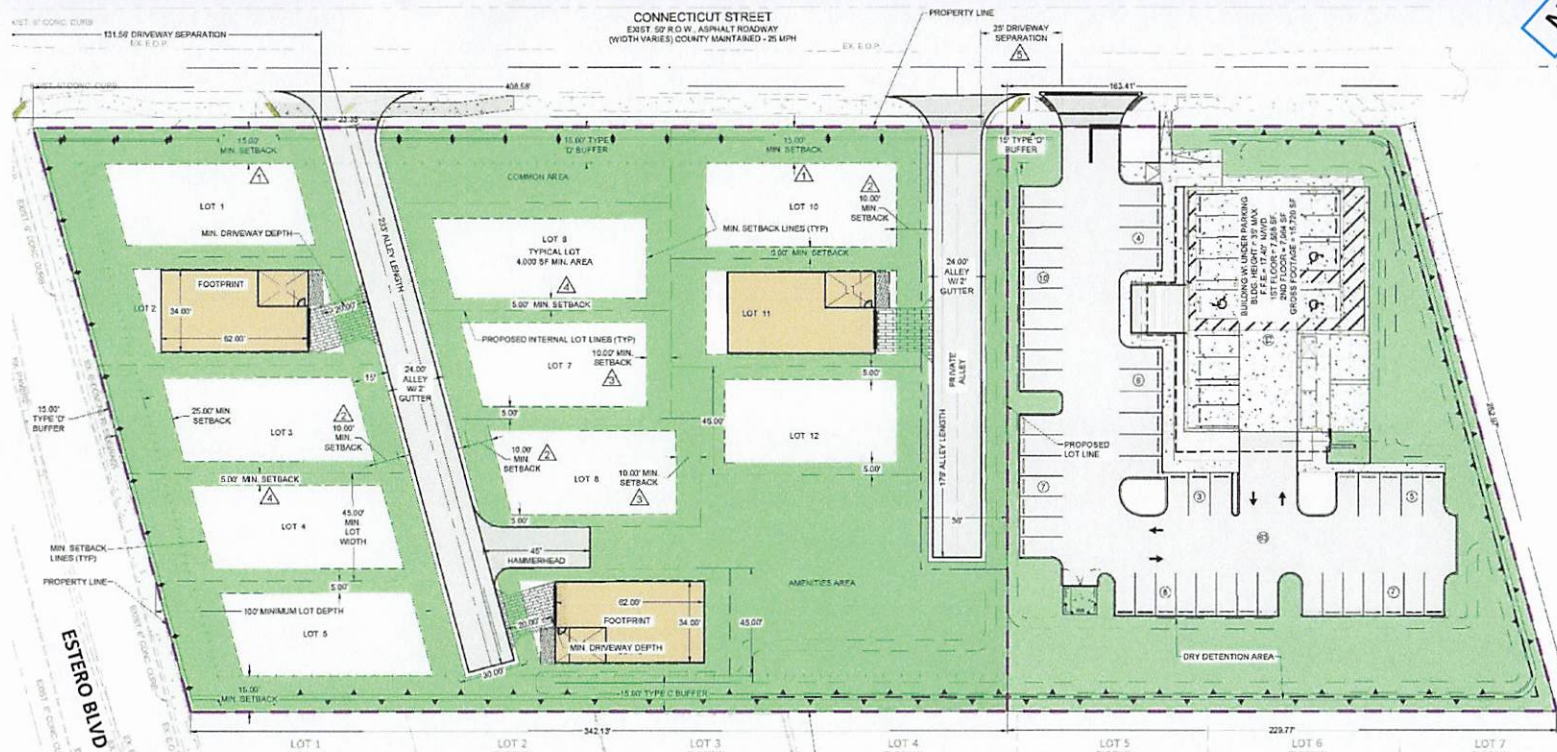


PRIOR TO HURRICANE IAN



- First Baptist Church fronting Estero Blvd with 2 accesses onto Connecticut street
- 4 structures behind the church used for various purposes
- Parking and dumpsters along east boundary with minimal buffer plantings





- No driveway access on Estero Blvd
- Separate accesses for church and single family
- Two privately maintained alleys:

West - hammerhead
turn-around

East - 179' maximum
dead-end length serving 3
homes

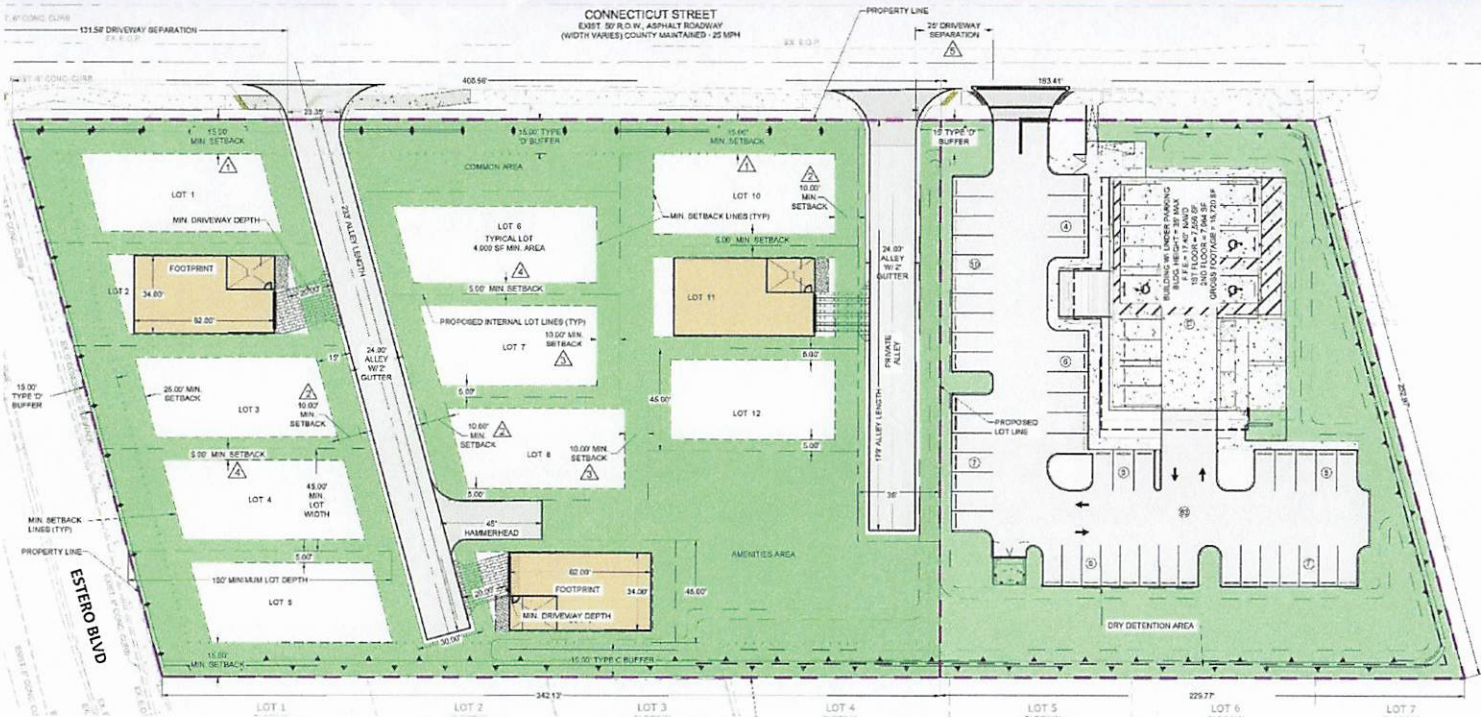
- Church access shifted west for maximum separation to abutting single family

- 12 single family lots
- 2.1 ac
- Rezone from IN to RC

Requested density is consistent with Mixed Residential Future Land Use (FLU-4-B-4)

- Church redevelopment
- 1.1 ac
- No zoning change

PROPOSED SITE PLAN



Water Management

- Modern stormwater system for water quality
- Detention provides increased separation to single family platted lots (south, east and north)
- Privately maintained

Open Space

- Meets LDC requirements
- 55% of the site
- Two amenity / common area parcels

Church Parcel

- Allow government entities to use parking during emergencies
- Onsite traffic maintenance
- Development Order under review

LANDSCAPING – CHURCH PARCEL

BUFFERS

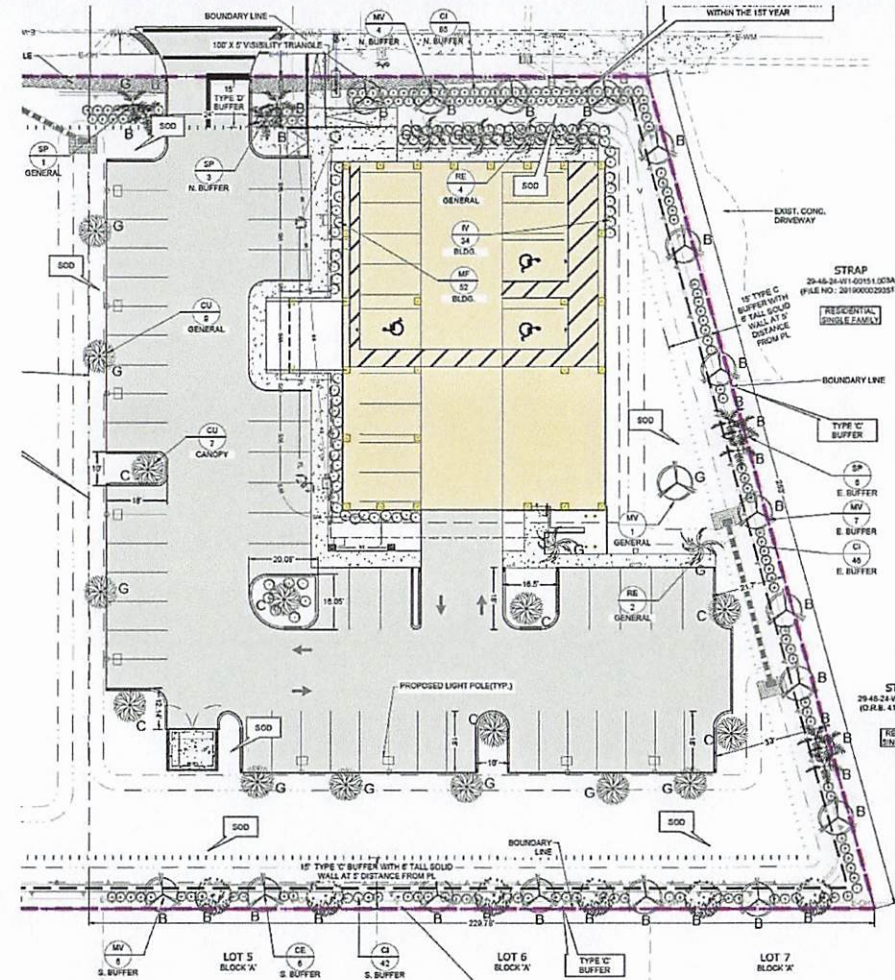
- North: 15' wide Type D (163 l.f.)
- East: 15' wide Type C with 6' wall (253 l.f.)
- South: 15' wide Type C with 6' wall (230 l.f.)

PLANTINGS

- 56 trees
- 259 shrubs
- 483 linear feet of 6' tall wall
- Plantings on the outside of the wall
- All native plant species

Development Order Planting Table

SPECIES LIST					
SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SPECIFICATION*	STATUS
GENERAL TREES					
CU	8	SEAGRAPE	COCCOLOBA UVIFERA	10' HT.; 2" CAL.; 4' SPREAD	NATIVE
RE	6	ROYAL PALM	ROYSTONEA ELATA	10' CLEAR TRUNK MIN.; 16' MIN. HT.	NATIVE
SP	1	SABAL PALMS	SABAL PALMETTO	10' CLEAR TRUNK MIN.; 16' MIN. HT.	NATIVE
MV	1	SWEETBAY	MAGNOLIA VIRGINIANA	10' HT.; 2" CAL.; 4' SPREAD	NATIVE
BUFFER TREES					
MV	17	SWEETBAY	MAGNOLIA VIRGINIANA	10' HT.; 2" CAL.; 4' SPREAD	NATIVE
CE	6	SILVER BUTTONWOOD	CONOCARPUS ERECTUS SER	10' HT.; 2" CAL.; 4' SPREAD	NATIVE
SP	9	SABAL PALMS	SABAL PALMETTO	10' CLEAR TRUNK MIN.; 16' MIN. HT.	NATIVE
PARKING TREES					
CU	8	SEAGRAPE	COCCOLOBA UVIFERA	10' HT.; 2" CAL.; 4' SPREAD	NATIVE
SHRUBS & PERIMETER LANDSCAPING					
MF	52	SIMPSON STOPPER	MYRACANTHES FRAGRANS	24" HT., #3 CONTAINER 36" O.C.	NATIVE
CI	173	RED TIP COCOPLUM	CHRYSOBALANUS ICACO	24" HT., #3 CONTAINER 5.5' O.C.	NATIVE
IV	34	DWARF YOUNG HOLLY	ILEX VOMITORIA	24" HT., #3 CONTAINER 36" O.C.	NATIVE
MISC					
SOD		BAHIA SOD	PASPALUM NOTATUM	SAND GROWN	NATIVE
MULCH		PINE STRAW MULCH		3" DEPTH THROUGHOUT	NATIVE



Development Order Landscape Plan

PRIOR TO HURRICANE IAN



2019 Google Earth
Connecticut Street - facing south at
west boundary

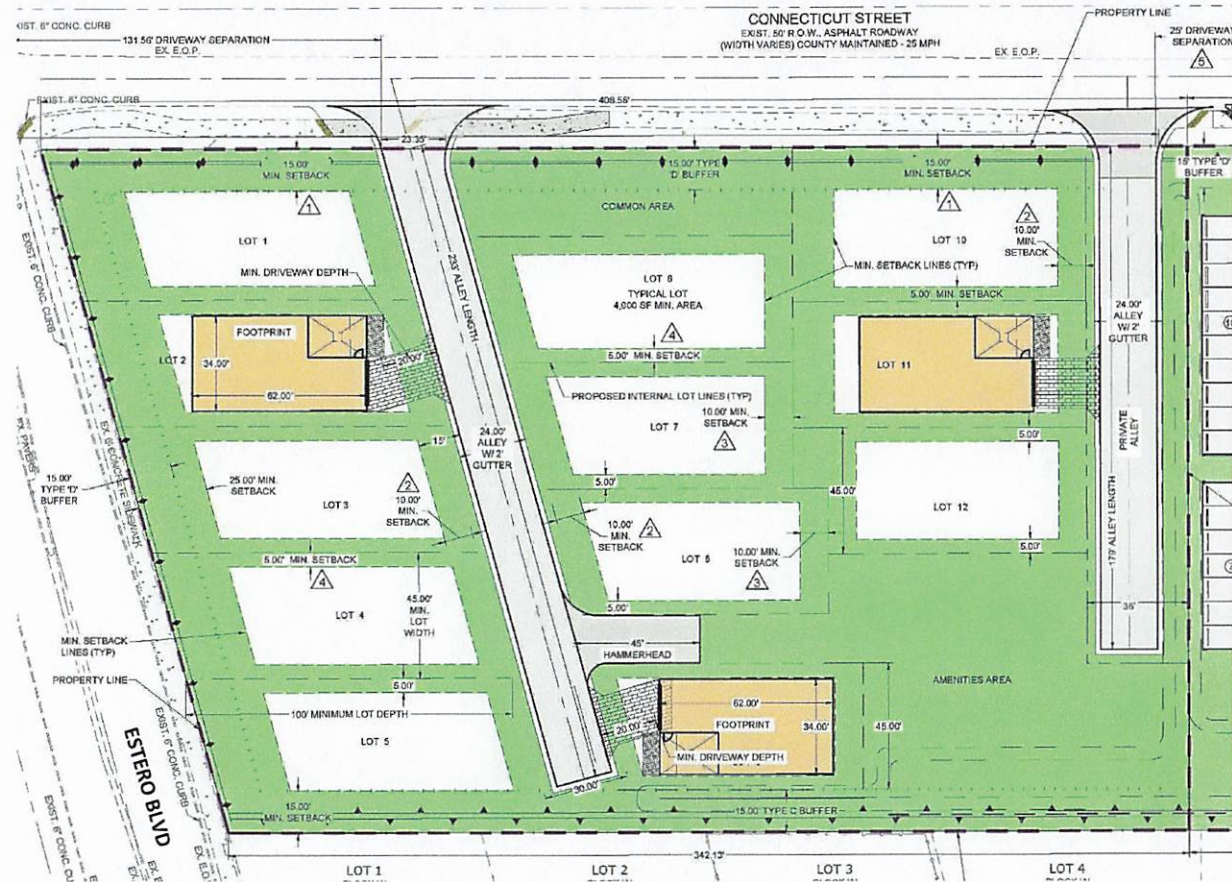
LANDSCAPING –SINGLE FAMILY PARCEL

BUFFERS

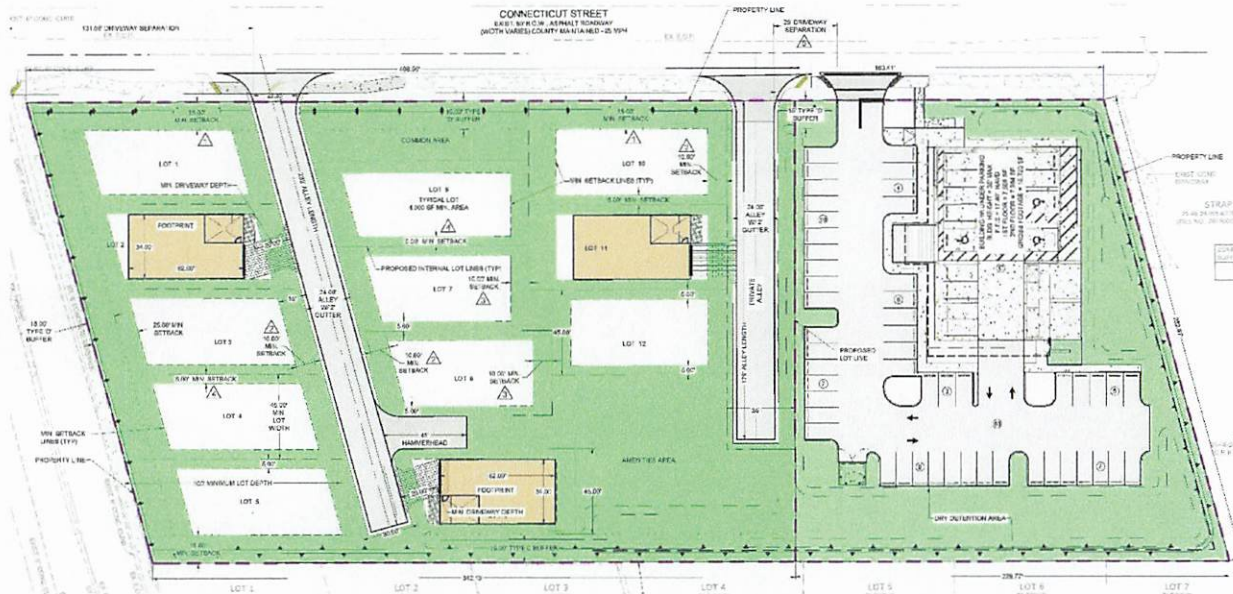
- North: 15' wide Type D (408 l.f.)
- West: 15' wide Type D (253 l.f.)
- South: 15' wide Type C with 6' wall (342 l.f.)
- Wall on southern border will block headlights from the alley

PLANTINGS

- 37 trees
- 1,152 shrubs
- 342 linear feet of 6' tall wall
- Plantings on the outside of the wall
- Buffers to be planted during construction of roads and utilities
- Landscaping on individual lots to be installed after vertical construction of homes



DEVELOPER AGREEMENT - PROHIBITED USES



Allowed by RC zoning but prohibited by
Developer Agreement (single family parcel):

- Bed and Breakfast
- Community Residential Home
- Home Care
- Daily Rental of Dwelling Unit (due to location on Estero Blvd)

Prohibited by Developer Agreement (church parcel):

- No temporary or permanent living quarters or dwelling units
- No overnight parking of recreational vehicles
- No social services, or rehabilitation programs will be conducted on-site

DEVELOPMENT REGULATIONS

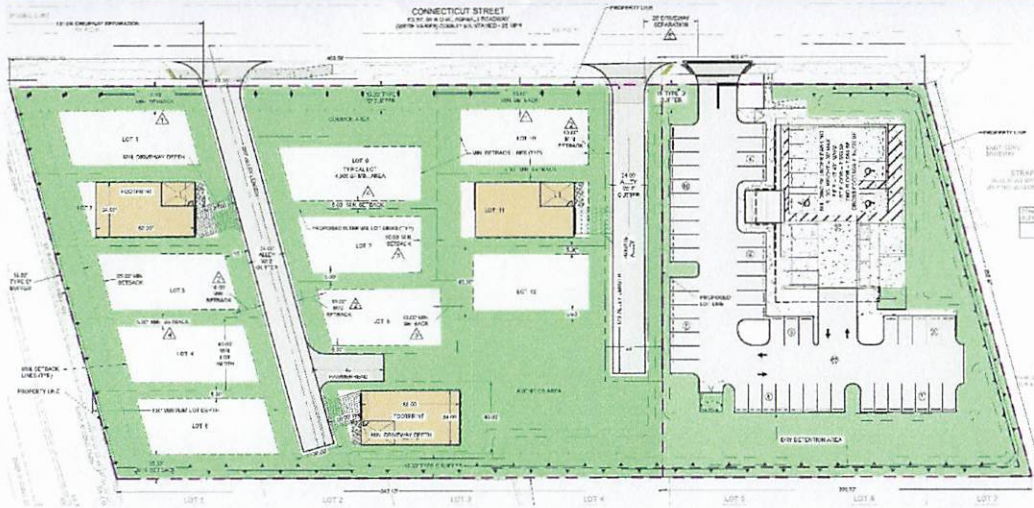
	IN (Current)	Church (Proposed)	RC (LDC)	Single Family (Proposed)
Street Setback	20'	25'	25'	25' Estero Parkway 15' Connecticut Street 10' Internal Alleys
Side Setback	7'	45'	6.5' (lots < 50' wide)	5'
Rear Setback	20'	103'	20'	10'
Lot Width	75'	163'	45'	45'
Lot Depth	100'	244'	80'	100'
Height Feet/stories	35'/3 stories	35'/2 over parking	30'/3	30'/3

CHURCH DEVELOPMENT REGULATIONS

	IN (Current)	Church (Proposed)
Street Setback	20'	25'
Side Setback	7'	45'
Rear Setback	20'	103'
Lot Width	75'	163'
Lot Depth	100'	244'
Height Feet/stories	35'/3 stories	35'/2 over parking

- Red box: by-right regulations that the church (or other IN uses) could develop by today
- Due to the development agreement, the church parcel will have greater setbacks

SINGLE FAMILY DEVELOPMENT REGULATION DEVIATIONS

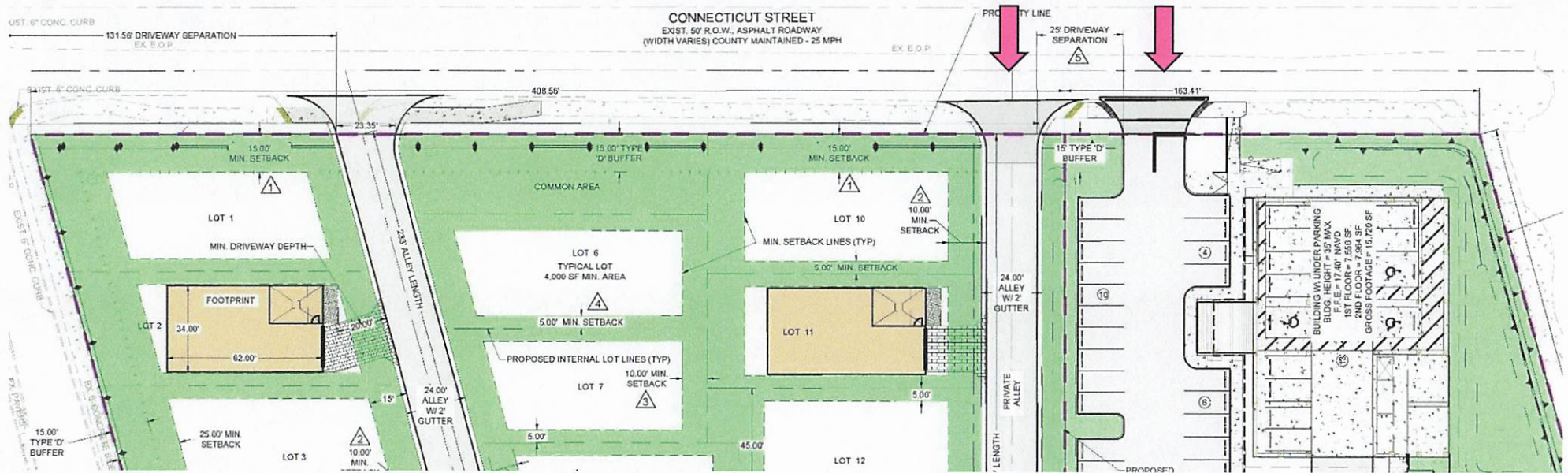


Four deviations for decreased single family setbacks:

- **Deviation 1:** Connecticut Street setback reduced by 10' (from 25' to 15')
 - ✓ Applies to side of home
 - ✓ Applies to 2 lots
- **Deviation 2:** Alley setback reduced by 15' (from 25' to 10')
 - ✓ Applies to undulations in home (bay window, etc.)
 - ✓ Garages must provide 20' driveway depth to allow vehicles to park without obstructing the alley
 - ✓ Internal to site, on privately maintained roadways
- **Deviation 3:** Rear setback reduced by 10' (from 20' to 10')
- **Deviation 4:** Side setback reduced by 1.5' (from 6.5' to 5')
 - ✓ Internal to site
 - ✓ Development Order will provide detailed grading and drainage plan

	RC (LDC)	Single Family (Proposed)
Street Setback	25'	25' Estero Parkway 15' Connecticut Street 10' Internal Alleys
Side Setback	6.5' (lots < 50' wide)	5'
Rear Setback	20'	10'
Lot Width	45'	45'
Lot Depth	80'	100'

DEVIATIONS



- Deviation 5: Reduce intersection separation from 125' to 25'
 - ✓ Applies to internal separations between church driveway and proposed alley (no adverse impact to existing access points)
 - ✓ Church access purposely placed west as much as possible to provide maximum separation to abutting single family

CONCLUSION

- The Development Agreement has been prepared in accordance with state and local requirements.
- As outlined in the staff report, request is consistent with the Comprehensive Plan through implementation of the Developer Agreement.
- Staff is Recommending Approval of the Development Agreement.

We ask for a Motion to Recommend Approval of the Proposed Development Agreement

1. **Request:**

Meeting Date: November 3, 2025

This legislative agenda item is a Second Reading Public Hearing on proposed Ordinance 25-18.

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

Why the action is necessary:

Town Council takes into consideration LPA's recommendations.

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA and TC for allowing the LPA to be the final decision-making body for Special Exceptions, which are for "like-for-like" replacements of structures or accessory structures destroyed during natural disasters in the EC zone.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

At the February 18, 2025 Town Council meeting, the Council discussed allowing the LPA to be the final decision-making body for Special Exceptions that were for "like-for-like" replacements of structures or accessory structures destroyed during natural disasters in the EC zone. Following Hurricane Ian, a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners. Many of the condominiums that have applied for Special Exceptions over the last four years were built before the Town's creation, so no previous Special Exception was issued. Many structures were built prior to the establishment of the 1978 CCCL which demarcates the EC zone. The time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town's efforts to rebuild the community. The intent of this ordinance is to reduce the approval time for previously existing structures that, when rebuilt, are unlikely to cause a nuisance. Special Exceptions for new structures in the EC zone will continue to require the oversight of Town Council.

Attachments:

1. Ord 25-18, Expedited Special Exception Ordinance

2. 25-18, Business Impact Estimate - Expedited Special Exception

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Approval

8. Recommended Approval:

Uma Sarmistha, Senior Planner
Georgina Cid, Community Development Manager
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/23/2025
Approved - 10/23/2025
Approved - 10/23/2025
Approved - 10/23/2025
Approved - 10/24/2025
Final Approval - 10/27/2025

ORDINANCE NO. 25-18

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

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

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

WHEREAS, Section 34-232 of the Town’s Land Development Code currently requires 2 public hearings for special exception applications, one before the local planning agency (“LPA”) and one before the town council; and

WHEREAS, in the recent past a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners; and

WHEREAS, the time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town’s efforts to rebuild the community; and

WHEREAS, notwithstanding the need to expedite the rebuilding of the Town, there may be situations where issues arise during the LPA meeting, which may require further evaluation by the Town Council; and

WHEREAS, a public hearing of this Ordinance was held before the LPA on the 9th day of September 2025, at which time the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and made a finding of consistency with the Fort Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 6 to 0, to recommend approval of this Ordinance amending the referenced section of the Land Development Code to the town council; and

WHEREAS, on the 6th day of October 2025, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Section 34-232 of the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 15th day of October 2025, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the 20th day of October which is no less than 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 3rd day of November 2025, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined by a vote of ___ to ___ that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the town council.

Section 2. That Section 34-232 "Required Hearings" of Division 5 "Public Hearings and Review" of Article II "Zoning Procedures" of Chapter 34 "Zoning Districts, Design Standards and Nonconformities is hereby amended as follows:

Section 34-232 – Required hearings.

(a) Amendment or adoption of land use ordinances.

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) *Owner-initiated requests.* Owner-initiated requests for rezonings, certain special exceptions and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances and special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster, which is that are unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action. ~~Other owner-initiated requests for variances require public hearings first by the local planning agency and then by the town council.~~

(c) *Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than ten abutting acres of land will require a single public hearing before the town council.

(2) Applications covering more than ten abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the town council.

The forgoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

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

ADOPTED this ____ day of _____, 2025 by the town council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

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

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

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

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

Following Hurricane Ian, a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners. Many of the condominiums that have applied for Special Exceptions over the last four years were built before the Town's creation, so no previous Special Exception was issued. Many structures were built prior to the establishment of the 1978 CCCL which demarcates the EC zone. The time and expense of requiring a second public hearing before the Town Council unless such a hearing is needed is in conflict with the Town's efforts to rebuild the community. The intent of this ordinance is to reduce the approval time for previously existing structures that, when rebuilt, are unlikely to cause a nuisance. Special Exceptions for new structures in the EC zone will continue to require the oversight of Town Council.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 25-xx. Costs may be reduced for certain applications due to the potential for reduced hearings.

Ordinance 25-2xx does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

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

This rezoning does not increase restrictions on existing businesses.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

Meeting Date: November 3, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RESCINDING AND REVOKING WITHOUT PREJUDICE VARIANCE 2023016Z21391, WHICH APPROVED TWO VARIANCES WITH CONDITIONS FROM TABLE 34-3 OF THE LAND DEVELOPMENT CODE TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE TO ALLOW FOR THE CONSTRUCTION OF AN ENCLOSED SWIMMING POOL; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Evidence has been provided that the survey used for a variance and building permit was conducted in violation of the Professional Standards of Practice and Chapters 472 and 177, Florida Statutes.

What the action accomplishes:

Revokes a variance that was granted based on incorrect documents.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Town seeks to rescind and revoke Resolution 23-190, which was approved by the Town Council on March 4, 2024. This resolution approved two variances, a side yard setback and a waterbody setback for an elevated pool at 21391 Widgeon Terrace in the Town of Fort Myers Beach. After approval of the resolution approving the variances, the property owner received a building permit for the pool at the same location although an appeal of the variance approval was filed. Since approval of the Resolution and building permit, the Town has been provided with new evidence suggesting that survey used during the two application processes was found to be conducted in violation of the Professional Standards of Practice and Chapters 472 and 177, Florida Statutes, and that the calculations therein are wholly unsubstantiated and inaccurate pursuant to the findings of the Board of Surveyors and Mappers and Surveyor's admission. More details about these findings are provided in the agenda item attachments, including a letter to the Town from Hartsell Ostery, P.A.

Recently, the Town has received an affidavit stating that the identified errors have been corrected. However, because this affidavit and the corrected was not available or provided at the time the variance was approved by the Town Council, revoking and rescinding the previously approved variance is the appropriate action. The affidavit and corrected survey was not reviewed by the Town Council and therefore cannot be evidence in support of the variances that are pending review in the circuit court. Revoking and rescinding the approved variances would not prohibit the property owner from filing a new variance request with a corrected survey for review by the Town in the regular course of Town business.

Attachments:

1. 10.16.25 Ltr to Town Counsel re FDACS Reprimand Alvarez _ LandTec Survey (2)
2. 23-190, VAR20230162 21391 Widgeon Terrace Final for signatures - signed
3. Plaisted Land Boundary Survey - Signed Affidavit

4. 1027 NS Res 25-305 Rescinding Variance for 21391 Widgeon Terrace (1)

Financial Impact:

No impact

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 10/20/2025
Approved - 10/23/2025
Approved - 10/23/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025



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October 16, 2025

TOWN OF FORT MYERS BEACH

Nancy Stuparich, Esq.

Vose Law Firm LLP
324 W. Morse Boulevard
Winter Park, Florida 32789

Via Email to: nstuparich@voselaw.com

RE: NOTICE OF FLORIDA DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES (“FDACS”), BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, FINAL ORDER DISCIPLINING AND REPRIMANDING SURVEYOR ALVAREZ / LANDTEC SURVEYING & LIEN, LLC, FOR VIOLATIONS OF STANDARDS OF PRACTICE AND CHAPTERS 472 & 177, FLORIDA STATUTES, IN CONDUCTING THE PLAISTED SURVEY FOR 21391 WIDGEON TERRACE, FORT MYERS BEACH, FLORIDA - TOWN OF FORT MYERS BEACH BUILDING PERMIT #242333 / #234477 & TOWN OF FORT MYERS BEACH RESOLUTION NO. 23-190.

I. INTRODUCTION AND PURPOSE OF NOTICE

This correspondence serves as formal notice and to inform the Town of Fort Myers Beach (“Town”) of the recent disciplinary action by the Florida Department of Agriculture and Consumer Services (“FDACS”), Board of Professional Surveyors and Mappers (“Board”), against Surveyor Alvarez / LandTec Surveying & Lien, LLC (“Surveyor”). The disciplinary findings confirm that the survey prepared for 21391 Widgeon Terrace, Fort Myers Beach, Florida, (“Plaisted Property”) which formed the basis for the Town’s issuance of both a variance and building permit, was conducted in violation of the professional Standards of Practice and Chapters 472 and 177, Florida Statutes, and the calculations therein are wholly unsubstantiated and inaccurate, pursuant to the findings of the Board and Surveyor’s admissions. These findings directly impact two pending litigation matters against the Town, and compel revocation of the approvals issued in reliance upon

the unsubstantiated and inaccurate survey, including the Variance¹ and Building Permit², pursuant to Town Code Section 6-447. – “Suspension or revocation,³ and Code Section 1-16. – “Misrepresentation of application.”⁴

II. BACKGROUND AND PENDING LITIGATION

There are two active cases against the TOWN related to the subject property:

1. *Himmelstein Associates, LLC, et. al, v. Town of Fort Myers Beach, and Todd Plaisted*, Case No. 24-CA-2551 (Circuit Court of the 20th Judicial Circuit, Lee County), an action for Petition for Writ of Certiorari filed in the 12th Judicial Circuit in and for Lee County, seeking to quash the variance granted by the Town Council permitting Mr. Todd Plaisted to construct an above-ground pool. The petition challenges the variance as inconsistent with Florida law, lacking legal hardship, and unsupported by competent substantial evidence.

[AND]

2. *Himmelstein Associates, LLC, et. al, v. Town of Fort Myers Beach*, ADMINISTRATIVE APPEAL with [SECOND RENEWED] ADMINISTRATIVE APPEAL BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace), an Administrative Appeal action challenging the Town Council’s subsequent approval of a building permit for the same pool, asserting that Mr. Plaisted relied upon an incorrect property boundary survey and included condominium common area land in calculating private lot square footage, thereby artificially reducing the impervious surface ratio below the 0.67 threshold.

As you are aware, at the March 4, 2024 Town Council Meeting on the Variance—and on numerous occasions thereafter—our client and retained experts formally objected to the accuracy of the survey based upon the faulty boundary lines and square footage calculations used as its basis.

III. NEWLY CONFIRMED EVIDENCE OF SURVEYOR MISCONDUCT

¹ Subject of the pending litigation styled, *Himmelstein Associates, LLC, et. al, v. Town of Fort Myers Beach, and Todd Plaisted*, Case No. 24-CA-2551 (Circuit Court of the 20th Judicial Circuit, Lee County).

² Subject of the pending litigation styled, *Himmelstein Associates, LLC, et. al, v. Town of Fort Myers Beach*, ADMINISTRATIVE APPEAL with [SECOND RENEWED] ADMINISTRATIVE APPEAL BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace).

³ “The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of the town.” Section 6-447, Town of Fort Myers Beach Code of Ordinances.

⁴ “The town may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation in the application or plans upon which the permit or approval was based.” Section 1-16, Town of Fort Myers Beach Code of Ordinances.

FDACS, through its Board of Professional Surveyors and Mappers, has now substantiated the well documented concerns by our clients, through a Final Order of Discipline against Surveyor Alvarez / LandTec Surveying & Lien, LLC.⁵ It cannot be overstated that the recent findings by FDACS go even further and find that the Survey itself was constitutes a violation of the professional Standards of Practice and Chapters 472 and 177, Florida Statutes, as admitted by the Surveyor. These findings must be brought to the Town's attention.

The Board's findings include, but are not limited to, the following:

- The surveyor “**did not provide documentation and did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat.**”
- The surveyor **failed to provide documentation of vertical accuracies or the origin of the Mean High Water (MHW) line** elevation of .15, as required.
- The MHW line elevation of 0.15 is inconsistently shown between the Boundary Survey and the Construction/Topographic Survey.
- The surveyor **did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey** as required by rule.
- The **West line of the Subject Lot** referenced in the survey is not a well-established monumented line, and no ties were made to Plat control points.
- The surveyor **failed to get and follow methodology as prescribed by the DEP to establish MHW line.**

See Exhibits A & B.

IV. FACTUAL BASIS FOR REVOCATION

Independent verification by our retained expert surveyor further confirms the material inaccuracy of the survey, finding that:

- The correct parcel area, based on the prior and correct 2016 boundary survey, is approximately 8,063 square feet, from top of riprap on the north to top of riprap on the south;

⁵ See attached Exhibit A, *FDACS v. Alavarez*, Case No.: 2407-20819, Agency Clerk No.: B56389 and Exhibit B, *FDACS v. LandTec Surveying & Lien, LLC*, Case No.: 2407-20818, Agency Clerk No.: B56387.

- The impervious area (driveway, house, decks, and walks, excluding roof overhang) is approximately 5,757 square feet, or 71% of the lot, in violation of Town Code Section 6-14;⁶
- The boundaries in the 2023 LandTec survey improperly extend east and west, encroaching upon limited common elements, defined in the recorded condominium documents as “all lands lying east of the platted unit line and west of the Mean High Tide Line along Estero Bay.”⁷

V. LEGAL BASIS FOR ACTION BY THE TOWN

Pursuant to the Town’s authority under its Code of Ordinances the Town may revoke, and should revoke the Building Permit pursuant to

Code Section 6-447. – “Suspension or revocation;”

The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of the town.

and Code Section 1-16. – “Misrepresentation of application.”

The town may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation in the application or plans upon which the permit or approval was based.

In conjunction with the above, additional grounds for revocation are present as the Plaisteds, and/or their agents, violated the Affidavit of Authorization required by the Town to be submitted, in which Plaisteds, and/or their agent “being first duly sworn, depose and say that we/I am/are the property owners of the property described herein and which is the subject matter of the proposed hearing; that all the answers in this application, including the disclosure of interest information, **all sketches, data, and other supplementary matter attached to and made part of this application, are honest and true to the best of our knowledge and belief. We/I understand that the information requested on this application is complete and accurate.**

VI. DEMAND AND REQUESTED ACTION

Accordingly, on behalf of our client, we formally request that the Town:

1. Immediately review the FDACS Final Order of Discipline and the findings related to the underlying survey deficiencies; and

⁶ “To minimize neighborhood flooding from normal daily rainfall, no more than 67 percent of the total lot area within a residential zoning district shall be covered with impervious surfaces.” Town of Fort Myers Beach Section 6-14.

⁷ See Exhibit C – Condominium Plat.

2. Revoke building permit no. # 242333 / #234477 issued for 21391 Widgeon Terrace, Fort Myers Beach, Florida, on the grounds of misrepresentation and reliance on invalid documentation.

VII. REQUESTED TOWN RESPONSE

Please provide written acknowledgment of receipt of this Notice. Additionally, the undersigned requests a response outlining the Town's intended course of action. Should the Town require copies of any relevant documentation, expert reports, or supporting drawings, we will provide same upon request.

Please include this letter and its corresponding attachments as part of the Record of the Administrative Appeal (*Himmelstein Associates, LLC, et. al, v. Town of Fort Myers Beach*, ADMINISTRATIVE APPEAL with [SECOND RENEWED] ADMINISTRATIVE APPEAL BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace))

Respectfully submitted by:

/s/ Shai Ozery
Shai Ozery, Esq.
Florida Bar No. 118371
Shai@HartsellOzery.com
HARTSELL OZERY, P.A.
61 NE 1st Street, Suite C,
Pompano Beach, FL 33060
Telephone: 954-778-1052
Counsel for Defendant,
Himmelstein Associates, LLC

cc: *Robert Burandt, Esq., Counsel for the Plaintiffs*

EXHIBIT A

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,**

Petitioner,

Case No.: 2407-20819

Agency Clerk No.: B56389

v.

PABLO A. ALVAREZ, PSM,

Respondent.

FINAL ORDER

THIS CAUSE came before the Florida Board of Professional Surveyors and Mappers (“Board”) pursuant to sections 120.569 and 120.57(4), Florida Statutes, at a duly noticed meeting on July 29, 2025, in Naples, Florida, for consideration of a proposed Settlement Stipulation. Pablo A. Alvarez (“Respondent”) was not present at the meeting. The Florida Department of Agriculture and Consumer Services (“Department”) was represented by Ana M. Gargollo-McDonald, Esq.

SUMMARY

1. On or about May 5, 2025, the Department issued an Administrative Complaint against Respondent in Case No. 2407-20819, attached hereto as “Exhibit A” and incorporated herein.
2. The Department and Respondent reached an agreement to resolve the instant case via a Settlement Stipulation.
3. The Settlement Stipulation was submitted in lieu of the Board moving forward with further legal proceedings in the instant case.

Upon consideration of the Administrative Complaint and the Settlement Stipulation, and

being otherwise fully advised of the premises, it is hereby **ORDERED AND ADJUDGED**:

A. The Settlement Stipulation is approved and adopted. The Settlement Stipulation is attached as "Exhibit B" and incorporated herein.

B. The Settlement Stipulation is accepted as resolution of this case.

C. The parties shall adhere to and abide by all the terms and conditions of the Settlement Stipulation.

D. Failure to comply with the terms of the Settlement Stipulation shall cause Respondent to be subject to further discipline.

E. This Final Order shall be placed in and become part of Respondent's official records and shall take effect upon being filed with the Agency Clerk of the Department of Agriculture and Consumer Services.

DONE AND ORDERED this 17th day of August, 2025.



Christopher E. Green, Executive Director
Florida Board of Professional Surveyors and Mappers
For Iarelis Hall, Chair

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and the Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Rendered this 8th day of August, 2025.



Agency Clerk

Copy sent to:

Pablo A. Alvarez
11450 SW 146th Pl.
Miami, FL 33186

Certified Receipt No. 7008 2810 0000 0384 8009

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

v.

CASE NO. 2407-20819

CASE NO. 2407-20818

PABLO A. ALVAREZ, PSM,
LANDTEC SURVEYING AND LIEN, LLC.

Respondents.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner Department of Agriculture and Consumer Services files this Administrative Complaint before the Board of Professional Surveyors and Mappers (“Board”) against Pablo A. Alvarez, PSM, (Alvarez) and Landtec Surveying and Lien, LLC, (“Landtec Surveying”) (collectively ‘Respondents’) and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of land surveying and mapping pursuant to Chapter 472, Florida Statutes.

2. At all times material to this complaint, Respondent Alvarez was a licensed professional surveyor and mapper within the state of Florida, having been issued license number LS7274. The license is currently listed as “Active.” Respondent Alvarez has no prior complaints where probable cause was found.

3. Respondent Alvarez’s address of record is 11450 SW 146th Pl., Miami, Florida 33186. Respondent Alvarez is the Surveyor of Record for Landtec Surveying as of June 13, 2022.

4. At all times material to this complaint, Respondent Landtec Surveying was issued a certificate of authorization by the Board, LB8507, which is currently listed as “Active.”

Respondent Landtec Surveying's address of record is 700 W Hillsboro Blvd., Ste 4-100, Deerfield Beach, Florida 33441. Respondent Landtec Surveying has no prior complaints where probable cause was found.

5. Pursuant to section 472.021(5), Florida Statutes, "[d]isciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered surveyor and mapper."

6. On or about July 29, 2024, the Department received a complaint from Robert Himmelstein ("Complainant") alleging that Landtec Surveying was hired to survey property located at 21391 Widgeon Ter, Fort Myers Beach, Florida. Complainant alleges that the square footage of the parcel shown on the survey is incorrect. Respondent Alvarez signed the subject survey and the revised survey.

7. On or about August 6, 2024, the complaint submitted by Complainant was determined to be legally sufficient to open an investigation.

8. On or about August 7, 2024, the Department sent a Notice of Investigation, along with a copy of the initial complaint and a Schedule "A" document request list to Respondents.

9. On or about August 29, 2024, the Department received a response package from Respondents.

10. On or about September 13, 2024, the Department submitted all documents received during the course of its investigation into this matter to Arthur A. Mastronicola, Jr., PSM LS4166 ("Consultant Mastronicola"), licensed professional surveyor and mapper, for expert review of the investigative file.

11. Consultant Mastronicola reviewed the documentation provided by the Department related to the subject survey in this matter, using the Standards of Practice (SOP) pursuant to Chapter 5J-17, Florida Administrative Code (F.A.C.) in effect on the date of the surveys.

12. On or about September 27, 2024, Consultant Mastronicola provided his Consultant Report to the Department in which he identified the following violations of the Standards of Practice, and Chapters 472 and 177, Florida Statutes:

- a. The survey was issued with no description of the benchmark used reflected on the survey. There also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.
- b. No documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the Mean High Water (MHW) line elevation of 0.15 disclosed. Graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.
- c. The MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.
- d. Respondents failed to provide notes or documentation to support horizontal accuracies and how measured distances were calculated as shown on the survey map as required.
- e. Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.
- f. Original field survey dates were July 27, 2023, and July 28, 2023. There are additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.
- g. Boundary survey references the "West line of Subject Lot" which is not a well-established monumented line.
- h. The Construction /Topographic survey references the "Centerline of 93rd Avenue," which is not a well-established monumented line or shown on the survey map.
- i. No ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position. Entire survey was based upon one (1) found lot corner and no other control.

- j. Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.
- k. Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived. Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.
- l. The 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.
- m. Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection (“DEP”) supplementary regulations in performing and issuing a survey showing location of MHW line.
- n. Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

COUNT I

- 13. Petitioner incorporates and restates allegations in paragraphs 1 through 12.
- 14. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.
- 15. Rule 5J-17.051(2)(a), Florida Administrative Code (“F.A.C.”), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.
- 16. The survey was issued with no description of the benchmark used reflected on the survey. There also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.
- 17. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule

5J-17.051(2)(a), F.A.C., when Respondents issued a survey with no description of the benchmark used reflected on the survey; and there also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.

COUNT II

18. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

19. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

20. Rule 5J-17.051(2)(a), Florida Administrative Code (“F.A.C.”), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.

21. No documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the Mean High Water (MHW) line elevation of 0.15 disclosed. Graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.

22. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(a), F.A.C., because no documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the MHW elevation of 0.15 disclosed; and graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.

COUNT III

23. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

24. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor

and mapper to discipline for violating a rule of the Board or Department.

25. Rule 5J-17.051(2)(a), Florida Administrative Code (“F.A.C.”), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.

26. The MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.

27. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(a), F.A.C., because the MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.

COUNT IV

28. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

29. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

30. Rule 5J-17.051(2)(b), F.A.C., provides:

All surveying and mapping products expressing or displaying mapped features shall state the datum and a detailed description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the horizontal accuracy and the methodology used to determine accuracy. Mapped features may be obtained on an assumed datum provided the numerical basis of the datum is obviously different than a publicly published datum.

31. Respondents failed to provide notes or documentation to support horizontal accuracies and how measured distances were calculated as shown on the survey map as required.

32. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(b), F.A.C., because Respondents failed to provide notes or documentation to support

horizontal accuracies and how measured distances were calculated as shown on the survey map as required.

COUNT V

33. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

34. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

35. Rule 5J-17.051(2)(d), F.A.C., provides: [m]easurement and computation records shall be dated as of the date of acquisition and must contain sufficient data to substantiate the surveying and mapping products.

36. Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.

37. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(d), F.A.C., because Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.

COUNT VI

38. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

39. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

40. Rule 5J-17.051(3)(d), F.A.C., provides: “[a]ll survey maps must reflect a survey date, which is the last date of data acquisition. When the graphics of a map are revised, but the survey date stays the same, the map must list dates for all revisions.”

41. Original field survey dates were July 27, 2023, and July 28, 2023. There are

additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.

42. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(d), F.A.C., because there are additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.

COUNT VII

43. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

44. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

45. Rule 5J-17.051(3)(g), F.A.C., provides:

A reference to all bearings shown on a survey map or report must be clearly stated, i.e., whether to “True North”; “Grid North as established by the NOS”; “Assumed North based on a bearing for a well defined line, such as the center line of a road or right of way, etc.”; “a Deed Call for a particular line”; or “the bearing of a particular line shown upon a plat.” References to Magnetic North should be avoided except in the cases where a comparison is necessitated by a Deed Call. In all cases, the bearings used shall be referenced to some well-established and monumented line.

46. Boundary survey references the “West line of Subject Lot” which is not a well-established monumented line.

47. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(g), F.A.C., because the boundary survey references the “West line of Subject Lot” which is not a well-established monumented line.

COUNT VIII

48. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

49. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor

and mapper to discipline for violating a rule of the Board or Department.

50. Rule 5J-17.051(3)(g), F.A.C., provides:

A reference to all bearings shown on a survey map or report must be clearly stated, i.e., whether to “True North”; “Grid North as established by the NOS”; “Assumed North based on a bearing for a well defined line, such as the center line of a road or right of way, etc.”; “a Deed Call for a particular line”; or “the bearing of a particular line shown upon a plat.” References to Magnetic North should be avoided except in the cases where a comparison is necessitated by a Deed Call. In all cases, the bearings used shall be referenced to some well-established and monumented line.

51. The Construction /Topographic survey references the “Centerline of 93rd Avenue,” which is not a well-established monumented line or shown on the survey map.

52. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(g), F.A.C., because the Construction /Topographic survey references the “Centerline of 93rd Avenue,” which is not a well-established monumented line or shown on the survey map.

COUNT IX

53. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

54. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

55. Rule 5J-17.052(1)(a)1., F.A.C., provides: “[e]very parcel of land whose boundaries are surveyed shall be made to conform with the record boundaries of such land, taking into account relevant requirements of law concerning whether the survey is original or a resurvey.”

56. No ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position. Entire survey was based upon one (1) found lot corner and no other control.

57. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(a)1., F.A.C., because no ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position; and entire survey was based upon one (1) found lot corner and no other control.

COUNT X

58. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

59. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

60. Rule 5J-17.052(1)(a)2.a., F.A.C., provides: prior to making the survey, the licensee shall perform research of records with sufficient scope and depth to identify with reasonable certainty the location of the record boundaries.

61. Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.

62. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(a)2.a., F.A.C., because Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.

COUNT XI

63. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

64. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

65. Rule 5J-17.052(1)(i), F.A.C., provides:

Surveys of parcels with water boundaries shall describe the feature located including, top of bank, edge of water, mean high water line, ordinary high water line and the method used to locate the water boundary. Water boundaries may be located in their approximate position as long as this is adequately depicted and explained with notes on the face of the plat or map.

66. Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived. Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.

67. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(i), F.A.C, because Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived; Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.

COUNT XII

68. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

69. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

70. Rule 5J-17.052(4)(b), F.A.C., provides: “[e]asements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map.”

71. Although the 15’ Roadway and Utility Easement is shown on the survey, because the west boundary is in an incorrect position, the easement is also shown in an incorrect position.

72. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(4)(b), F.A.C, because the west boundary is in an incorrect position, the 15’ Roadway and Utility Easement shown on the survey is also in an incorrect position.

COUNT XIII

73. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

74. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

75. Rule 5J-17.052(5)(a), F.A.C., provides: “[l]ocation of fixed improvements pertinent to the survey shall be graphically shown upon the map and their positions shall be dimensioned in reference to the boundaries, either directly or by offset lines.”

76. The 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.

77. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(5)(a), F.A.C, because the 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.

COUNT XIV

78. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

79. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for failing to perform any statutory or legal obligation placed upon a licensed surveyor and mapper.

80. Section 177.35, Florida Statutes, provides:

The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line, whether by federal, state, or local agencies or private parties, shall be made in accordance with the standards and procedures set forth in ss. 177.37-177.39 and in accordance with supplementary regulations promulgated by the department¹.

81. Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection (DEP) supplementary regulations in performing and issuing a survey showing location of MHW line.

82. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating section 177.35, Florida Statutes, because Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection (DEP) supplementary regulations in performing and issuing a survey showing location of MHW line.

COUNT XV

83. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

84. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for failing to perform any statutory or legal obligation placed upon a licensed surveyor and mapper.

85. Section 177.39, Florida Statutes, provides:

¹ Department” means the Department of Environmental Protection. § 177.27(7), Fla. Stat.

Determination of mean high-water line or mean low-water line.—The location of the mean high-water line or the mean low-water line shall be determined by methods which are approved by the department for the area concerned. Geodetic bench marks shall not be used unless approved by the department.

86. Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

87. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating section 177.39, Florida Statutes, because Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

WHEREFORE, Petitioner respectfully requests an order from the Board imposing one or more of the following penalties: imposition of an administrative fine not to exceed **Five Hundred Dollars and Zero Cents (\$500.00)** per count, placement on probation, survey review, assessment of costs associated with the investigation and prosecution, imposition of any or all penalties delineated within Section 472.0351(2), Florida Statutes, and/or any other relief that the Board or the Department is authorized to impose pursuant to Chapter 472, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 5th day of May, 2025.

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**



Ana M. Gargollo-McDonald

Senior Attorney

Florida Bar No.: 85907

Office of General Counsel

407 S. Calhoun St., Ste. 520

Tallahassee, FL 32399-0800

Tel: (850) 245-1000

Facsimile: (850) 245-1001

Email: ana.gargollo-mcdonald@fdacs.gov

PCP Date: April 30, 2025

PCP Members: Chris McLaughlin (Chair)
Keith Fountain
Danny Williams

Certified U.S. Mail, Return Receipt # 7019 0160 0000 0402 5281

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with sections 20.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within twenty-one (21) days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged in the Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to section 472.0351(4)(a), Florida Statutes, the Board may assess costs and attorney's fees related to the investigation and prosecution of the case against the Respondent in addition to any other discipline imposed.

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

v.

CASE NO. 2407-20819
CASE NO. 2407-20818

PABLO A. ALVAREZ, PSM,
LANDTEC SURVEYING AND LIEN, LLC.

Respondent.

SETTLEMENT STIPULATION

Petitioner, the Department of Agriculture and Consumer Services ("Department"), and Respondent, Pablo A. Alvarez, PSM, P.S.M., pursuant to Section 120.57(4), Florida Statutes, stipulate and agree to the following Settlement Stipulation and entry of a Final Order of the Board of Professional Surveyors and Mappers ("Board"), incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. Petitioner is the state agency charged with regulating licensed professional surveyors and mappers in the state of Florida pursuant to Chapter 472, Florida Statutes.
2. For all times pertinent hereto, Respondent was a licensed professional surveyor and mapper in the state of Florida having been issued license number LS7274. Respondent's address of record is 11450 SW 146th Pl., Miami, Florida 33186.
3. On or about May 5, 2025, in Department Case No. 2407-20819, Petitioner issued an Administrative Complaint against Respondent alleging that Respondent violated Chapter 472,

Florida Statutes, and/or other applicable statutes, and/or the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto.

4. For the purposes of these proceedings, Respondent admits the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

5. Respondent admits that, as a licensed professional surveyor and mapper, he is subject to the provisions of Chapter 472, Florida Statutes, and the jurisdiction of the Department and the Board.

6. Respondent admits the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 472, Florida Statutes.

7. Respondent agrees that this Settlement Stipulation is a fair, appropriate, and acceptable disposition of this case.

8. Respondent agrees the Board's acceptance of this Settlement Stipulation constitutes disciplinary action within the meaning of Sections 472.033 and 472.0351, Florida Statutes.

STIPULATED DISPOSITION

9. **REPRIMAND:** The Board shall issue a Reprimand against Respondent's license.

10. **FINE:** The Board shall impose an administrative fine of Three Thousand Dollars and Zero Cents (\$3,000.00) against Respondent's license which Respondent shall pay to Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, **within ninety (90) days of the entry of the Final Order** accepting this Settlement Stipulation. **All fines shall be paid by cashier's check or money order.** Respondent's failure to pay the fine by the

time due shall result in the immediate suspension of Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

11. **COSTS:** Pursuant to Rule 5J-17.06, Florida Administrative Code, Respondent agrees to pay the Department for the Department's costs incurred in the investigation and prosecution of this case. Respondent agrees that the amount of the Department costs to be paid in this case is **One Thousand One Hundred and Forty-Seven Dollars and Ninety-One Cents (\$1,147.91)**. Respondent shall pay such administrative costs to: Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, **within ninety (90) days of the entry of the Final Order** accepting this Settlement Stipulation. **All costs shall be paid by cashier's check or money order.** Respondent's failure to pay the costs by the time due shall result in the immediate suspension of Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

12. **PROBATION:** Probation shall take effect **immediately** upon the date the Board's Final Order is rendered in this matter. If Respondent fails to comply with any terms of probation, the matter shall be referred to the Department for further prosecution and additional discipline, including additional fines and costs, and/or other appropriate discipline. Terms of probation shall be as follows:

a. All documents required to be submitted by Respondent under this paragraph 12 shall be filed with the Executive Director of the Board of Professional Surveyors and Mappers, 2005 Apalachee Parkway, Tallahassee, Florida 32399-2900 ("Board Office").

b. Respondent may commence and complete performance of these terms of probation no earlier than ninety (90) days from the date on which the Board approved this Settlement Stipulation, which is listed below.

c. Continuing Education: Respondent shall complete twelve (12) credit hours of Board approved continuing education courses, six (6) of which shall be in **Standards of Practice (SOP)**, **within sixty (60) days from the date the Board's Final Order** is rendered in this matter. If extenuating circumstances prevent Respondent from completing in the timeframe, Respondent shall notify the Board office within 30 days of the completion deadline, and an extension may be granted accordingly. Respondent shall submit proof of completion of the above-mentioned course to the Board Office within the allotted time frame. Continuing education courses completed as part of this probation shall not be counted toward the continuing education requirement for renewal of the Respondent's license under Chapter 472, Florida Statutes.

d. Survey Review: Respondent shall provide the Board with a list of all signed and sealed surveys, which shall contain a minimum of three (3) surveys which were performed by Respondent within ninety (90) days of the date of the completion of the aforementioned CE credits.

- i. The survey list submitted by the probationer shall contain each survey's project name and/or number, the client's name (if available), the date of the survey and the type of survey performed.
- ii. The Board's Probation Chair will randomly select three (3) of Respondent's signed and sealed surveys for review from the survey list submitted by Respondent.

- iii. Within five (5) calendar days of being notified by the Board of the surveys which were selected for review and the attendant costs of such review, Respondent shall have post-marked and submitted to the Board Office signed and sealed surveys for the surveyed properties selected for review, along with copies of the relevant field notes, the relevant full size record plats, all measurement and computational records, and all other documents necessary for a full and complete review of the surveys, in accordance with Florida Administrative Code Rules 5J-17.016, 5J-17.083, and 5J-17.085. Along with the surveys submitted to the Board Office, Respondent shall also remit to the Department the amount of the quoted cost of review, payable by cashier's check or money order to: Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers.
- iv. The Board Office shall submit the surveys supplied by Respondent, along with supporting documentations and records, to the expert consultant selected by the Board to conduct a review. The expert consultant shall provide an evaluation report of his review to the Board's Probation Review Committee along with a copy to the Respondent.
- v. Respondent must attend the Probation Committee meeting at which the surveys and the evaluation report prepared by the expert consultant surveys are to be discussed. At this meeting, the Probation Committee shall determine whether Respondent's reviewed surveys meet or exceed the standards of practice.

vi. If Respondent's surveys fail to meet or exceed the standards of practice, Respondent shall be granted another opportunity to pass survey review and shall repeat the steps outlined above. If Respondent fails to pass survey review a second time, he shall be referred to the Department for non-compliance with a final order of the Board and be subject to further disciplinary action.

e. Failure to comply with any of the terms of probation outlined herein shall constitute a violation of section 472.0351(1)(h), F.S., and shall result in the immediate suspension of Respondent's license. The matter shall be referred to the Department for further prosecution and additional discipline, including fines, costs, and/or other appropriate discipline.

STANDARD PROVISIONS

13. From the date of entering this Settlement Stipulation, Respondent shall not violate Chapter 472, Florida Statutes, or the administrative rules promulgated pursuant thereto.

14. Respondent understands a violation of any term of this Settlement Stipulation shall constitute a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapter 472, Florida Statutes.

15. It is expressly understood that this Settlement Stipulation is subject to the approval of the Board and the Department and has no force and effect until the Board enters a Final Order incorporating the terms of this agreement.

16. Respondent executes this Settlement Stipulation to avoid further administrative action in this instant case and to avoid incurring expenses associated with further litigation with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of

the Settlement stipulation. If this Settlement Stipulation is not approved by the Board, then neither party may use this Settlement Stipulation against the other and this Settlement Stipulation shall be deemed null and void. Furthermore, should this Settlement Stipulation not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement Stipulation and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

17. Respondent understands that this Settlement Stipulation, and the subsequent Final Order incorporating the same, will not in any way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint (Attached as Exhibit A).

18. Upon the Board's adoption of this Settlement Stipulation, Respondent waives all further procedural steps, and waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Stipulation and the Final Order of the Board incorporating the terms of the Settlement Stipulation.

19. Respondent waives the right to seek any attorney's fees or costs from the Board or Department in connection with this disciplinary proceeding or any appeal thereafter.

20. Respondent enters into this Settlement Stipulation freely and voluntarily. Respondent acknowledges that no promises were made to the Respondent regarding the disposition of this case or any other case that may be pending now or in the future before this Board, except the terms of this Settlement Stipulation.

21. Respondent understands the Final Order entered in this case may be used in future cases to seek enhanced penalties if Respondent commits a violation after the filing date of this

Settlement Stipulation and Final Order.

22. If Respondent holds any other professional or occupational license, Respondent understands and acknowledges that this Settlement Stipulation and Final Order may be used as grounds for discipline against any other license held by the Respondent.

23. Venue for any action arising out of this Settlement Stipulation and Final Order shall be in Leon County, Florida.

24. This Settlement Stipulation constitutes the entire agreement between the Department and Respondent, including anyone acting for, associated with, or employed by either party, concerning only those matters specified above and supersedes any prior discussions, agreements, or understandings. No modification or waiver of any provision is valid unless the parties complete and properly executed a written amendment to the Settlement Stipulation.

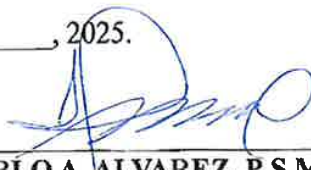
25. This Settlement Stipulation is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against any party.

26. To the extent any portion of this Settlement Stipulation is prohibited by law for any reason, such prohibition shall not affect any other provision of this Settlement Stipulation.

WHEREFORE, the parties hereto request the Board of Professional Surveyors and Mappers to enter a Final Order accepting and implementing the terms contained herein.

[SIGNATURE PAGE TO FOLLOW]

SIGNED this 22TH day of MAY, 2025.


PABLO A. ALVAREZ, P.S.M.
LS7274

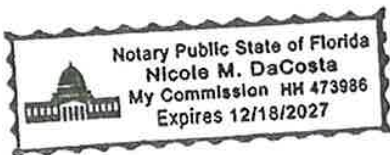
STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME personally appeared X, whose identity is
known to me or who produced _____ (type of identification) and
who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 22 day of may, 2025.


NOTARY PUBLIC

My Commission Expires: 12/18/2027



APPROVED this 31st day of July, 2025.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES



Ana M. Gargollo-McDonald

Senior Attorney

Florida Bar No.: 85907

Office of General Counsel

407 S. Calhoun St., Ste. 520

Tallahassee, FL 32399-0800

Tel: (850) 245-1000

Fax: (850) 245-1001

Email: ana.gargollo-mcdonald@fdacs.gov

EXHIBIT B

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,**

Petitioner,

Case No.: 2407-20818

Agency Clerk No.: B56387

v.

LANDTEC SURVEYING AND LIEN, LLC,

Respondent.

FINAL ORDER

THIS CAUSE came before the Florida Board of Professional Surveyors and Mappers (“Board”) pursuant to sections 120.569 and 120.57(4), Florida Statutes, at a duly noticed meeting on July 29, 2025, in Naples, Florida, for consideration of a proposed Settlement Stipulation. Landtec Surveying and Lien, LLC (“Respondent”) was not represented at the meeting. The Florida Department of Agriculture and Consumer Services (“Department”) was represented by Ana M. Gargollo-McDonald, Esq.

SUMMARY

1. On or about May 5, 2025, the Department issued an Administrative Complaint against Respondent in Case No. 2407-20818, attached hereto as “Exhibit A” and incorporated herein.
2. The Department and Respondent reached an agreement to resolve the instant case via a Settlement Stipulation.
3. The Settlement Stipulation was submitted in lieu of the Board moving forward with further legal proceedings in the instant case.

Upon consideration of the Administrative Complaint and the Settlement Stipulation, and being otherwise fully advised of the premises, it is hereby **ORDERED AND ADJUDGED**:

A. The Settlement Stipulation is approved and adopted. The Settlement Stipulation is attached as "Exhibit B" and incorporated herein.

B. The Settlement Stipulation is accepted as resolution of this case.

C. The parties shall adhere to and abide by all the terms and conditions of the Settlement Stipulation.

D. Failure to comply with the terms of the Settlement Stipulation shall cause Respondent to be subject to further discipline.

E. This Final Order shall be placed in and become part of Respondent's official records and shall take effect upon being filed with the Agency Clerk of the Department of Agriculture and Consumer Services.

DONE AND ORDERED this 7th day of August, 2025.


Christopher E. Green, Executive Director
Florida Board of Professional Surveyors and Mappers
For Iarelis Hall, Chair

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and the Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Rendered this 8th day of August, 2025.



Agency Clerk

Copy sent to:

Landtec Surveying and Lien, LLC
700 W Hillsboro Blvd.
Ste 2-102
Deerfield Beach, FL 33441

Certified Receipt No. 7008 2810 0000 0384 7996

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

v.

CASE NO. 2407-20818
CASE NO. 2407-20819

LANDTEC SURVEYING AND LIEN, LLC.,
PABLO A. ALVAREZ, PSM,

Respondents.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner Department of Agriculture and Consumer Services files this Administrative Complaint before the Board of Professional Surveyors and Mappers (“Board”) against Pablo A. Alvarez, PSM, (Alvarez) and Landtec Surveying and Lien, LLC, (“Landtec Surveying”) (collectively ‘Respondents’) and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of land surveying and mapping pursuant to Chapter 472, Florida Statutes.
2. At all times material to this complaint, Respondent Alvarez was a licensed professional surveyor and mapper within the state of Florida, having been issued license number LS7274. The license is currently listed as “Active.” Respondent Alvarez has no prior complaints where probable cause was found.
3. Respondent Alvarez’s address of record is 11450 SW 146th Pl., Miami, Florida 33186. Respondent Alvarez is the Surveyor of Record for Landtec Surveying as of June 13, 2022.
4. At all times material to this complaint, Respondent Landtec Surveying was issued a certificate of authorization by the Board, LB8507, which is currently listed as “Active.”

Respondent Landtec Surveying's address of record is 700 W Hillsboro Blvd., Ste 2-102, Deerfield Beach, Florida 33441. Respondent Landtec Surveying has no prior complaints where probable cause was found.

5. Pursuant to section 472.021(5), Florida Statutes, "[d]isciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered surveyor and mapper."

6. On or about July 29, 2024, the Department received a complaint from Robert Himmelstein ("Complainant") alleging that Landtec Surveying was hired to survey property located at 21391 Widgeon Ter, Fort Myers Beach, Florida. Complainant alleges that the square footage of the parcel shown on the survey is incorrect. Respondent Alvarez signed the subject survey and the revised survey.

7. On or about August 6, 2024, the complaint submitted by Complainant was determined to be legally sufficient to open an investigation.

8. On or about August 7, 2024, the Department sent a Notice of Investigation, along with a copy of the initial complaint and a Schedule "A" document request list to Respondents.

9. On or about August 29, 2024, the Department received a response package from Respondents.

10. On or about September 13, 2024, the Department submitted all documents received during the course of its investigation into this matter to Arthur A. Mastronicola, Jr., PSM LS4166 ("Consultant Mastronicola"), licensed professional surveyor and mapper, for expert review of the investigative file.

11. Consultant Mastronicola reviewed the documentation provided by the Department related to the subject survey in this matter, using the Standards of Practice (SOP) pursuant to Chapter 5J-17, Florida Administrative Code (F.A.C.) in effect on the date of the surveys.

12. On or about September 27, 2024, Consultant Mastronicola provided his Consultant Report to the Department in which he identified the following violations of the Standards of Practice, and Chapters 472 and 177, Florida Statutes:

- a. The survey was issued with no description of the benchmark used reflected on the survey. There also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.
- b. No documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the Mean High Water (MHW) line elevation of 0.15 disclosed. Graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.
- c. The MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.
- d. Respondents failed to provide notes or documentation to support horizontal accuracies and how measured distances were calculated as shown on the survey map as required.
- e. Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.
- f. Original field survey dates were July 27, 2023, and July 28, 2023. There are additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.
- g. Boundary survey references the "West line of Subject Lot" which is not a well-established monumented line.
- h. The Construction /Topographic survey references the "Centerline of 93rd Avenue," which is not a well-established monumented line or shown on the survey map.
- i. No ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position. Entire survey was based upon one (1) found lot corner and no other control.

- j. Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.
- k. Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived. Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.
- l. The 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.
- m. Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection ("DEP") supplementary regulations in performing and issuing a survey showing location of MHW line.
- n. Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

COUNT I

- 13. Petitioner incorporates and restates allegations in paragraphs 1 through 12.
- 14. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.
- 15. Rule 5J-17.051(2)(a), Florida Administrative Code ("F.A.C."), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.
- 16. The survey was issued with no description of the benchmark used reflected on the survey. There also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.
- 17. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule

5J-17.051(2)(a), F.A.C., when Respondents issued a survey with no description of the benchmark used reflected on the survey, and there also appears a 0.26 foot adjustment between the GPS readings and known elevation bench mark that have not been discussed.

COUNT II

18. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

19. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

20. Rule 5J-17.051(2)(a), Florida Administrative Code ("F.A.C."), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.

21. No documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the Mean High Water (MHW) line elevation of 0.15 disclosed. Graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.

22. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(a), F.A.C., because no documentation of the vertical accuracies was provided as required, nor was the documentation of the origin of the MHW elevation of 0.15 disclosed; and graphical interpretation was shown for 5 points along the eastern boundary, but none along the western boundary.

COUNT III

23. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

24. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor

and mapper to discipline for violating a rule of the Board or Department.

25. Rule 5J-17.051(2)(a), Florida Administrative Code ("F.A.C."), provides:

All surveying and mapping products with elevation data shall state the datum and a description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the vertical accuracy and the methodology used to determine accuracy. Elevation data may be obtained on an assumed datum provided the base elevation of the assumed datum is obviously different than a publicly published datum and clearly noted.

26. The MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.

27. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(a), F.A.C., because the MHW line elevation of 0.15 appears to be shown at a different location on the Boundary survey than that of the Construction/Topographic survey.

COUNT IV

28. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

29. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

30. Rule 5J-17.051(2)(b), F.A.C., provides:

All surveying and mapping products expressing or displaying mapped features shall state the datum and a detailed description of the control upon which the surveying and mapping products are based. The data shall be supported with documentation describing the horizontal accuracy and the methodology used to determine accuracy. Mapped features may be obtained on an assumed datum provided the numerical basis of the datum is obviously different than a publicly published datum.

31. Respondents failed to provide notes or documentation to support horizontal accuracies and how measured distances were calculated as shown on the survey map as required.

32. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(b), F.A.C., because Respondents failed to provide notes or documentation to support

horizontal accuracies and how measured distances were calculated as shown on the survey map as required.

COUNT V

33. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

34. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

35. Rule 5J-17.051(2)(d), F.A.C., provides: [m]easurement and computation records shall be dated as of the date of acquisition and must contain sufficient data to substantiate the surveying and mapping products.

36. Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.

37. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(2)(d), F.A.C., because Respondents did not provide a GPS coordinate data file, calculations files, or field boundary measurement notes for substantiating the data of survey as required by the rule.

COUNT VI

38. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

39. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

40. Rule 5J-17.051(3)(d), F.A.C., provides: “[a]ll survey maps must reflect a survey date, which is the last date of data acquisition. When the graphics of a map are revised, but the survey date stays the same, the map must list dates for all revisions.”

41. Original field survey dates were July 27, 2023, and July 28, 2023. There are

additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.

42. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(d), F.A.C., because there are additional field survey notes dated August 15, 2023 that appear to have been incorporated into the issued survey, but not noted as the last date of field survey.

COUNT VII

43. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

44. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

45. Rule 5J-17.051(3)(g), F.A.C., provides:

A reference to all bearings shown on a survey map or report must be clearly stated, i.e., whether to “True North”; “Grid North as established by the NOS”; “Assumed North based on a bearing for a well defined line, such as the center line of a road or right of way, etc.”; “a Deed Call for a particular line”; or “the bearing of a particular line shown upon a plat.” References to Magnetic North should be avoided except in the cases where a comparison is necessitated by a Deed Call. In all cases, the bearings used shall be referenced to some well-established and monumented line.

46. Boundary survey references the “West line of Subject Lot” which is not a well-established monumented line.

47. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(g), F.A.C., because the boundary survey references the “West line of Subject Lot” which is not a well-established monumented line.

COUNT VIII

48. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

49. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor

and mapper to discipline for violating a rule of the Board or Department.

50. Rule 5J-17.051(3)(g), F.A.C., provides:

A reference to all bearings shown on a survey map or report must be clearly stated, i.e., whether to “True North”; “Grid North as established by the NOS”; “Assumed North based on a bearing for a well defined line, such as the center line of a road or right of way, etc.”; “a Deed Call for a particular line”; or “the bearing of a particular line shown upon a plat.” References to Magnetic North should be avoided except in the cases where a comparison is necessitated by a Deed Call. In all cases, the bearings used shall be referenced to some well-established and monumented line.

51. The Construction /Topographic survey references the “Centerline of 93rd Avenue,” which is not a well-established monumented line or shown on the survey map.

52. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.051(3)(g), F.A.C., because the Construction /Topographic survey references the “Centerline of 93rd Avenue,” which is not a well-established monumented line or shown on the survey map.

COUNT IX

53. Petitioner incorporates and restates allegations in allegations in paragraphs 1 through 12.

54. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

55. Rule 5J-17.052(1)(a)1., F.A.C., provides: “[e]very parcel of land whose boundaries are surveyed shall be made to conform with the record boundaries of such land, taking into account relevant requirements of law concerning whether the survey is original or a resurvey.”

56. No ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position. Entire survey was based upon one (1) found lot corner and no other control.

57. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(a)1., F.A.C., because no ties were made to Plat control points with the only field measured distance being to another lot corner with the assumption it was correct, and showing the recovered southeast corner of the Unit M-1 tract being out of position; and entire survey was based upon one (1) found lot corner and no other control.

COUNT X

58. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

59. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

60. Rule 5J-17.052(1)(a)2.a., F.A.C., provides: prior to making the survey, the licensee shall perform research of records with sufficient scope and depth to identify with reasonable certainty the location of the record boundaries.

61. Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.

62. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(a)2.a., F.A.C., because Respondents did not perform sufficient research to make a reasonable decision as to the boundary location to establish the west and east boundary lines and MHW lines as shown on the record Condo Plat, but are not mathematically defined which was the entire request for the original survey to be accomplished.

COUNT XI

63. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

64. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

65. Rule 5J-17.052(1)(i), F.A.C., provides:

Surveys of parcels with water boundaries shall describe the feature located including, top of bank, edge of water, mean high water line, ordinary high water line and the method used to locate the water boundary. Water boundaries may be located in their approximate position as long as this is adequately depicted and explained with notes on the face of the plat or map.

66. Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived. Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.

67. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(1)(i), F.A.C, because Respondents did not provide documentation as to how the information about the elevation 0.15 line for MHW was derived; Respondents did not perform sufficient research to establish the west and east boundary lines and the MHW lines as shown on the record Condo Plat, as they were not mathematically defined; and details regarding the locations and areas of specific interest are not clearly communicated on the survey.

COUNT XII

68. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

69. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

70. Rule 5J-17.052(4)(b), F.A.C., provides: “[e]asements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map.”

71. Although the 15’ Roadway and Utility Easement is shown on the survey, because the west boundary is in an incorrect position, the easement is also shown in an incorrect position.

72. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(4)(b), F.A.C, because the west boundary is in an incorrect position, the 15’ Roadway and Utility Easement shown on the survey is also in an incorrect position.

COUNT XIII

73. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

74. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

75. Rule 5J-17.052(5)(a), F.A.C., provides: “[l]ocation of fixed improvements pertinent to the survey shall be graphically shown upon the map and their positions shall be dimensioned in reference to the boundaries, either directly or by offset lines.”

76. The 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.

77. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating Rule 5J-17.052(5)(a), F.A.C, because the 133.6 foot long dock is not tied where it crosses the boundary, and there are no dimensions on the dock itself other than a perpendicular length out from a calculation closure line.

COUNT XIV

78. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

79. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for failing to perform any statutory or legal obligation placed upon a licensed surveyor and mapper.

80. Section 177.35, Florida Statutes, provides:

The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line, whether by federal, state, or local agencies or private parties, shall be made in accordance with the standards and procedures set forth in ss. 177.37-177.39 and in accordance with supplementary regulations promulgated by the department¹.

81. Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection (DEP) supplementary regulations in performing and issuing a survey showing location of MHW line.

82. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating section 177.35, Florida Statutes, because Respondents failed to follow guidelines of Chapter 177 and the Florida Department of Environmental Protection (DEP) supplementary regulations in performing and issuing a survey showing location of MHW line.

COUNT XV

83. Petitioner incorporates and restates allegations in paragraphs 1 through 12.

84. Section 472.0351(1)(h), Florida Statutes, subjects a licensed professional surveyor and mapper to discipline for failing to perform any statutory or legal obligation placed upon a licensed surveyor and mapper.

85. Section 177.39, Florida Statutes, provides:

¹ Department” means the Department of Environmental Protection. § 177.27(7), Fla. Stat.

Determination of mean high-water line or mean low-water line.—The location of the mean high-water line or the mean low-water line shall be determined by methods which are approved by the department for the area concerned. Geodetic bench marks shall not be used unless approved by the department.

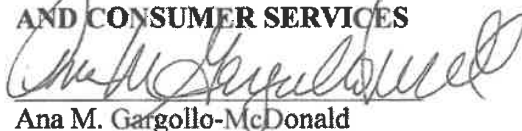
86. Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

87. Respondents violated Section 472.0351(1)(h), Florida Statutes, by violating section 177.39, Florida Statutes, because Respondents failed to get and follow methodology as prescribed by the DEP to establish MHW Line.

WHEREFORE, Petitioner respectfully requests an order from the Board imposing one or more of the following penalties: imposition of an administrative fine not to exceed **Five Hundred Dollars and Zero Cents (\$500.00)** per count, assessment of costs associated with the investigation and prosecution, imposition of any or all penalties delineated within Section 472.0351(2), Florida Statutes, and/or any other relief that the Board or the Department is authorized to impose pursuant to Chapter 472, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 5th day of May, 2025.

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**



Ana M. Gargollo-McDonald
Senior Attorney
Florida Bar No.: 85907
Office of General Counsel
407 S. Calhoun St., Ste. 520
Tallahassee, FL 32399-0800
Tel: (850) 245-1000
Facsimile: (850) 245-1001
Email: ana.gargollo-mcdonald@fdacs.gov

PCP Date: April 30, 2025

PCP Members: Chris McLaughlin (Chair)
Keith Fountain
Danny Williams

Certified U.S. Mail, Return Receipt # 7019 0160 0000 0402 5298

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with sections 20.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within twenty-one (21) days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged in the Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to section 472.0351(4)(a), Florida Statutes, the Board may assess costs and attorney's fees related to the investigation and prosecution of the case against the Respondent in addition to any other discipline imposed.

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

v.

CASE NO. 2407-20818

CASE NO. 2407-20819

**LANDTEC SURVEYING AND LIEN, LLC.,
PABLO A. ALVAREZ, PSM,**

Respondents.

_____ /

SETTLEMENT STIPULATION

Petitioner, the Department of Agriculture and Consumer Services ("Department"), and Respondent, Landtec Surveying and Lien, LLC, pursuant to Section 120.57(4), Florida Statutes, and Section 472.021, Florida Statutes, stipulate and agree to the following Settlement Stipulation and entry of a Final Order of the Board of Professional Surveyors and Mappers ("Board"), incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. Petitioner is the state agency charged with regulating licensed professional surveyors and mappers in the state of Florida pursuant to Chapter 472, Florida Statutes.

1. For all times pertinent hereto, Respondent was issued a certificate of authorization by the board, LB8507. Respondent's address of record is 700 W Hillsboro Blvd., Ste 2-102, Deerfield Beach, Florida 33441.

2. On or about May 5, 2025, in Department Case No. 2407-20818, Petitioner issued an Administrative Complaint against Respondent alleging that Respondent violated Chapter 472,

Florida Statutes, and/or other applicable statutes, and/or the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto.

3. For the purposes of these proceedings, Respondent admits the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

4. Respondent admits that it is subject to the provisions of Chapter 472, Florida Statutes, and the jurisdiction of the Department and the Board.

5. Respondent admits the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 472, Florida Statutes.

6. Respondent agrees that this Settlement Stipulation is a fair, appropriate and acceptable disposition of this case.

7. Respondent agrees the Board's acceptance of this Settlement Stipulation constitutes disciplinary action within the meaning of Sections 472.033 and 472.0351, Florida Statutes.

STIPULATED DISPOSITION

8. **REPRIMAND:** The Board shall issue a Reprimand against Respondent's license.

9. **FINE:** The Board shall impose an administrative fine of **Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00)** against Respondent's license which Respondent shall pay to Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, **within ninety (90) days of the entry of the Final Order** accepting this Settlement Stipulation. **All fines shall be paid by cashier's check or money order.** Respondent's failure to pay the fine by the time due shall result in the immediate suspension of

Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

10. **COSTS:** Pursuant to Rule 5J-17.06, Florida Administrative Code, Respondent agrees to pay the Department for the Department's costs incurred in the investigation and prosecution of this case. Respondent agrees that the amount of the Department costs to be paid in this case is **One Thousand Thirty-One Dollars and Two Cents (\$1,031.02)**. Respondent shall pay such administrative costs to: Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, **within ninety (90) days of the entry of the Final Order** accepting this Settlement Stipulation. **All costs shall be paid by cashier's check or money order.** Respondent's failure to pay the costs by the time due shall result in the immediate suspension of Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

STANDARD PROVISIONS

11. From the date of entering this Settlement Stipulation, Respondent shall not violate Chapter 472, Florida Statutes, or the administrative rules promulgated pursuant thereto.

12. Respondent understands a violation of any term of this Settlement Stipulation shall constitute a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapter 472, Florida Statutes.

13. It is expressly understood that this Settlement Stipulation is subject to the approval of the Board and the Department and has no force and effect until the Board enters a Final Order incorporating the terms of this agreement.

14. Respondent executes this Settlement Stipulation to avoid further administrative action in the instant case and avoid incurring expenses associated with further litigation with respect to this case. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Settlement stipulation. If this Settlement Stipulation is not approved by the Board, then neither party may use this Settlement Stipulation against the other and this Settlement Stipulation shall be deemed null and void. Furthermore, should this Settlement Stipulation not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement Stipulation and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

15. Respondent understands that this Settlement Stipulation, and the subsequent Final Order incorporating the same, will not in any way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint (Attached as Exhibit A).

16. Upon the Board's adoption of this Settlement Stipulation, Respondent waives all further procedural steps, and waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Stipulation and the Final Order of the Board incorporating the terms of the Settlement Stipulation.

17. Respondent waives the right to seek any attorney's fees or costs from the Board or Department in connection with this disciplinary proceeding or any appeal thereafter.

18. Respondent enters into this Settlement Stipulation freely and voluntarily. Respondent acknowledges that no promises were made to the Respondent regarding the

disposition of this case or any other case that may be pending now or in the future before this Board, except the terms of this Settlement Stipulation.

19. Respondent understands the Final Order entered in this case may be used in future cases to seek enhanced penalties if Respondent commits a violation after the filing date of this Settlement Stipulation and Final Order.

20. Venue for any action arising out of this Settlement Stipulation and Final Order shall be in Leon County, Florida.

21. This Settlement Stipulation constitutes the entire agreement between the Department and Respondent, including anyone acting for, associated with, or employed by either party, concerning only those matters specified above and supersedes any prior discussions, agreements, or understandings. No modification or waiver of any provision is valid unless the parties complete and properly execute a written amendment to the Settlement Stipulation.

22. This Settlement Stipulation is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against any party.

23. To the extent any portion of this Settlement Stipulation is prohibited by law for any reason, such prohibition shall not affect any other provision of this Settlement Stipulation.

WHEREFORE, the parties hereto request the Board of Professional Surveyors and Mappers to enter a Final Order accepting and implementing the terms contained herein.

[SIGNATURE PAGE TO FOLLOW]

SIGNED this 22 day of May, 2025.

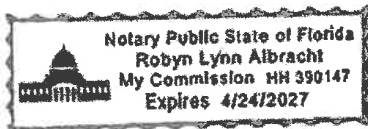
Daniel Snyder
Authorized Representative for
Landtec Surveying and Lien, LLC
LB8507

STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME personally appeared Daniel Snyder, whose identity is known to me or who produced _____ (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 22 day of May, 2025.

[Signature]
NOTARY PUBLIC
My Commission Expires: 4-24-2027



APPROVED this 31st day of July, 2025.

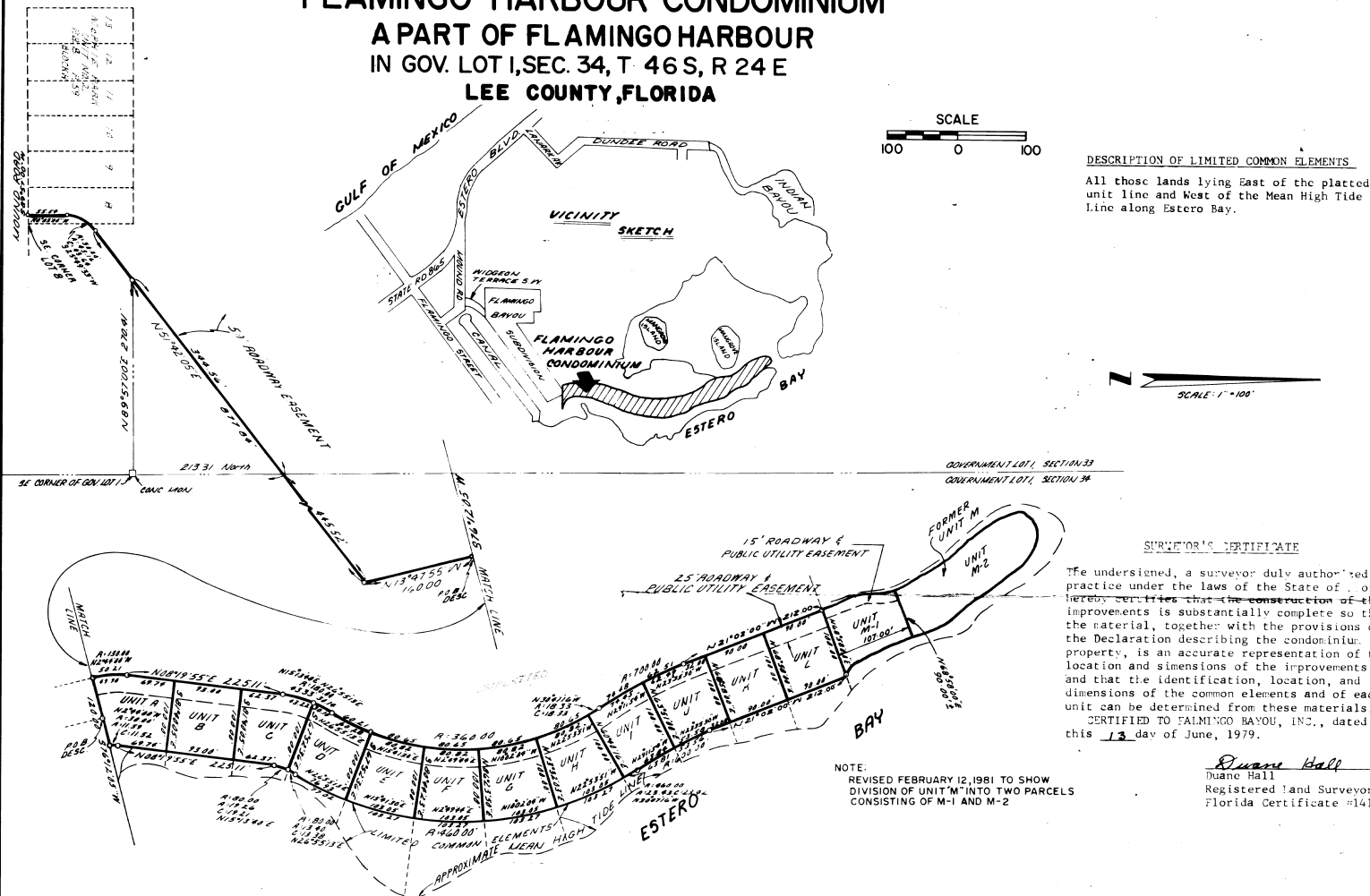
DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

[Signature]
Ana M. Gargollo-McDonald
Senior Attorney
Florida Bar No.: 85907
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407 S. Calhoun St., Ste. 520
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Fax: (850) 245-1001
Email: ana.gargollo-mcdonald@fdacs.gov

EXHIBIT C

AMENDMENT NO. 1
FLAMINGO HARBOUR CONDOMINIUM
 A PART OF FLAMINGO HARBOUR
 IN GOV. LOT 1, SEC. 34, T. 46 S, R. 24 E
 LEE COUNTY, FLORIDA

CONDOMINIUM
 PLAT BOOK 7 PAGE 104



DESCRIPTION OF LIMITED COMMON ELEMENTS
 All those lands lying East of the platted unit line and West of the Mean High Tide Line along Estero Bay.

SURVEYOR'S CERTIFICATE

I, the undersigned, a surveyor duly authorized to practice under the laws of the State of Florida, hereby certify that the construction of the improvements is substantially complete so that the material, together with the provisions of the Declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements, and that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.
 CERTIFIED TO FLAMINGO BAYOU, INC., dated this 13 day of June, 1979.

Duane Hall
 Duane Hall
 Registered Land Surveyor
 Florida Certificate #1415

NOTE:
 REVISED FEBRUARY 12, 1981 TO SHOW
 DIVISION OF UNIT "M" INTO TWO PARCELS
 CONSISTING OF M-1 AND M-2

DESCRIPTION: A tract of land lying in Government Lot 1, Section 34, Township 46 South, Range 24 East, Estero Island, Florida, which tract is described as follows: From the southeast corner of Lot 8, Block H., Unit 7, McPhie Park, according to the plat recorded in Plat Book 8 at page 59 of the public records of Lee County, Florida, run westerly along the south line of said Lot 8 for 10 feet; thence run northerly perpendicular to said south line and along the east line of a roadway easement 50 feet wide for 55.54 feet to a point of tangency; thence run northeasterly along the southeasterly line of said roadway easement along the arc of a curve to the right having a radius of 30 feet to a point of tangency; thence run N 51°42'05" E along said southeasterly line of said roadway easement along a line 295 feet (as measured on a perpendicular) northwesterly of and parallel with the northwesterly line of Block C of Flamingo Park (now the centerline of Flamingo Street) as shown on the plat recorded in Plat Book 3 at page 66 of said public records for 877.84 feet; thence run N 13°47'55" W along the northeasterly line of said roadway easement for 160 feet to the point of beginning of the lands herein

described. From said point of beginning run S 76°12'05" W for 60 feet; thence run northwesterly, northerly and northeasterly along the westerly line of a roadway easement 25 feet wide along the arc of a curve to the right having a radius of 130 feet (chord bearing S 2°44'00" W - chord distance 49.90 feet) for 50.21 feet to a point of tangency; thence run N 8°19'55" E along said westerly line of said roadway easement for 225.11 feet to a point of tangency; thence run northeasterly along said westerly line of said roadway easement along the arc of a curve to the right having a radius of 180.00 feet (chord bearing N 20°01'28" E - chord distance 17.76 feet) for 71.44 feet to a point of reverse curvature; thence run northeasterly, northerly and northwesterly along said westerly line of said roadway easement along the arc of a curve to the left having a radius of 360.00 feet (chord bearing N 0°15'53" E - chord distance 381.35 feet) for 411.89 feet to a point of reverse curvature; thence

run northwesterly along the arc of a curve to the right having a radius of 700.00 feet (chord bearing N 76°28'74" W - chord distance 136.78 feet) for 137.00 feet to a point of tangency; thence run N 21°02'00" W along said westerly line of said roadway easement for 212.00 feet; thence run S 0°58'58" E for 10 feet more or less to the waters of Flamingo Harbor; thence run northwesterly, northerly and northeasterly along said waters to the waters of Estero Bay; thence run in a southerly direction along said waters to an intersection with a line bearing N 76°12'05" E passing through the point of beginning; thence run S 76°12'05" W along said line to the point of beginning. TOGETHER WITH the hereinabove described roadway easement 50 feet wide extending from Round Road to the southerly line of the hereinabove described parcel.

DUANE HALL & ASSOCIATES, INC.			
CIVIL ENGINEERS—LAND SURVEYORS—LAND PLANNERS			
PO BOX 6790 FORT MYERS FLORIDA 33901			
Date 4-2-79	Drawn by A.O.	Checked by	
Proj. No. 292265	File No.		

RESOLUTION NUMBER 23-190

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Todd Plaisted, owner of the property situated at 21391 Widgeon Terrace, is requesting two variances from LDC Table 34-3 which requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and a 25-foot setback from the mean high water line; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W1-022M0.0010; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on February 13, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted to recommend approval with conditions of the variance; and

WHEREAS, on March 4, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve with conditions the request.

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

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

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested Variance does meet the requirements of the Town Comprehensive Plan and LDC and approving with conditions the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES WITH CONDITIONS these two variances from LDC Table 34-3 requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25 foot setback from a waterbody.

Section 3. In approving with conditions the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

- B. The landscaping, as shown on the landscape plan attached as Exhibit A, or another landscape plan which is found to be acceptable to the applicant and neighbor, shall be installed prior to final inspection.
- C. Construction staging shall occur offsite.
- D. The maximum height of the pool deck shall not exceed the height of the finished floor.

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

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

ADOPTED this 4th day of March 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 3, 2024 12:05 EDT)
Dan Allers, Mayor

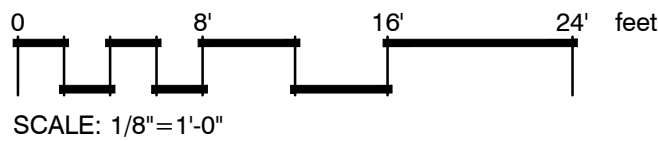
ATTEST:

Amy Baker
Amy Baker (Apr 3, 2024 16:53 EDT)
Amy Baker, Town Clerk

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

Becky Vose
Becky Vose (Apr 3, 2024 16:51 EDT)
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of April 2024.



<u>SYMBOL</u>	<u>QTY</u>	<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>	<u>SIZE</u>	<u>CONTAINER</u>	<u>REMARKS</u>
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<u>SYMBOL</u>	<u>QTY</u>	<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>	<u>SIZE</u>	<u>CONTAINER</u>	<u>SPACING</u>	<u>REMARKS</u>
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MULCH - SHREDDED	HARDWOOD, DK. BROWN MULCH	QTY. BY CONTRACTOR
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23-190, VAR20230162 21391 Widgeon Terrace

Final for signatures

Final Audit Report

2024-04-03

Created:	2024-04-03
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAI_egdPK3_BbqKDER8pBNpEE9NdFecXK2

"23-190, VAR20230162 21391 Widgeon Terrace Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2024-04-03 - 3:53:06 PM GMT- IP address: 173.165.214.193
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature
2024-04-03 - 3:53:14 PM GMT
-  Email viewed by Dan Allers (allersd@fmbgov.com)
2024-04-03 - 4:05:12 PM GMT- IP address: 104.47.56.126
-  Document e-signed by Dan Allers (allersd@fmbgov.com)
Signature Date: 2024-04-03 - 4:05:29 PM GMT - Time Source: server- IP address: 98.238.27.76
-  Document emailed to Becky Vose (bvose@voselaw.com) for signature
2024-04-03 - 4:05:30 PM GMT
-  Email viewed by Becky Vose (bvose@voselaw.com)
2024-04-03 - 4:26:10 PM GMT- IP address: 68.202.143.234
-  Document e-signed by Becky Vose (bvose@voselaw.com)
Signature Date: 2024-04-03 - 8:51:34 PM GMT - Time Source: server- IP address: 174.212.35.210
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature
2024-04-03 - 8:51:35 PM GMT
-  Email viewed by Amy Baker (AMY@FMBGOV.COM)
2024-04-03 - 8:52:56 PM GMT- IP address: 104.47.57.126
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)
Signature Date: 2024-04-03 - 8:53:06 PM GMT - Time Source: server- IP address: 173.165.214.193

✔ Agreement completed.
2024-04-03 - 8:53:06 PM GMT

This instrument was prepared by:
Daniel Snyder
Landtec Surveying and Lien
700 W Hillsboro Boulevard, Suite 2-102
Deerfield Beach, FL 33441

AFFIDAVIT

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared Pablo Alvarez ("Affiant"), who depose(s) and says under penalties of perjury that:

1. This affidavit is made regarding 21391 Widgeon Terrace, Fort Myers Beach, FL 33931.
2. Affiant is a licensed professional land surveyor in the State of Florida, License No. 7274.
3. That the Boundary Survey under Job Number 179798-SW, is an accurate and reliable survey.
4. That the Landtec Surveying and Lien, LLC team verified the precise locations of all property corners and boundary markers on multiple occasions to ensure complete accuracy and consistency of the survey results.
5. That any Florida Department of Agriculture and Consumer Services (FDACS) findings previously associated with this survey pertained only to procedural or technical matters, all of which were fully corrected and remedied in accordance with regulatory requirements.
6. That at no time was the Boundary Survey of 21391 Widgeon Terrace, Fort Myers, Florida, ruled fraudulent, nor has there been any finding or determination by any authority to that effect.
7. That this affidavit is made for the purpose of affirming the professional integrity, validity, and reliability of the Boundary Survey prepared by Pablo Alvarez of Landtec Surveying and Lien, LLC, and may be relied upon by interested parties, including but not limited to title companies, lenders, governmental entities, and property owners.



(Affiant)

Print Name: PABLO A ALVAREZ

STATE OF FLORIDA
COUNTY OF CHARLOTTE

Sworn to, affirmed, and subscribed before me this 24th day of October, 2025, by
Pablo Alvarez who is personally known to me or who has produced
as identification.

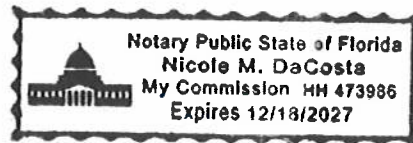
Notary Signature: 

Print Name: Nicole DaCosta

Notary Public, State of Florida

My Commission Expires: 10/18/2027

NOTARY SEAL



RESOLUTION NUMBER 25-305

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RESCINDING AND REVOKING WITHOUT PREJUDICE VARIANCE 2023016Z21391 FOR THE APPROVAL OF TWO VARIANCES WITH CONDITIONS FROM TABLE 34-3 OF THE LAND DEVELOPMENT CODE TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE TO ALLOW FOR THE CONSTRUCTION OF AN ENCLOSED SWIMMING POOL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Sec. 2(B), Art. VIII of the Florida Constitution and Sec. 166.021, Florida Statutes, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and may 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, on April 4, 2024, the Town Council Variance 2023016z21391 approving two variances with conditions from Table 34-3 of the Land Development Code to decrease the required side yard setback by 2.18 feet from the required 10 feet and to decrease the required waterbody setback by 14.39 feet from the required 25 feet, in the RC zoning district, for the property located at 21391 Widgeon Terrace to allow for the construction of an enclosed swimming pool (the “Variances”); and

WHEREAS, the Town Council’s approval of the Variances was based on and relied upon the accuracy of a survey prepared by a surveyor employed by Landtec and Lien, LLC (“the Survey”); and

WHEREAS, subsequent to the Town Council’s approval new information contained in Administrative Case Nos. 2407-20818 and 2407-20819 filed with the State of Florida Department of Agriculture and Consumer Services Board of Professional Surveyors and Mappers, has been brought to the Town’s attention questioning the accuracy of the information contained in the Survey upon which the Town Council relied upon in rendering its approval of Variance 2023016Z21391; and

WHEREAS, the action proposed in this Resolution is in the best interest of the residents of the Town.

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

Section 1. That the above recitals are true and correct and incorporated by reference as though fully set forth herein and are adopted as the legislative and administrative findings of the Town Council.

Section 2. That Variance 2023016Z21391 is rescinded and revoked without prejudice. The property owners shall not be prohibited from resubmitting a variance request with a corrected survey for review.

Section 3. That this Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this _____ day of November 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Nancy Stuparich, Town Attorney

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

1. **Request:**

Meeting Date: November 3, 2025

Accept FY2024 Audit Report Prepared by Mauldin & Jenkins

Why the action is necessary:

This is an opportunity for the Board to formally acknowledge and accept the results of the audit.

What the action accomplishes:

Formal acknowledgment and acceptance of audit report for Fiscal Year 2024

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Motion to accept

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town's annual audit was performed by Mauldin & Jenkins. A copy of the audit report was provided to the Town's Audit Committee. On August 11, 2025, there was a presentation by the auditor to the Audit Committee regarding the audit. The Committee reviewed and discussed the audit report with the Finance Director and approved forwarding it to the Town Council for acceptance.

Attachments:

Financial Impact:

Strengthens confidence in financial data and reporting

6. **Alternative Action**

Not accept the audit report

7. **Management Recommendations:**

Accept audit report

8. **Recommended Approval:**

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

Created/Initiated - 8/5/2025
Approved - 8/5/2025
Approved - 8/5/2025
Approved - 8/5/2025
Approved - 8/11/2025
Final Approval - 9/17/2025

1. **Request:**

Meeting Date: November 3, 2025

APPROVAL OF A SPECIAL EVENT REQUESTED BY THE WHALE RESTAURANT, LOCATED AT 1249 ESTERO BLVD FOR "*The Whale is Back-Sneak Peek Bash*" CELEBRATING THE REOPENING OF THE WHALE RESTAURANT ON SATURDAY, NOVEMBER 8, 2025 STARTING AT 1:00 PM TO 1:00 AM (NOVEMBER 9, 2025, INCLUDING A WAIVER OF THE TOWN'S NOISE ORDINANCE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Tracie Raski, Magistrate
Coordinator

5. **Background:**

Attachments:

1. 11-8-25_The Whale is back

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/24/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025



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



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.



All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.



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.



Detailed description of entire event including set up and breakdown



Letters of permission if using someone else's property for event.



Site plan – marked off with placement of objects (chairs, tables, tents, etc.)



Parking Plan – if applicable



Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder



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.



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

Name of event THE WHALE IS BACK - SNEAK PEEK BASH
Attach separate sheet of paper with detailed description of event

Date(s) and times of event 11.8.2025 1PM - 1AM

Address of event 1249 ESTERO BLVD, FMB, FL 33931

Expected # of participants/attendees 250

Sponsoring Organization THE WHALE

Organization address 1249 ESTERO BLVD, FMB, FL 33931

Contact Person/Phone# ROXANN DE ARMAS - 347.252.7576

E-mail EVENTS@THEWHALEFMB.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 ATTACHED

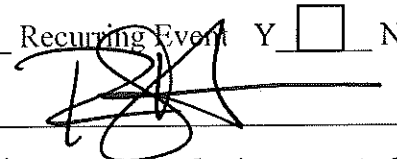
Site Plan Insurance (Naming Town of FMB as Certificate Holder)

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 

Printed Name ROXANN DE ARMAS

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.

January 30, 2023

Applicant to Complete:

Company managing trash removal: THE WHALE

No. of dumpsters: 1 Type of dumpsters: 1

Who is responsible for clean-up and payment: THE WHALE

City right-of-way Parking Use: _____ Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: _____

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

Approval: _____ Date: _____

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239)770-7502 Fax(850)412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ **Site Plan** _____ **Description** _____

Florida DEP approval: _____ **Date:** _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ **Date:** _____

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

prevention@fmbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S 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: 10.21.2025		Date of Event: 11.8.2025
Location: 1249 ESTERO BLVD. FMB FL 33931		
Event Start Date/Time: 11.8.2025 1 PM		Event End Date/Time: 11.9.2025 1 AM
Setup Date: 11.8.2025	Setup Time: 1 PM	Inspection Time:
Event Sponsor: THE WHALE		
Sponsor Contact: ROXANN DE ARMAS	Sponsor Phone #: 347-252-7576	Sponsor Email: EVENTS@THEWHALEFMB.COM
Anticipated Number of Attendees: 250	Anticipated Number of Event Workers: 40	
Will there be carnival or mechanical rides: NO	Number of Stages: NO	
Total Number of Vendors: NO	Total Number of Hot Food Vendors: NO	
Number of Tents larger than 20 x 20: NO	Number of 10 x 10 Tents: NO	

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).

ROXANN DE ARMAS	
Submitting Party Name (Print)	Submitting Party Name (Sign)
Date: 10.21.2025	



Daytime Phone: 347-252-7576
Evening Phone:
Fax Number:
Event Manager: Roxann De Armas

Updated: 10/20/2025

Day	Date	Location	Function	Floorplan	Staff	Rental
11.8.2025	Saturday	Buyout	Sneak Peek Bash	Attached	Full	Waived

[illegible]

BEVERAGE	QTY	PRICE	TOTAL
Open Bar From 3pm - 12am			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
	SUBTOTAL		\$ -

TITLE: The Whale is Back! - Sneak Peek Bash

SET-UP & SERVICE		QTY	PRICE	TOTAL
Live Music - 3pm - 6pm, 6pm - 9pm, 9pm - 12am			\$ -	\$ -

1pm - 3pm - Staff Set Up	Sound Check 2pm	\$ -	\$ -
12am - 1am - Staff Breakdown		\$ -	\$ -
		SUBTOTAL	\$ -

ESTIMATED CHARGES (Actual Charges Presented At Conclusion of Event)							
Charges	20% Svc. Chg. Server		Subtotal	Tax 1 Rate	Tax 1		Total
0.00	0.00	0.00	0.00	6.50%	0.00		0.00
	0.00	0.00	0.00		0.00		0.00
							\$0.00
SUBTOTAL							\$0.00

Scheduled Payment:

A credit card is needed to confirm your event.
Tax and the 20% service charge will be added to your final bill.
Payment is due in full at the conclusion of your event.

This is just an estimate of charges. The final bill may differ in amount

Only one (1) bill will be presented at the end of the event unless prior approval has been given

*** Final headcount due (3) days before scheduled event

Subjects: 1	Affected: 93	Buffer: 500	Date: 10/21/2025 12:00:00 AM	List Size: 94				
Index	Subject	FolioId	STRAP	OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity
0	True	10228167	19-46-24-W4-0060H.0300	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH
1	False	10127257	24-46-23-W3-00011.0000	CLOWNFISH RESTAURANT HOLDINGS		11201 COORPORATE CIRCLE N		SAINT PETERSBURG
2	False	10617008	19-46-24-W4-00000.01CE	VENETIAN GARDENS CANAL		PALERMO CIR		FORT MYERS BEACH
3	False	10617009	19-46-24-W4-00000.02CE	VENETIAN GARDENS CANAL		PALERMO CIR		FORT MYERS BEACH
4	False	10228046	19-46-24-W4-00600.Y000	EE44 LLC		1961 PINE RIDGE DR		JENISON
5	False	10228062	19-46-24-W4-0060A.0300	LANI KAI LP		1400 ESTERO BLVD		FORT MYERS BEACH
6	False	10228063	19-46-24-W4-0060A.0320	LANI KAI LP		1400 ESTERO RD		FORT MYERS BEACH
7	False	10228064	19-46-24-W4-0060A.0330	AULLS PATRICIA E L/E		7241 BERGAMO WAY #101		FORT MYERS
8	False	10228065	19-46-24-W4-0060A.0340	WILCOX LANCE		1339 SANTOS RD		FORT MYERS BEACH
9	False	10228066	19-46-24-W4-0060A.0350	PARILLA DAVID R TR		1335 SANTOS RD		FORT MYERS BEACH
10	False	10228067	19-46-24-W4-0060A.0360	CONNER CHARLES R & GAIL D		53 POMPAO ST		FORT MYERS BEACH
11	False	10228068	19-46-24-W4-0060A.0370	PARILLA DAVID R TR		1335 SANTOS RD		FORT MYERS BEACH
12	False	10477703	19-46-24-W4-0060B.0070	LKLB OF FLORIDA INC		1400 ESTERO BLVD		FORT MYERS BEACH
13	False	10228069	19-46-24-W4-0060B.0100	KLC SURF LLC	CHRISTOPHER PRIMEAU	2327 NURSERY RD		CLEARWATER
14	False	10228070	19-46-24-W4-0060B.0120	KLC SURF LLC	CHRISTOPHER PRIMEAU	2327 NURSERY RD		CLEARWATER
15	False	10228071	19-46-24-W4-0060B.0130	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD		FORT MYERS BEACH
16	False	10228072	19-46-24-W4-0060B.0140	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD		FORT MYERS BEACH
17	False	10228073	19-46-24-W4-0060B.0150	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD		FORT MYERS BEACH
18	False	10228074	19-46-24-W4-0060B.0160	7-ELEVEN INC	CORP INCOME TAX DEPT	3200 HYACKBERRY RD		IRVING
19	False	10228092	19-46-24-W4-0060E.0010	MILLER JONATHAN T		PO BOX 80490		FORT WAYNE
20	False	10228093	19-46-24-W4-0060E.0030	TEZAK HELEN C TR		50 CHAPEL ST #4		FORT MYERS BEACH
21	False	10228094	19-46-24-W4-0060E.0050	551 PALERMO LLC		243 PALERMO CIR		FORT MYERS BEACH
22	False	10558864	19-46-24-W4-0060E.0060	WEIGERT ANTJE & MARTIN		415 CAPE CORAL PKWY W		CAPE CORAL
23	False	10228095	19-46-24-W4-0060E.0070	DIEPHOLZ FAMILY LLC		9 TINSBURY		MATTOON
24	False	10228096	19-46-24-W4-0060E.0080	GNIRCK RAPHAEL +		AM MUEHLBERG 39A		BAD HOMBURG VD H
25	False	10228097	19-46-24-W4-0060E.0090	STRICK RICHARD A &		5804 PARK RIDGE CT		FORT COLLINS
26	False	10228098	19-46-24-W4-0060F.0010	HENNESSEY PATRICIA J &		460 PALERMO CIR		FORT MYERS BEACH
27	False	10228099	19-46-24-W4-0060F.0020	NORTH KEY INC		7150 RED LION FIVE POINTS RD		SPRINGBORO
28	False	10228100	19-46-24-W4-0060F.0030	DONNA M BYRD TRUST +		5701 BLUNK KNOB RD		ELIZABETH
29	False	10228101	19-46-24-W4-0060F.0040	RELAAX LLC		2201 E WILLOW ST #D-363		SIGNAL HILL
30	False	10228102	19-46-24-W4-0060F.0050	RELAAX LLC		2201 E WILLOW ST #D-363		SIGNAL HILL
31	False	10228122	19-46-24-W4-0060F.0270	FITE DAVID MITCHELL + JULIE H		220 PALERMO CIR		FORT MYERS BEACH
32	False	10599453	19-46-24-W4-0060F.0280	LUSSIER TARA CORBISHLEY &		745 BIMINI LN		PUNTA GORDA
33	False	10599454	19-46-24-W4-0060F.028A	RELAAX LLC		2201 E WILLOW ST #D-363		SIGNAL HILL
34	False	10228133	19-46-24-W4-0060G.0120	WEBER JEFFREY E &		11624 WILLOW SPRINGS DR		ZIONSVILLE
35	False	10562982	19-46-24-W4-0060G.0130	CAVENEY MARK J & NANCY Y		122 E EMPORIA ST		TRIBUNE
36	False	10228134	19-46-24-W4-0060G.0140	JKCK LLC		3360 ESTERO BLVD		FORT MYERS BEACH
37	False	10619304	19-46-24-W4-0060G.0150	201 PALERMO LLC		1421 E LAKE SHORE DR		SPRINGFIELD
38	False	10619305	19-46-24-W4-0060G.0160	201 PALERMO LLC		1421 E LAKE SHORE DR		SPRINGFIELD
39	False	10228136	19-46-24-W4-0060G.0170	DAY BILLY WAYNE		3708 SHANNON RUN TRL		LOUISVILLE
40	False	10228137	19-46-24-W4-0060G.0180	LUMP THOMAS F & ANN M C TR		145 PALERMO CIR		FORT MYERS BEACH
41	False	10228138	19-46-24-W4-0060G.0190	SLOMSKI STEVEN A &		PO BOX 2428	PMB 25382	PENSACOLA
42	False	10228153	19-46-24-W4-0060H.0160	MORRIS CHARLES D		194 PRIMO DR		FORT MYERS BEACH
43	False	10228154	19-46-24-W4-0060H.0170	TEKULVE LAYNE JOSEPH	PARAMOUNT LAWN AND LANDSCAPE	8900 GLENDALE MILFORD RD # A1		LOVELAND
44	False	10228155	19-46-24-W4-0060H.0180	RILEY CHRISTOPHER M &		180 PRIMO DR		FORT MYERS BEACH
45	False	10228156	19-46-24-W4-0060H.0190	RILEY SUSAN K TR		180 PRIMO DR		FORT MYERS BEACH
46	False	10228157	19-46-24-W4-0060H.0200	BAILEY JAMES P & LANA C		162 PRIMO DR		FORT MYERS BEACH
47	False	10574248	19-46-24-W4-0060H.021A	BEEN STEVEN MICHAEL &		112 LUICKS LN N #4		BELMOND
48	False	10574249	19-46-24-W4-0060H.0220	NEUMANN TIMOTHY D &		146 PRIMO DR		FORT MYERS BEACH
49	False	10228159	19-46-24-W4-0060H.0230	140 PRIMO LLC	SHEILA NEUMANN	146 PRIMO DR		FORT MYERS BEACH
50	False	10228160	19-46-24-W4-0060H.0240	SEABIRD RESIDENTIAL LLC		1709 SW 47TH TER		CAPE CORAL
51	False	10228161	19-46-24-W4-0060H.0250	HIGHLEY JAY E & MARY B		124 PRIMO DR		FORT MYERS BEACH
52	False	10228162	19-46-24-W4-0060H.0260	HUCK JOSHUA D & SARAH L		630 W OHIO ST		FORTVILLE
53	False	10228163	19-46-24-W4-0060H.026A	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH
54	False	10228164	19-46-24-W4-0060H.0270	ARLINGTON GREEN HOMES LLC	LARRY SMITH	434 SPINNAKER DR		MARCO ISLAND
55	False	10228165	19-46-24-W4-0060H.0280	KALIDINDI RAMA USHA +		44354 APACHE CIR		ASHBURN
56	False	10228191	19-46-24-W4-0070D.001B	GANIM GEORGE W & JOSEPHINE TR		4666 MAIN ST		BRIDGEPORT
57	False	10228192	19-46-24-W4-0070D.0020	LANI KAI LP	ROBERT G CONIDARIS	1400 ESTERO BLVD		FORT MYERS BEACH
58	False	10228196	19-46-24-W4-0070F.0010	RIGHT CHOICE INVESTMENTS LLC		13500 TELEGRAPH RD		TAYLOR

59	False	10228197	19-46-24-W4-0070F.001A	OUR BEACH SAND LLC		12483 SUMMERWOOD DR	FORT MYERS
60	False	10228348	19-46-24-W4-0140A.0010	GANIM PROPERTIES LLC		4666 MAIN ST	BRIDGEPORT
61	False	10557364	19-46-24-W4-0140A.001A	GANIM PROPERTIES LLC		4666 MAIN ST	BRIDGEPORT
62	False	10557293	19-46-24-W4-0150D.0050	TPI-FMB SUITES LLC		1207 ESTERO BLVD	FORT MYERS BEACH
63	False	10228358	19-46-24-W4-0150D.0060	COLLIN JAMES GROUP LLC		15 CARROTWOOD CT	FORT MYERS
64	False	10228359	19-46-24-W4-0150D.0070	GRIFFIS LLC		9051 E CHICAGO RD	JEROME
65	False	10228360	19-46-24-W4-0150D.0080	PATTON THOMAS D TR		153 PRIMO DR	FORT MYERS BEACH
66	False	10228361	19-46-24-W4-0150D.0090	RANDELL ANTHONY CHARLES		1260 BRAESIDE DR	OAKVILLE
67	False	10228362	19-46-24-W4-0150D.0100	BRIODY SUSAN S		167 PRIMO DR	FORT MYERS BEACH
68	False	10228363	19-46-24-W4-0150D.0110	FMB REAL ESTATE INVESTMENTS LL		171/191 PRIMO DR	FORT MYERS BEACH
69	False	10228364	19-46-24-W4-0150D.0120	FMB REAL ESTATE INVESTMENTS LL		171/191 PRIMO DR	FORT MYERS BEACH
70	False	10228365	19-46-24-W4-0150D.0130	REDENIUS RICHARD R +		16191 SUNSET STRIP	FORT MYERS
71	False	10228378	19-46-24-W4-0150E.0010	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH
72	False	10228379	19-46-24-W4-0150E.001A	DEEP DISH DOUGH LLC		328 BUCKLIN ST	LA SALLE
73	False	10228380	19-46-24-W4-0150E.0030	MILLER CONRAD RE LLC		PO BOX 80490	FORT WAYNE
74	False	10456515	19-46-24-W4-0150E.0040	INVESTMENTS OF FMB LLC	MARK DEIFT	560 NW 118 AVE	PLANTATION
75	False	10569721	19-46-24-W4-0150E.005B	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH
76	False	10577231	19-46-24-W4-0150E.0060	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH
77	False	10588279	19-46-24-W4-0150E.0070	RICHARD JOHN W +		152 CRESCENT ST	FORT MYERS BEACH
78	False	10588280	19-46-24-W4-0150E.0080	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH
79	False	10228384	19-46-24-W4-0150E.0090	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD	FORT MYERS BEACH
80	False	10627252	19-46-24-W4-0150E.00CE	CRESENT PARK HOMEOWNERS ASSOC		CRESCENT ST	FORT MYERS BEACH
81	False	10462572	19-46-24-W4-02600.00CE	CRESCENT SHORE CONDO ASSOC		PO BOX 2990	FORT MYERS BEACH
82	False	10634282	19-46-24-W4-U0492.2607	TPI-FMB LLC		103 15TH AVE NW #200	WILLMAR
83	False	10622777	19-46-24-W4-U0498.2607	TOWN OF FORT MYERS BEACH		2523 ESTERO BLVD	FORT MYERS BEACH
84	False	10228463	19-46-24-W4-02600.1010	1300 ESTERO BLVD LLC		32 BAYVIEW BLVD	FORT MYERS BEACH
84	False	10228464	19-46-24-W4-02600.1040	BEYER TAMMY E TR		9656 HALYARDS CT # 24	FORT MYERS
84	False	10228465	19-46-24-W4-02600.1050	ANDRESEN EDWIN TR		7960 PRESERVATION DR	INDIANAPOLIS
84	False	10228466	19-46-24-W4-02600.1060	BOCCELLA SALVATORE		4 POINT VIEW CT	SICKLERVILLE
84	False	10228467	19-46-24-W4-02600.2010	JOHNSON NANCY ANN L/E		9 NANCY LN	FORT MYERS BEACH
84	False	10228468	19-46-24-W4-02600.2020	SIMONSON ALISSA SCOTT &		12945 TURTLE COVE TRL	NORTH FORT MYERS
84	False	10228469	19-46-24-W4-02600.2030	CONANT DONNA TR		8122 S FOREST HILL CIR	FRANKLIN
84	False	10228470	19-46-24-W4-02600.2040	DENNIS R + CYNTHIA L LOKEN TRU		106 ICHABOD LN	MANKATO
84	False	10228471	19-46-24-W4-02600.2050	LANDOLFI STEVEN J		22 VETO ST	PROVIDENCE
84	False	10228472	19-46-24-W4-02600.2060	NIEMEIER RYAN & SUMMER		106 S WALNUT ST	LA CRESCENT

CLOWNFISH RESTAURANT HOLDINGS
11201 COORPORATE CIRCLE N
SAINT PETERSBURG FL 33716

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL
PALERMO CIR
FORT MYERS BEACH FL 33931

EE44 LLC
1961 PINE RIDGE DR
JENISON MI 49428

LANI KAI LP
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
1400 ESTERO RD
FORT MYERS BEACH FL 33931

AULLS PATRICIA E L/E
7241 BERGAMO WAY #101
FORT MYERS FL 33966

WILCOX LANCE
1339 SANTOS RD
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D
53 POMPAÑO ST
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

LKLB OF FLORIDA INC
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

KLC SURF LLC
CHRISTOPHER PRIMEAU
2327 NURSERY RD
CLEARWATER FL 33764

KLC SURF LLC
CHRISTOPHER PRIMEAU
2327 NURSERY RD
CLEARWATER FL 33764

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

7-ELEVEN INC
CORP INCOME TAX DEPT
3200 HYACKBERRY RD
IRVING TX 75063

MILLER JONATHAN T
PO BOX 80490
FORT WAYNE IN 46898

TEZAK HELEN C TR
50 CHAPEL ST #4
FORT MYERS BEACH FL 33931

551 PALERMO LLC
243 PALERMO CIR
FORT MYERS BEACH FL 33931

WEIGERT ANTJE & MARTIN
415 CAPE CORAL PKWY W
CAPE CORAL FL 33914

DIEPHOLZ FAMILY LLC
9 TINSBURY
MATTOON IL 61938

GNIRCK RAPHAEL +
AM MUEHLBERG 39A
BAD HOMBURG VD HOEHE 61348
GERMANY

STRICK RICHARD A &
5804 PARK RIDGE CT
FORT COLLINS CO 80528

HENNESSEY PATRICIA J &
460 PALERMO CIR
FORT MYERS BEACH FL 33931

NORTH KEY INC
7150 RED LION FIVE POINTS RD
SPRINGBORO OH 45066

DONNA M BYRD TRUST +
5701 BLUNK KNOB RD
ELIZABETH IN 47117

RELAAX LLC
2201 E WILLOW ST #D-363
SIGNAL HILL CA 90755

RELAAX LLC
2201 E WILLOW ST #D-363
SIGNAL HILL CA 90755

FITE DAVID MITCHELL + JULIE H
220 PALERMO CIR
FORT MYERS BEACH FL 33931

LUSSIER TARA CORBISHLEY &
745 BIMINI LN
PUNTA GORDA FL 33950

RELAAX LLC
2201 E WILLOW ST #D-363
SIGNAL HILL CA 90755

WEBER JEFFREY E &
11624 WILLOW SPRINGS DR
ZIONSVILLE IN 46077

CAVENEY MARK J & NANCY Y
122 E EMPORIA ST
TRIBUNE KS 67879

JKCK LLC
3360 ESTERO BLVD
FORT MYERS BEACH FL 33931

201 PALERMO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

201 PALERMO LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

DAY BILLY WAYNE
3708 SHANNON RUN TRL
LOUISVILLE KY 40299

LUMP THOMAS F & ANN M C TR
145 PALERMO CIR
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &
PO BOX 2428 PMB 25382
PENSACOLA FL 32513

MORRIS CHARLES D
194 PRIMO DR
FORT MYERS BEACH FL 33931

TEKULVE LAYNE JOSEPH
PARAMOUNT LAWN AND LANDSCAPE
8900 GLENDALE MILFORD RD # A1
LOVELAND OH 45140

RILEY CHRISTOPHER M &
180 PRIMO DR
FORT MYERS BEACH FL 33931

RILEY SUSAN K TR
180 PRIMO DR
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C
162 PRIMO DR
FORT MYERS BEACH FL 33931

BEEN STEVEN MICHAEL &
112 LUICKS LN N #4
BELMOND IA 50421

NEUMANN TIMOTHY D &
146 PRIMO DR
FORT MYERS BEACH FL 33931

140 PRIMO LLC
SHEILA NEUMANN
146 PRIMO DR
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC
1709 SW 47TH TER
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B
124 PRIMO DR
FORT MYERS BEACH FL 33931

HUCK JOSHUA D & SARAH L
630 W OHIO ST
FORTVILLE IN 46040

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

ARLINGTON GREEN HOMES LLC
LARRY SMITH
434 SPINNAKER DR
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +
44354 APACHE CIR
ASHBURN VA 20147

GANIM GEORGE W & JOSEPHINE TR
4666 MAIN ST
BRIDGEPORT CT 06606

LANI KAI LP
ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

RIGHT CHOICE INVESTMENTS LLC
13500 TELEGRAPH RD
TAYLOR MI 48180

OUR BEACH SAND LLC
12483 SUMMERWOOD DR
FORT MYERS FL 33908

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC
4666 MAIN ST
BRIDGEPORT CT 06606

TPI-FMB SUITES LLC
1207 ESTERO BLVD
FORT MYERS BEACH FL 33931

COLLIN JAMES GROUP LLC
15 CARROTWOOD CT
FORT MYERS FL 33919

GRIFFIS LLC
9051 E CHICAGO RD
JEROME MI 49249

PATTON THOMAS D TR
153 PRIMO DR
FORT MYERS BEACH FL 33931

RANDELL ANTHONY CHARLES
1260 BRAESIDE DR
OAKVILLE ON L6J 2A4
CANADA

BRIODY SUSAN S
167 PRIMO DR
FORT MYERS BEACH FL 33931

FMB REAL ESTATE INVESTMENTS LL
171/191 PRIMO DR
FORT MYERS BEACH FL 33931

FMB REAL ESTATE INVESTMENTS LL
171/191 PRIMO DR
FORT MYERS BEACH FL 33931

REDENIUS RICHARD R +
16191 SUNSET STRIP
FORT MYERS FL 33908

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC
328 BUCKLIN ST
LA SALLE IL 61301

MILLER CONRAD RE LLC
PO BOX 80490
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC
MARK DEIFT
560 NW 118 AVE
PLANTATION FL 33325

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W +
152 CRESCENT ST
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

CRESENT PARK HOMEOWNERS ASSOC
CRESCENT ST
FORT MYERS BEACH FL 33931

CRESCENT SHORE CONDO ASSOC
PO BOX 2990
FORT MYERS BEACH FL 33932

TPI-FMB LLC
103 15TH AVE NW #200
WILLMAR MN 56201

TOWN OF FORT MYERS BEACH
2523 ESTERO BLVD
FORT MYERS BEACH FL 33931

1300 ESTERO BLVD LLC
32 BAYVIEW BLVD
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR
9656 HALYARDS CT # 24
FORT MYERS FL 33919

ANDRESEN EDWIN TR
7960 PRESERVATION DR
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE
4 POINT VIEW CT
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E
9 NANCY LN
FORT MYERS BEACH FL 33931

SIMONSON ALISSA SCOTT &
12945 TURTLE COVE TRL
NORTH FORT MYERS FL 33903

CONANT DONNA TR
8122 S FOREST HILL CIR
FRANKLIN WI 53132

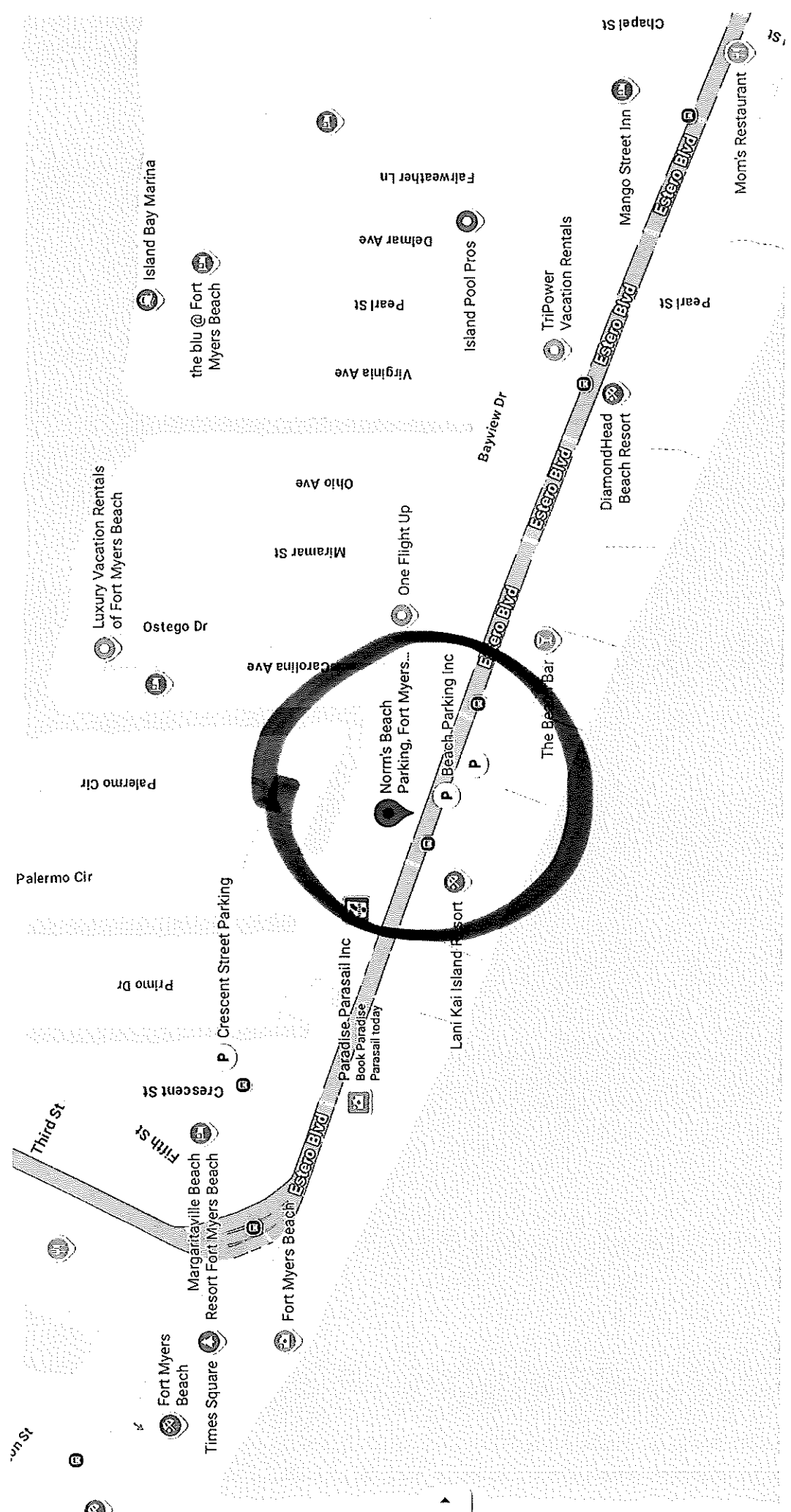
DENNIS R + CYNTHIA L LOKEN TRU
106 ICHABOD LN
MANKATO MN 56001

LANDOLFI STEVEN J
22 VETO ST
PROVIDENCE RI 02908

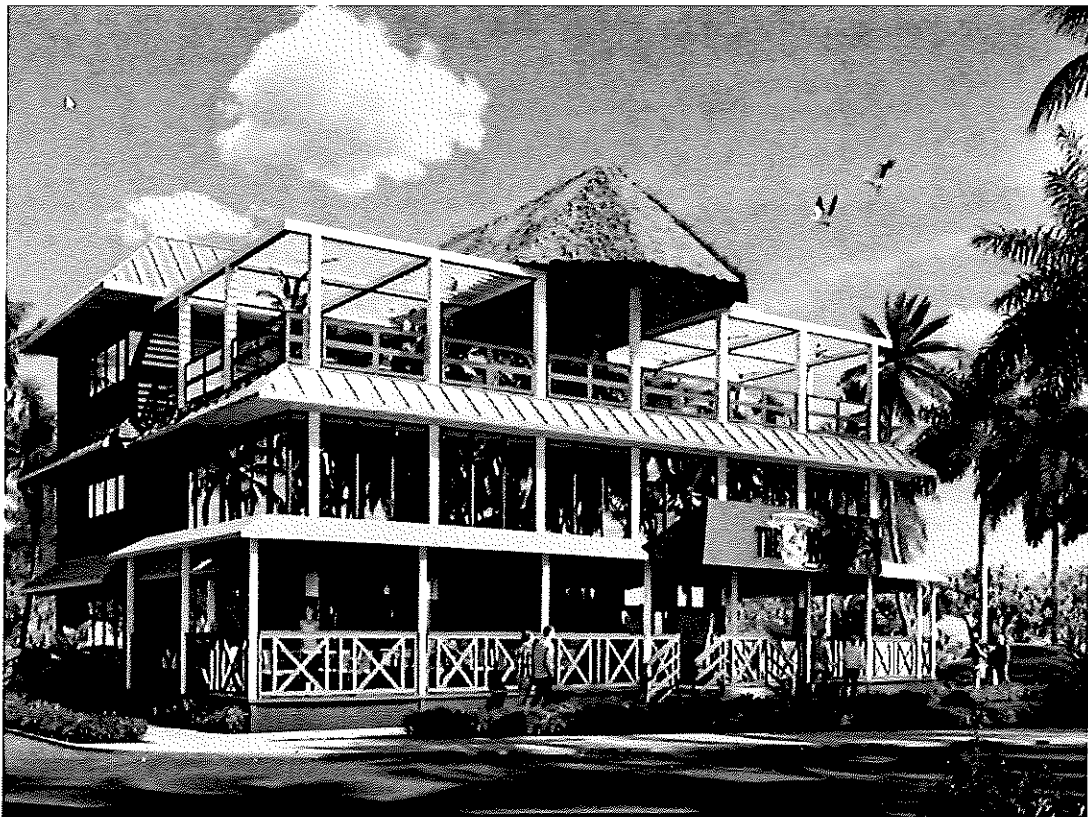
NIEMEIER RYAN & SUMMER
106 S WALNUT ST
LA CRESCENT MN 55947



PARKING PLAN 11.8.25



SITE PLAN 11.8.2025



**EVENT WILL TAKE PLACE INSIDE
OF THE WHALE FACILITIES**

NOTIFICATION LETTER

Dear Permittee:

Pursuant to the requirements, of Town of Fort Myers Beach – Special Event Application, **Florida Ordinance Code 20-17**, this letter is to notify you that a preview celebration referred to as, *The Whale is Back! Sneak Peek Bash*, will occur at The Whale, 1249 Estero Blvd, Fort Myers Beach, FL 33914. The proposed event is within or in radius of the view zone of your location and will have musical amplification. The proposed preview celebration event will take place on November 8th, 2025 beginning at 1pm, ET and set to conclude on November 9th, 2025 at 1am, ET.

Respectfully,
Roxann De Armas
Events Manager
The Whale
1249 Estero Blvd, FMB, FL 33931
Events@thewhalefmb.com

1. **Request:**

Meeting Date: November 3, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT APPROVED BY RESOLUTION 25-235 WITH NATIONAL METERING SERVICE FOR THE WATER METER REPLACEMENT PROGRAM IN AN AMOUNT NOT TO EXCEED \$1,619,790.00, TO AUTHORIZE A METER MODEL CHANGE FROM A RADIO FREQUENCY (RF) MODEL TO A CELLULAR (CELL) MODEL FOR BOTH THE 5/8- AND 1-INCH METER SIZES AND METER ANTENNAS, WHICH WILL INCREASE THE PRICE BY \$204,162.00 FOR A NEW TOTAL COST OF \$1,823,952.00 TO UTILIZE CELLULAR TECHNOLOGY TO: 1) ASSURE 100% COVERAGE OF THE ISLAND FOR DISTRIBUTION MONITORING, METER READING, AND CUSTOMER INTERFACE; AND 2) RETAIN A RELIABLE, SAFE AND EFFICIENT METER AND DISTRIBUTION MONITORING SYSTEM; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the total expenditure of \$204,162 is over \$75,000 which is the limit that can be approved by the town manager:

What the action accomplishes:

This action enables the town to comply with its purchasing ordinance which requires the Town Council ratification of purchases over \$75,000:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Utilities Manager

5. **Background:**

At the time of bid development, the 2 technologies for meter reading were radio frequency (RF) and cellular (cell). Cellular technology, although a more reliable, efficient, effective, and overall better system, was limited to just one carrier. So the coverage on the island could only be around 75%. Using RF, coverage was around 90% depending on how many fixed antennas are installed up and down the island. Since that time, Ferguson Water Works (sole supplier of both types of meters) has advanced the cell service interface to where the meters choose between the big 3 cell providers (ATT, Verizon, T-Mobile). This is done in an instant when you try to retrieve data from the meter. It picks out the best signal and sends the data on that service. It will provide 99.9% coverage for the island while increasing the amount of data that can be retrieved. The funds saved (Resolution 25-202) by not having the fixed antennas is more than the cost of the meter upgrades. The cell service is supplied through Ferguson (sole supplier). We do not have to sign up with each carrier. The cost comparison spreadsheet is attached. The cost increase covers: 2500-5/8 inch meters, 250-1 inch meters, 3000 cellular meter antennas.

Attachments:

1. Res 25-299 Amendment to National Metering Service
2. First Amendment to National Meter Service ITB-25-05-PW Agreement
3. Attachment A to the First Amendment
4. Original Resolution 25-235, ITB-25-05-PW Water Meter Replacement Agreement Signed
5. National Metering Services Fort Myers Beach Agreement - Executed
6. Background Information -- Original Invoice Re Costs
7. Background Information related to quotes

Financial Impact:

The total expenditure will be funded through the Water Department Fund Balance and seeking reimbursement through the Federal Emergency Management Agency (FEMA). The approval of this meter model change will eliminate the necessity to purchase new antennas, thus eliminating the \$480,560 expenditure for antennas that was originally approved by Resolution 25-202, resulting in a cost savings of \$276,398.

6. Alternative Action

Do not approve the amendment.

7. Management Recommendations:

Management recommends ratification of these expenditures to the National Metering Service to comply with the town's purchasing ordinance.

8. Recommended Approval:

Mark Ashton, Utilities Manager
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 10/2/2025
Approved - 10/21/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025

RESOLUTION NUMBER 25-299

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT APPROVED BY RESOLUTION 25-235 WITH NATIONAL METERING SERVICE FOR THE WATER METER REPLACEMENT PROGRAM IN AN AMOUNT NOT TO EXCEED \$1,619,790.00, TO AUTHORIZE A METER MODEL CHANGE FROM A RADIO FREQUENCY (RF) MODEL TO A CELLULAR (CELL) MODEL FOR BOTH THE 5/8- AND 1-INCH METER SIZES AND METER ANTENNAS, WHICH WILL INCREASE THE PRICE BY \$204,162.00 FOR A NEW TOTAL COST OF \$1,823,952.00 TO UTILIZE CELLULAR TECHNOLOGY TO: 1) ASSURE 100% COVERAGE OF THE ISLAND FOR DISTRIBUTION MONITORING, METER READING, AND CUSTOMER INTERFACE; AND 2) RETAIN A RELIABLE, SAFE AND EFFICIENT METER AND DISTRIBUTION MONITORING SYSTEM; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town became aware of the local availability of advanced meter reading technology after the approval of Resolution 25-235 on August 4 2025; and

WHEREAS, the change from a Radio Frequency ("RF") model to a Cellular ("Cell") model will assure that 100% coverage of the Town's jurisdiction for distribution monitoring, meter reading, and customer interface by eliminating all fixed antennas previously proposed; and

WHEREAS, the change from a RF model to a Cell model will assure no interruptions of service in case of emergency situations and further provides the residents and business owners a reliable, safe, and efficient meter and distribution monitoring system; and

WHEREAS, National Metering Service has provided updated meter costs for both 5/8- and 1-inch meters and their meter antennas to make the Town's meters compatible with the AMI Cellular Meter Reading and Monitoring System utilizing the Cell model from their bid proposal for consideration; and

WHEREAS, the change from a Radio Frequency ("RF") model to a Cellular ("Cell") model quote will increase the not to exceed approved project cost by \$204,162 for a total of \$1,823,952.00; and

WHEREAS, the change from a Radio Frequency ("RF") model to a Cellular ("Cell") model is in the best interest of the Town and the residents of the Town of Fort Myers Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE

TOWN OF FORT MYERS BEACH, AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution approves the first amendment to the previously approved agreement with National Metering Service from ITB-25-05-PW for the Water Meter Replacement Program by \$204,162 for a not to exceed amount of \$1,823,952.00 and authorizes the Town Manager to execute the first amendment to the agreement.

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

The foregoing Resolution was 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 3rd day of November 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

EXHIBIT A

FIRST AMENDMENT TO THE INDEPENDENT CONTRACTORS AGREEMENT WITH NATIONAL METERING SERVICE

THIS FIRST AMENDMENT is made and entered into this 3rd day of November 2025, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and NATIONAL METERING SERVICE, hereinafter referred to as “Contractor”, to that certain existing Independent Contractors Agreement, dated October 14, 2025 (“Agreement”) for Water Meter Replacement Program as approved by the Town Council of the Town of Fort Myers Beach on August 19, 2025.

WITNESSETH:

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 services provided by Contractor under the Agreement will be to replace all 5/8- and 1-inch meters from Radio frequency (“RF”) meters to the Cellular (“Cell”) metering system in the Town’s distribution system, necessitating the need to amend the original contract price and scope of meter type of \$1,619,790 to \$1,823,952 as provided in Attachment A to this First Amendment; and

WHEREAS, the Town became aware of the local availability of advanced meter reading technology after the approval of Resolution 25-235 on August 4, 2025; and

WHEREAS, the change from a RF model to a Cell model will assure 100% coverage of the Town’s jurisdiction for distribution monitoring, meter reading, and customer interface by eliminating all fixed antennas previously proposed; and

WHEREAS, National Metering Service has provided updated meter costs for both 5/8- and 1-inch meters and their meter antennas to make the Town’s meters compatible with the AMI Cellular Meter Reading and Monitoring System utilizing the Cell model from their bid proposal for consideration; and

WHEREAS, the change from a Radio Frequency (“RF”) model to a Cellular (“Cell”) model quote will increase the not to exceed approved project cost by \$204,162 for a total of

\$1,823,952.00; and

WHEREAS, the change from a RF model to a Cell model will assure continuous uninterrupted monitoring of the water distribution system under normal operations in addition to emergency situations (hurricanes) and further provides the residents and business owners a reliable, safe, and efficient meter and distribution monitoring system.

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

1. Amendment. This First Amendment amends and supplements the existing Agreement between the parties. In the event of a conflict between the terms and conditions contained in the Agreement and this First Amendment, the terms of this Amendment shall prevail. Attachment A to this First Amendment provides for the modifications to the scope and pricing originally provided within the Agreement in its Exhibits “A” and “B” to reflect the change from a RF model to a Cell model and its associated costs.

2. Available Funding. The Agreement is amended to provide that total payment for the cellular metering system shall not exceed \$1,823,952 in FY 2025 and FY 2026 as provided in Attachment A to this First Amendment, and replaces the total costs originally provided in Exhibit “B” and any further references to Exhibit “B” within the Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the days and year indicated below to bind the parties.

Contractor:

Print Name: _____

Company: National Metering Service

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

EXHIBIT A – SCOPE OF WORK

WATER METER REPLACEMENT PROJECT TECHNICAL SPECIFICATIONS

TS-1.0 Scope of Work

The Town of Fort Myers Beach (the “Town”) plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (RT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AMI System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection.

The Bidder is expected to purchase materials and equipment for approximately 3,000 water meters and complete the installation for the residential properties. Bidder is also required to purchase and inventory the materials and equipment.

The requirements for the Water Meter Replacement project also includes, but is not limited to, the repairing or replacing of the water meter box, removal of existing water meters and boxes, maintenance of traffic, trench/roadway restoration, site restoration, and all the other appurtenances necessary to complete the project. The Town currently uses two sizes of meters: 5/8 inches and 1 inch

Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required.

During the course of the project, Bidder will be required to work and coordinate with multiple departments within the Town to ensure a smooth process and accuracy in reporting and documentation.

- Coordination with the Customer Service Department is critical to ensure that sectors of the Town (cycle route) are not being read or billed at the same time as meter exchanges.
- Coordination with the Water Department is needed in the process of receiving a snapshot of all water meters in the Town.

TS-2.0 Work Plan

Prior to commencement of Work the Contractor must understand the additional requirements besides the replacement of the water meter for the project:

- As needed, repair or replace curb stops.
 - Repair or replacement is to the resident's connection.
- Requirement – meter couplings required (spuds) on both sides of the new meter.
- If needed – replace the water meter box

TS-2.1 Reports

The Contractor shall maintain a record of the meter replacements through the meter exchange tickets. The Contractor shall take a photograph for the Town of each existing meter and new meter once the meter has been replaced to verify replacement has occurred.

- Serial Number
- Meter Size
- Location Address

TS-2.2 Meetings/Communication

During the project, Contractor will be required to meet, work and coordinate with multiple departments with the Town to ensure smooth transition and accuracy in reporting and documentation.

- Utilities Customer Service Department – Coordinate efforts to ensure sectors of the Town (cycle

EXHIBIT A – SCOPE OF WORK

- routes) are not being read or billed at the same time of the meter exchange.
- Water Department – Coordinate if needed to receive a snapshot of the water meter.

TS-3.0 Time of Operations

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

TS-3.1 Timeline

Project duration for completion is one (1) year from the time the contract is fully executed.

TS-3.2 Testing

Performance tests and checks are required for each meter and is the Contractors responsibility. The Town will assign a representative to periodically inspect the meters, appurtenances and site restoration.

TS-3.3 Repairs

The Contractor will have 24 hours to repair any and all leaks from the time the Contractor is notified by the Town's representative.

TS-4.0 Disposal of Old Meters

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

TS-5.0 Warranty

The Contractor shall provide the full manufacturer warranty. In addition, the Contractor shall provide an installation warranty covering workmanship and labor for a period of three (3) months.

The Contractor will repair the leaks and related damages to the residential property at no cost to the Town.

TS-6.0 Contractors Responsibility

The Contractor also accepts sole responsibility for any damage to any person and or property resulting from their performance of the work, whether based on negligence or any other equitable claim.

TS-6.1 Noise

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

TS-7.0 General

The Contractor shall purchase the materials and equipment required for the Project as well as be responsible for storing and inventory. Table 1 presents the required Brand Specific materials and equipment. No deviations to Table 1 are allowed.

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

EXHIBIT A – SCOPE OF WORK

Proposed Water Meter Replacement Materials

Size	Brand Specific	Model	Approx Number of Units
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250
Antenna	Neptune Technology Group		3,000
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed

TS-8.0 Post-Work Cleanup or Obliteration

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer.

TS-8.1 Disposal

Disposal of any materials, waste, trash, garbage, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation

EXHIBIT B – PROJECT COST

Water Meter Replacement Project Bid Sheet					
Size	Brand Specific	Model	Approx Number of Units	Unit Price	Extended Price
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500	\$454.80	\$1,137,000.00
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250	\$599.35	\$149,837.50
Antenna	Neptune Technology Group		3,000	\$41.00	\$123,000.00
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites	\$176.93	\$176,930.00
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites	\$218.12	\$32,718.00
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed	\$26.34	\$26.34
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites	\$33.45	\$33.45
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed	\$175.95	\$175.95
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed	\$69.48	\$69.48
Base Bid Total					\$1,619,790.72

Name of Bidder: National Metering Services, Inc.

Total Base Price: \$1,619,790.72

RESOLUTION NUMBER 25-235

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AWARDED ITB 25-05-PW TO NATIONAL METERING SERVICE TO REPLACE ALL 5/8- AND 1-INCH WATER METERS IN THE DISTRIBUTION SYSTEM FOR USE IN THE ADVANCED METERING INFRASTRUCTURE METER READING SYSTEM (AMI) THE TOWN IS INSTALLING IN ORDER TO PROVIDE FOR A SAFE AND RELIABLE UTILTIY METERING SYSTEM IN AN AMOUNT NOT TO EXCEED AMOUNT OF \$1,619,790; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH NATIONAL METERING SERVICE SUBJECT TO LEGAL SIGN-OFF; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town became aware of non-reading or inefficient meters and issued ITB-25-05-PW, seeking contractors to replace all 5/8- and 1-inch meters in the Town's distribution system to allow the meters to be able to be compatible with the advanced metering infrastructure meter reading system (AMI) the town is installing; and

WHEREAS, 5 responses to ITB 25-05-PW were received and the bid from National Metering Service was evaluated by Community Services Director Hauge and Utilities Manager Ashton, and determined to be the most responsive bidder; although not the lowest bid due to negative references received of the lowest cost vendor, and

WHEREAS, authorizing the Town Manager to negotiate and execute an agreement with National Metering Service in an amount not to exceed \$1,619,790 in accordance with the Bid requirements and subject to legal sign-off is in the best interest of the Town and the residents of the Town of Fort Myers Beach.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The ITB 25-05-PW is awarded to National Metering Service and the Town Manager is authorized to negotiate and execute an agreement with National Metering Service in an amount not to exceed \$1,619,790 in accordance with the Bid requirements and subject to legal sign-off.

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

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

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

ADOPTED this 4th day of August 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Aug 19, 2025 09:37:42 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Aug 19, 2025 14:50:01 EDT)

Amy Baker, Town Clerk

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

Nancy Stuparich

Nancy Stuparich (Aug 19, 2025 12:37:55 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Aug 19, 2025.



TOWN of FORT MYERS BEACH

National Metering Services, Inc. **BIDDER SUBMITTAL CHECKLIST**

THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE BIDDER IN PREPARING A COMPLETED BID SUBMITTAL

IMPORTANT: Please read carefully and follow each item.

Please check off each of the following items as the necessary action is completed:

- ☒ 1. No. FMB:003 Official Bid Form, pg. D-2, insert firm name at the bottom of the page
- ☒ 2. Signed copy of each addendum, if any.
- ☒ 3. No. FMB:003 Official Bid Form, pg. D-3, insert Project Cost and any Alternates (if required)
- ☒ 4. No. FMB:003 Official Bid Form, pg. D-5, all addenda issued, if any, have been acknowledged. (*If a replacement proposal bid form or bid schedule page was issued with any addenda, replacement page is used for submitting a bid)
- ☒ 5. No. FMB:003 Official Bid Form, pg. D-5, substantial and final completion days inserted (if required)
- ☒ 6. No. FMB:003 Official Bid Form, pg. D-6, has been properly signed with the corporate seal (if applicable). Attested to by the Secretary.
- ☒ 7. No. FMB:001 Bid Bond/Cashier's Check/Certified Check have been submitted with the bid in the amount indicated. Note: Any cashier's or certified check must be received by the TOWN by the due date and time.
- ☒ 8. No. FMB:003 Official Bid Form, Bid Schedules & Disk (if applicable), have been properly completed, unit price extensions and totals have been checked for accuracy
- ☒ 9. Any other submittals required in Part B, "Legal Notice to BIDDERS, Paragraph 3. Submittal of Bids."
- ☒ 10. Erasures or other changes made to the bid have been initialed by the person signing the bid
- ☒ 11. No. FMB:004 Contractor's Qualification Questionnaire (properly completed, signed and notarized)
- ☒ 12. No. FMB:005 Schedule D, DBE Participation form; completed and signed or good faith documentation. (when applicable)
- ☒ 13. Proof of a "Good Faith Effort" in attempting to obtain DBE's for this project. (If subcontractors will be used and no DBE's are listed on Schedule D.) (when applicable)
- ☒ 14. No. FMB:019 Public Entities Crime Form
- ☒ 15. No. FMB:021 Non-Collusion Affidavit
- ☒ 16. No. FMB:022 Trench Safety Affidavit (when applicable)
- ☒ 17. No. FMB:023 Material Manufacturers
- ☒ 18. No. FMB:024 List of Sub-Contractors
- ☒ 20. No. FMB:100 Affidavit Certification Immigration Laws (Signed and notarized)



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM
(1 of 5 Pages)

FOR

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

Bids are to be submitted by
Monday, July 7, 2025, at 12:00 pm LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

**LOCATION: Town Hall
Town Hall Council Chambers
6231 Estero Blvd
Fort Myers Beach, FL. 33931**

Monday, July 7, 2025, at 1:00 pm LOCAL TIME

BIDDER: National Metering Services, Inc.
(Individual or Firm Name)



ADDENDUM TO PROPOSAL

ITB-25-05-PW

Addendum No.: 1

Project Name: Water Meter Replacement Project

Date of Issue: June 30, 2025

The following inquiries were received regarding the above reference RFP:

Q. Is a Neptune meter only proposal or are you accepting alternative bids?

A. Neptune is the required meter.

Q. Is there an estimated budget?

A. At this time, we will examine the bids first.

Q. Is there a start date and end date?

A. The project should take no more than one year and the start date is within 30 days of receiving the Notice to Proceed.

Deb Glavin, Contracts & Procurement Specialist
bids@fmbgov.com 239-765-0202

John McArthur
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6/30/25



ADDENDUM TO PROPOSAL

ITB-25-05-PW

Addendum No.: 2

Project Name: Water Meter Replacement Project

Date of Issue: June 30, 2025

The following inquiries were received regarding the above reference ITB:

Q. What is the existing meter brand?

A. Neptune

Q. What is the approximate geographic area of the meters to be covered under this contract?

A.

Q. What is the billing software the town utilizes?

A. CUSI-UB4 and Neptune 360

Q. If the Contractor provides storage, will the Town provide an area for the Contractor to place the storage container?

A. Depends on size and space available

Q. Will the Contractor be paid for "stored materials"?

A. Town will not pay for the storage

Q. How are the current meters being read?

A. AMR

Q. Will the transmitters be mounted through the meter box lids?

A. Yes

Q. Are there any existing holes in the lid?

A. Some, if new boxes are installed then it is up to the contractor to buy lids with holes


6/30/25
1 | Page

Q. What percentage of meter boxes are located in concrete or asphalt?

A. Unknown

Q. Do all settings have shut off valves before the meters?

A. Can not guarantee they all do that is part of the job if they do not, then they must be installed.

Q. Are all valves in the meter box?

A. Not all but most

Q. What is the procedure for any inoperable or broken valves?

A. Contractor will replace

Q. What is the age and primary make-up of service lines? (copper, plastic or galvanized)

A. The majority are poly lines with some pvc or galvanized (very rare)

Q. Who will provide Meter Tags for the old meters?

A. Contractor

Q. Electronic page 5 "Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required." Question Will the Town provide a list of these locations, or will the contractor have to determine out in the field?

A. Contractor determines the field

Q. Please confirm the Town is Tax Exempt?

A. Yes

Q. Please confirm that the contractor will be providing all material listed on the Bid Sheet.

A. The Contractor is responsible to provide all material on the bid sheet.

Q. Please confirm the contractor will only be responsible for leaks they have caused, no pre-existing leaks?

A. The Contractor will be responsible to repair leaks the Contractor created.

Q. Please confirm the contractor will be replacing existing curb stops?

A. Yes, if needed

Q. Will testing be required as part of this contract?

A. The meter must be turned on and fittings tested for leaks

Deb Glavin, Contracts & Procurement Specialist

John C. Costa
6/30/25
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bids@fmbgov.com 239-765-0202



RESCHEDULED

**PUBLIC NOTICE
--- BID OPENING ---**

**THE TOWN OF FORT MYERS BEACH WILL HOLD A PUBLIC
BID OPENING FOR:**

WATER METER REPLACEMENT PROGRAM

ITB-25-05-PW

Wednesday, July 9, 2025, at 1:00PM

NEW LOCATION

**MOUND HOUSE
451 CONNECTICUT STREET
FORT MYERS BEACH, FL 33931**

John Catu
7/2/25

All awards made as a result of this bid shall conform to applicable State laws and local ordinances. The Town reserves the right to accept or reject any bid in its sole discretion or not make any award.



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM

(2 of 5 Pages)

Monday, July 7, 2025

(DATE)

12:00 pm. LOCAL TIME

(TIME)

Town Hall Council Chambers

2371 Pak Street

Fort Myers Beach, FL 33931

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

**WATER METER REPLACEMENT PROJECT
ITB-25-05-PW**

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

3. The BIDDER hereby agrees that:
 - (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
 - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is



TOWN of FORT MYERS BEACH

executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.

(c) In the event of any conflict between the Invitation to Bid and Ordinance 24-11, the provisions of the ordinance will prevail. A copy of ordinance 24-11 is available on the TOWN'S website.



TOWN of FORT MYERS BEACH

Water Meter Replacement Project Bid Sheet					
Size	Brand Specific	Model	Approx Number of Units	Unit Price	Extended Price
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500	\$454.80	\$1,137,000.00
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250	\$599.35	\$149,837.50
Antenna	Neptune Technology Group		3,000	\$41.00	\$123,000.00
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites	\$176.93	\$176,930.00
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites	\$218.12	\$32,718.00
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed	\$26.34	\$26.34
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites	\$33.45	\$33.45
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed	\$175.95	\$175.95
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed	\$69.48	\$69.48
				Base Bid Total	\$1,619,790.72

Name of Bidder: National Metering Services, Inc.

Total Base Price: \$1,619,790.72



TOWN of FORT MYERS BEACH

(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: 6/30/25 Addendum No. 2 Dated 7/1/25

Addendum No. 3 Dated: 7/2/25 Addendum No. _____ Dated _____

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 240 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 365 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



TOWN of FORT MYERS BEACH

FMB:003 - OFFICIAL BID FORM

(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Peter Martin

(Name of License Holder)

CUC-1224998

(State Certificate No.)

74-8017540071-2

Business Tax Receipt No. (Specify jurisdiction)

F03000002137

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this 3rd day of July, 2025.

William Castle

President

By: Printed

By: Signature

President

TITLE: President

National Metering Services, Inc.

Company Name

235 Hatteras Ave Suite 200

Mailing Address

Clermont Florida 34711

City, State, and Zip

William Castle

Contact Person

wcastle@nmsnj.com

E-mail / Contact Person

201-628-2850

Telephone Number

201-246-1831

Fax Number

ATTEST:

Secretary John Castle

(Seal)

**INDEPENDENT CONTRACTOR'S AGREEMENT
ITB-25-05-PW**

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is effective the 1st day of October 2025 by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation (hereinafter the "TOWN") and **NATIONAL METERING SERVICES, INC**, a Florida corporation (hereinafter "CONTRACTOR").

WITNESSETH

WHEREAS, the TOWN is a municipal corporation in the State of Florida, having a responsibility to provide certain services to benefit the citizens of the TOWN OF FORT MYERS BEACH; and

WHEREAS, the TOWN has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is in the business of Water Meter Replacement Program in the TOWN and elsewhere in the State of Florida; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, CONTRACTOR was the successful bidder for an advertised Invitation to Bid identified as ITB-25-05-PW, "WATER METER REPLACEMENT PROGRAM," which satisfies the TOWN's Procurement Policy; and

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

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or proposal documents issued in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1) **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.

2) **Description of Work.**

- a) The TOWN hereby retains CONTRACTOR to furnish goods and services as described in the Scope of Services, which is attached hereto as **Exhibit "A"** and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit "A"** will be resolved in favor of the body of this Agreement.

CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.

- b) CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB) (here, ITB-25-05-PW), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the TOWN, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, as applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.

3) **Commencement and completion/Term.**

- a) CONTRACTOR must commence work under this Agreement immediately upon receipt by CONTRACTOR of the Notice to Proceed and must and must complete the work not later than 120 calendar days thereafter.
- b) Liquidated damages will be assessed against CONTRACTOR in the amount of \$500.00 per day, for each day beyond the Final Completion deadline that the work contemplated by this Agreement is incomplete. The Town shall have the right to deduct all liquidated damages due from the final payment request as well as any retainage if completion deadline is delayed by the contractor's actions only. However, CONTRACTOR shall not be assessed liquidated damages for delays in completion caused by acts of the Town or its employees, acts of God, or other events beyond the control of CONTRACTOR.

4) **Payment.**

- a) The TOWN agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in **Exhibit "B"**, which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amounts set forth in **Exhibit "B."**
- b) Progress payments, if any, will be made as set forth in **Exhibit "B"**.

- c) The TOWN reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations upon prompt and reasonable notice by the TOWN. CONTRACTOR must, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.
- 5) **Acceptance of work product, payment, and warranty.**
- a) **Installment Payments.** Upon receipt of a periodic work product or notice that work has progressed to a point of payment in accordance with **Exhibit "B"** attached or the Bid Documents, if any, together with an invoice sufficiently itemized to permit audit, the TOWN will diligently review those documents. When it finds the work acceptable under this Agreement the installment payment, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of receipt of the invoice, unless another payment schedule is provided in **Exhibit "B"**. TOWN acceptance of work and corresponding payment shall not be unreasonably withheld.
 - b) **Final Payment.** Upon receipt of written notice that the work is ready for final inspection and acceptance, the TOWN will promptly make such inspection. When it finds the work acceptable under this Agreement and the contract fully performed, it will promptly issue a final certificate stating that the work provided for in this Agreement has been completed, and acceptance by the TOWN under the terms and the conditions thereof, is recommended and the entire balance, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of the final certificate. Before issuance of final certificate, CONTRACTOR must submit an affidavit satisfactory to the TOWN that all payrolls, subcontractors, materialmen, and other similar bills and indebtedness connected with the work have been paid.
 - c) **Warranty.** CONTRACTOR warrants that the data utilized by CONTRACTOR (other than as provided by the TOWN) is from a source, and collected using methodologies, which are generally recognized in CONTRACTOR's industry or profession to be a reliable basis and foundation for CONTRACTOR's work product. CONTRACTOR must notify the TOWN in writing if it appears, in CONTRACTOR's professional judgement that the data or information provided by the TOWN for use in CONTRACTOR's work product is incomplete, defective, or unreliable. CONTRACTOR shall provide its standard warranty, which includes 12-month workmanship warranty covering all workmanship.
 - d) **Performance Guarantee.** CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the TOWN any defect in workmanship or material appearing in the work; and further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment, by the TOWN will relieve CONTRACTOR from its obligations to do and complete the work in accordance with this Agreement. If the TOWN deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the TOWN will make an equitable deduction from the contract price, or, in the alternative, the TOWN may seek damages.

CONTRACTOR shall provide a thirty (30) day warranty for leaks occurring within three (3) feet after the meter, as well as its standard warranty, which includes a 12-month workmanship warranty covering all workmanship.

6) **Termination.**

- a) Termination at Will: This Agreement may be terminated by the TOWN in whole or in part at any time without cause by the TOWN giving written notice to CONTRACTOR not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
- b) Termination for Cause: This Agreement may be terminated by either party for cause by the TOWN or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7) **Project management.**

- a) The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 8 below and does not require an amendment to this Agreement.

(1) TOWN's Project Manager is: Mark Ashton, Utilities Manager

(2) CONTRACTOR's Project Manager is: Gary Hunter

8) **Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a) To TOWN: Fort Myers Beach Town Council, Attention: Town Manager, 6231 Estero Blvd, FORT MYERS BEACH, Florida 33931;
- b) To CONTRACTOR: NATIONAL METERING SERVICES Attention: WILLIAM CAASTLE, President, 235 Hatteras Avenue Suite 200, Clemont, Florida 34711.

9) **Insurance.**

- a) CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the TOWN from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement,

either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.

- b) The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:
 - i) Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease.
 - ii) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location and project in the amount of \$1,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00.
 - iii) Commercial Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv) Fire damage liability shall be included at \$500,000.00.
 - c) CONTRACTOR must furnish the TOWN with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The TOWN is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the TOWN before commencement of any work activities.
 - d) The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.
- 10) **General Provisions.** CONTRACTOR must comply with the following general provisions:

- a) **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the TOWN, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the TOWN to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the TOWN. The TOWN will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the TOWN.
- b) **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c) **Personal nature of Agreement; Assignment.**
 - i) The parties acknowledge that the TOWN places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal, and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the TOWN.
 - ii) If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the TOWN Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d) **Discrimination.**
 - i) CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii) CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- e) **Independent contractor.**
 - i) CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the TOWN. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the TOWN. None of the benefits, if any,

provided by the TOWN to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the TOWN to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the TOWN and is subject to the TOWN's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The TOWN will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.

- ii) CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
- iii) CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.

f) Indemnification.

- i) CONTRACTOR must indemnify and hold the TOWN harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the TOWN, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property as a result of the contractors acts or omissions. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the TOWN against any claim that any product purchased or licensed by the TOWN from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the TOWN by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all

other legal remedies available to the TOWN and not considered to be the TOWN's exclusive remedy.

- ii) In the event that any claim in writing is asserted by a third party which may entitle the TOWN to indemnification, the TOWN must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the TOWN decides to participate in the proceeding or defense, the TOWN will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days' notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.
 - iii) The indemnification provisions of this paragraph will survive the termination of this Agreement.
- g) **Sovereign Immunity.** Nothing in this Agreement extends, or will be construed to extend, the TOWN's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Agreement is a consent, or will be construed as consent, by the TOWN to be sued by third parties in any matter arising out of this Agreement.
- h) **Public records.**
- i) CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 - (1) Keep and maintain public records required by the TOWN to perform the service.
 - (2) Upon request from the TOWN's custodian of public records, provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the TOWN.
 - (4) Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If CONTRACTOR transfers all public records to the TOWN upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from

public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

- ii) "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
- iii) If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
- iv) CONTRACTOR consents to the TOWN's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by TOWN.
- v) CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the TOWN.
- vi) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, TOWN CLERK, AT (239) 765-0202, FMBPUBLICRECORDS@FMB.GOV; MAILING ADDRESS: 6231 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931.**

- i) **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the County 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.
- j) **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.

- k) **Federal or State Funding.** If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply, provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the TOWN's Project Manager to determine whether Federal or State funding is applicable to this Agreement.
- i) **E-Verify.** CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR during the Term of this Agreement.
 - ii) **Agency.** CONTRACTOR agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
 - iii) **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the TOWN, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the TOWN's sovereign immunity.
 - iv) **Workers' Compensation Insurance.** CONTRACTOR must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, CONTRACTOR must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), CONTRACTOR must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. CONTRACTOR must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
 - v) **Liability Insurance.** Contractor shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida.

CONTRACTOR shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. CONTRACTOR shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the TOWN and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The TOWN and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The TOWN's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the TOWN or the State of Florida may have.

- vi) Inspections. CONTRACTOR shall permit, and require its subcontractors to permit, the TOWN's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described herein and in the bid documents.
- vii) Auditor General Cooperation. CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.

- l) **Federal Funding Requirements.** All or a portion of the funding for this project may be derived from federal funding, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in **Exhibit D** ("Federal Supplemental Conditions") attached hereto and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit D** will be resolved in favor of **Exhibit D**.
- m) **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.

- n) **Disclosure Requirements for “Foreign Countries of Concern”.** CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall

automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

- o) **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.
 - p) **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.
 - q) **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.
 - r) **No Coercion for Labor or Services.** CONTRACTOR swears under penalty of perjury that CONTRACTOR does not use coercion for labor or services as defined as follows:
 - i) “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.
- 11) **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:
- a) **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.

- b) **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized TOWN representatives.
- c) **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
- d) **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
- e) **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- f) **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
- g) **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the TOWN's rights under this Agreement, or of any cause of action the TOWN may have arising out of the performance of this Agreement.
- h) **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance

by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.

- i) **Law; Venue.** This Agreement is being executed in Lee County, Florida and is governed in accordance with the laws of the State of Florida. Venue of any action hereunder will be in Lee County, Florida.

12) **Special Provisions.**

- a. This Agreement is a non-exclusive contract; the TOWN is not prohibited, or deemed to be prohibited, from bidding similar services either as an independent job or a component of a larger project.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., CONTRACTOR declares that CONTRACTOR has read the foregoing Section 10(r) above and that the facts stated in it are true.

TOWN OF FORT MYERS BEACH

WB McKannay

William B. McKannay, Town Manager

ATTEST:

Amy Baker

Amy Baker, Town Clerk

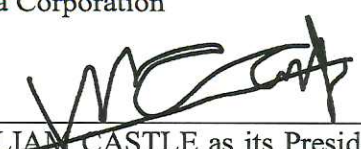
APPROVED AS TO FORM

[Signature]

Vose Law Firm, Town Attorney

NATIONAL METERING SERVICES,
a Florida Corporation

by


WILLIAM CASTLE as its President and
authorized agent

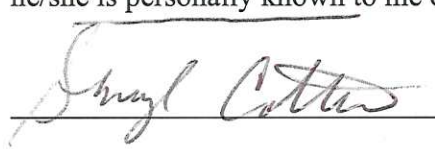
(CORPORATE SEAL)

ATTEST:


Secretary

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 14 day of October, 2025, by WILLIAM CASTLE, President of **NATIONAL METERING SERVICES**, a Florida corporation, on behalf of the corporation, and he/she is personally known to me or has produced _____ as identification.


Signature of Notary Public - State of Florida

Sheryl Cotter

Printed/Typed/Stamped Name of Notary
My commission expires

Apr 23, 2028



EXHIBIT A – SCOPE OF WORK

WATER METER REPLACEMENT PROJECT TECHNICAL SPECIFICATIONS

TS-1.0 Scope of Work

The Town of Fort Myers Beach (the “Town”) plans to replace and standardize all water meters to a Single Meter Encoder-Receiver-Transmitter (RT) combination. The combination meter will allow the Town to collect meter readings remotely and upload the data through the Advanced Metering Infrastructure (AMI) system. The AMI System will improve accuracy and efficiencies in the water meter readings collections, health monitoring and leak detection.

The Bidder is expected to purchase materials and equipment for approximately 3,000 water meters and complete the installation for the residential properties. Bidder is also required to purchase and inventory the materials and equipment.

The requirements for the Water Meter Replacement project also includes, but is not limited to, the repairing or replacing of the water meter box, removal of existing water meters and boxes, maintenance of traffic, trench/roadway restoration, site restoration, and all the other appurtenances necessary to complete the project. The Town currently uses two sizes of meters: 5/8 inches and 1 inch

Exception: If the meter currently has a meter box with an antenna installed, the meter will not be replaced, no further action is required.

During the course of the project, Bidder will be required to work and coordinate with multiple departments within the Town to ensure a smooth process and accuracy in reporting and documentation.

- Coordination with the Customer Service Department is critical to ensure that sectors of the Town (cycle route) are not being read or billed at the same time as meter exchanges.
- Coordination with the Water Department is needed in the process of receiving a snapshot of all water meters in the Town.

TS-2.0 Work Plan

Prior to commencement of Work the Contractor must understand the additional requirements besides the replacement of the water meter for the project:

- As needed, repair or replace curb stops.
 - Repair or replacement is to the resident’s connection.
- Requirement – meter couplings required (spuds) on both sides of the new meter.
- If needed – replace the water meter box

TS-2.1 Reports

The Contractor shall maintain a record of the meter replacements through the meter exchange tickets. The Contractor shall take a photograph for the Town of each existing meter and new meter once the meter has been replaced to verify replacement has occurred.

- Serial Number
- Meter Size
- Location Address

TS-2.2 Meetings/Communication

During the project, Contractor will be required to meet, work and coordinate with multiple departments with the Town to ensure smooth transition and accuracy in reporting and documentation.

- Utilities Customer Service Department – Coordinate efforts to ensure sectors of the Town (cycle

EXHIBIT A – SCOPE OF WORK

- routes) are not being read or billed at the same time of the meter exchange.
- Water Department – Coordinate if needed to receive a snapshot of the water meter.

TS-3.0 Time of Operations

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

TS-3.1 Timeline

Project duration for completion is one (1) year from the time the contract is fully executed.

TS-3.2 Testing

Performance tests and checks are required for each meter and is the Contractors responsibility. The Town will assign a representative to periodically inspect the meters, appurtenances and site restoration.

TS-3.3 Repairs

The Contractor will have 24 hours to repair any and all leaks from the time the Contractor is notified by the Town's representative.

TS-4.0 Disposal of Old Meters

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

TS-5.0 Warranty

The Contractor shall provide the full manufacturer warranty. In addition, the Contractor shall provide an installation warranty covering workmanship and labor for a period of three (3) months.

The Contractor will repair the leaks and related damages to the residential property at no cost to the Town.

TS-6.0 Contractors Responsibility

The Contractor also accepts sole responsibility for any damage to any person and or property resulting from their performance of the work, whether based on negligence or any other equitable claim.

TS-6.1 Noise

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

TS-7.0 General

The Contractor shall purchase the materials and equipment required for the Project as well as be responsible for storing and inventory. Table 1 presents the required Brand Specific materials and equipment. No deviations to Table 1 are allowed.

All used meters are to be returned to the Town Hall, Utilities Department. The used meters must be tagged with the residential address that equipment was removed from.

EXHIBIT A – SCOPE OF WORK

Proposed Water Meter Replacement Materials

Size	Brand Specific	Model	Approx Number of Units
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250
Antenna	Neptune Technology Group		3,000
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed

TS-8.0 Post-Work Cleanup or Obliteration

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer.

TS-8.1 Disposal

Disposal of any materials, waste, trash, garbage, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation

EXHIBIT B – PROJECT COST

Water Meter Replacement Project Bid Sheet					
Size	Brand Specific	Model	Approx Number of Units	Unit Price	Extended Price
5/8 Inch	Neptune Technology Group	Mach 10 – EU1B2G1 (5/8x3/4 Mach 10 R900i v4 Gallons)	2,500	\$454.80	\$1,137,000.00
1 Inch	Neptune Technology Group	Mach 10 – EU1F2G1 (1" Mach 10 R900i v4 Gallons)	250	\$599.35	\$149,837.50
Antenna	Neptune Technology Group		3,000	\$41.00	\$123,000.00
5/8 Inch Curb Stop	Ford	B43-342W-NL (3/4" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 5/8"x3/4" & 3/4" Meter Swivel Nut) or approved equivalent	As Needed up to 1,000 Unites	\$176.93	\$176,930.00
1 Inch Curb Stop	Ford	B43-444W-NL (1" Ball Valve, Pad Wing – No Lead 1" CTS Pack Joint by 1" Meter Swivel Nut) or approved equivalent	As Needed up to 150 Unites	\$218.12	\$32,718.00
5/8 Inch Straight Meter Coupling	Ford	C38-23-2-NL (2" Length) or approved equivalent	As Needed	\$26.34	\$26.34
1 Inch Straight Meter Coupling	Ford	C38-44-2-NL (2" Length) or approved equivalent	As Needed up to 150 unites	\$33.45	\$33.45
Meter Box	Quazite	CDR Box 11"x18"x12" Straight Wall or approved equivalent	As Needed	\$175.95	\$175.95
Meter Lid	Quazite	CDR Cover 11"x18"x12" w/ 4"x6" CIR5t or approved equivalent	As Needed	\$69.48	\$69.48
				Base Bid Total	\$1,619,790.72

Name of Bidder: National Metering Services, Inc.

Total Base Price: \$1,619,790.72

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

The Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. 23LE1 ("FDEP Grant Agreement") with the Town of Fort Myers Beach, which requires that certain terms be incorporated into agreements funded thereby. These requirements are in addition to, and do not modify or reduce, any other requirement or obligation in the Agreement.

1. Public Entity Crimes. Pursuant to Section 287.133(3)(a), Florida Statutes: 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 contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the convicted vendor list within the last 36 months. If the Contractor is placed on the convicted vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

2. Discriminatory Vendors. Pursuant to Section 287.134(3)(a), Florida Statutes: 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. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the discriminatory vendor list within the last 36 months. If the Contractor is placed on the discriminatory vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

3. Antitrust Violator Vendors. Pursuant to Section 287.137(3)(a), Florida Statutes: A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the antitrust violator vendor list within the last 36 months. If the Contractor is placed on the antitrust violator vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

4. Compliance with FDEP Security and Safety Requirements and Processes. Contractor and its employees, agents, and subcontractors shall comply with any security and safety requirements and processes, if provided by FDEP, for work done at the Project location.

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

5. Contractual Costs. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapter 274, F.S., and Chapter 69I-73, F.A.C. Contractor shall be responsible for maintaining appropriate property records for this Agreement and any subcontracts that include the purchase of equipment as part of the delivery of services. Contractor shall comply with this requirement and ensure that this requirement is imposed upon any subcontractors under this Agreement in writing.

6. Statutory Notices Relating to Unauthorized Employment and Subcontracts. FDEP considers the employment by Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

7. Compliance with Federal, State and Local Laws. Contractor 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. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of FDEP and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

8. Record Keeping. Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. Contractor shall grant the FDEP, the State of Florida, or their authorized representatives access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. Contractor shall similarly require each of its subcontractors to maintain and allow access to such records for audit purposes.

9. Compliance with Section 20.055, Florida Statutes. the CONTRACTOR understands its duty, pursuant to section 20.055(5), F.S. to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. CONTRACTOR will comply with this duty and impose this requirement, in writing, on its subcontractors.

10. No Third-Party Rights in FDEP Grant Agreement. Contractor is advised that the FDEP Grant Agreement does not create any third-party rights, and no third parties shall rely upon any of the rights and obligations created under the FDEP Grant Agreement.

11. Insurance Requirements. At all times during the Agreement the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and minimum limits described below. Contractor understands and agrees that funds for the Project are conditioned upon their compliance with the insurance requirements of the Agreement. Failure to maintain the minimum insurance required herein shall be grounds for immediate termination of the Agreement. Contractor must provide proof of insurance upon request. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Contractor may provide coverage through a self-insurance program established and operating under the laws of Florida. The minimum insurance requirements applicable to this Agreement are set forth

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

below. However, if any other provision of the Agreement or bid documents requires insurance coverage in greater amounts or of broader scope, the greater requirements shall apply.

- a. Commercial General Liability Insurance. The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any general liability policies. The minimum limits shall be \$ 250,000 for each occurrence and \$500,000 policy aggregate.
- b. Commercial Automobile Insurance. If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows: 200,000/300,000 Automobile Liability for Company-Owned Vehicles, if applicable 200,000/300,000 Hired and Non-owned Automobile Liability Coverage.
- c. Workers' Compensation and Employer's Liability Coverage. The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
- d. Other Insurance. None.

13. Incorporation into Subcontracts. Contractor shall provide its subcontractors with a copy of this Exhibit, and the Contractor's obligations hereof shall be incorporated into each of Contractor's contracts with its subcontractor as obligations of the subcontractor. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

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 may be used to fund all or a portion of this contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally- Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

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."

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

- (2) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (3) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

(4) CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. 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

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

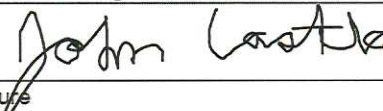
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

National Metering Services, Inc.

By: 
Signature

John Castle, General Manager
Name and Title

235 Hatteras Ave
Street Address

Clermont, FL, 34711
City, State, Zip

22-3392696

UEI Unique Entity Identifier (for SAM.gov verification)

10/14/2025
Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																						
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																						
A. PRIME VENDOR/CONTRACTOR INFORMATION																						
PRIME NAME		PRIME FBD NUMBER		CONTRACT DOLLAR AMOUNT																		
National Metering Services, Inc.		22-3392696		\$1,619,790.72																		
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN? Y ☒ N ☐ DBE? Y ☐ N ☒ MBE? Y ☐ N ☒ WBE? Y ☐ N ☒ SDB SA? Y ☐ N ☒		IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION? Y ☒ N ☐ CONSULTATION? Y ☐ N ☒ OTHER? Y ☐ N ☒																		
IS THIS SUBMISSION A REVISION?		Y ☐ N ☒		IF YES, REVISION NUMBER _____																		
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																						
DBE VETERAN	MBE WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
TOTALS																						
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																						
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																		
John Castle		10/14/2025		General Manager																		
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																		
jcastle@nmsnj.com		201-456-0218		201-246-1831																		
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"><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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DEPARTMENT NAME		FMS CONTRACT # (F&B or PO/REQ)		GRANT PROGRAM/CONTRACT																		
ACCEPTED BY:				DATE																		

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Agreement Number: D1502

STATE-FUNDED LAP GRANT AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Town of Fort Myers Beach**, Florida (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

a. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

b. In addition to the foregoing, the Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(2) CONTACT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Berenice Hernandez Avila
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-815-4206
Email: Berenice.Hernandez@em.myflorida.com

c. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

Cheri Russ
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: cheri.russ@fmbgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(3) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(4) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(5) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(6) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(7) PERIOD OF AGREEMENT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2026** unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(8) FUNDING

- a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will grant funds to the Recipient only for allowable costs that will be incurred by the Recipient in the successful completion of each deliverable or for loss of revenue.
- d. The Division will review any request for grant funding by comparing the documentation provided by the Recipient against a performance measure, outlined in Attachment A, which clearly delineates:
 - i. The required minimum acceptable level of service to be performed; and,
 - ii. The criteria for evaluating the successful completion of each deliverable.
- e. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.
- f. For the purposes of this Agreement, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.
- g. All funds shall be placed in an interest-bearing account and the interest shall be returned to the Division quarterly until the completion of all deliverables. The interest shall be returned to the Division's General Revenue Fund.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(9) RECORDS

a. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

e. The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

b. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

d. The Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine (9) months from the end of the Recipient's fiscal year.

e. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

i. The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii. The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

(11) REPORTS

a. The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all Sub-Recipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than thirty (30) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever occurs first.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments or FEMA Public Assistance funds until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Recipient shall provide additional program updates or information that may be required by the Division.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

f. The Recipient shall obtain engineering inspection reports for any new construction or installation. The Recipient shall furnish the reports to the Division within fifteen (15) days of receipt of the completed report.

(12) MONITORING

a. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the period of agreement to ensure timely completion of all tasks.

(13) LIABILITY

a. Unless Recipient is a state agency or subdivision, as defined in section 768.28, Florida Statutes, the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

(14) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

payments or partial payments, if applicable, after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

- a. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.
- c. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;
- d. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:
 - i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
 - ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
 - iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
 - iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(16) TERMINATION

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(17) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) 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 Division and 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. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes.

(18) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Statement of Assurances

Attachment D – Warranties and Representations

Attachment E – Certification Regarding Debarment

Attachment F – Foreign Country of Concern Affidavit

(19) PAYMENTS

a. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Recipient's quarterly reporting as referenced in paragraph (11) REPORTS of this Agreement.

b. If the Recipient is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in section 288.0656(2), Florida Statutes, the Division may issue payment of submitted invoices for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in this Agreement to the extent that federal or state law, rule, or other regulation allows such payments. The Recipient may elect in writing to exercise this provision as long as the Recipient is a county or municipality which is a rural community or rural area of opportunity, as defined in section 288.0656(2), Florida Statutes, and demonstrates financial hardship. A county or municipality located within a financially constrained county, as defined in section 288.67(1), Florida Statutes, is deemed to have demonstrated a financial hardship for the purposes of this provision.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of completion of the last deliverable.

(20) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(21) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

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

d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

g. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(g)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment E) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

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

j. Use of grant funds for travel is not authorized.

k. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

l. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

m. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division 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 this Agreement by the Division.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

o. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

p. This Agreement may be charged only with allowable costs resulting from obligations that will be incurred during the period of agreement.

q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

r. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

s. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes., or 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 been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

t. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(22) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(23) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

a. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.

d. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(25) ASSURANCES.

The Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT: Town of Fort Myers Beach, Florida

By:  _____

Name and Title: Dan Allers Mayor

Date: 1/31/2021

FID# 65-0632312

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By:  _____

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief,
as Authorized Representative.**

Date: 3/5/2021

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

EXHIBIT – 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO S SB 2500 (2023), ITEM 2676A:

State Project -

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **\$350,000,000**

2676A LUMP SUM
HURRICANE RECOVERY GRANT PROGRAM
FROM GENERAL REVENUE FUND 350,000,000

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to \$350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

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ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Project	Anticipated Expenditure Amount
Beach Renourishment	\$8,000,000.00
Legislative Appropriation Funds	\$8,000,000.00
Total Expenditures	\$8,000,000.00

II. BACKGROUND

As documented by the Hurricane Ian and Nicole Grant Recovery Program, \$350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sustained significant damage to their beaches due to major Hurricane Ian. The Town of Fort Myers Beach is awarded a one-time advance payment of \$8,000,000 for their Beach Renourishment Project excluding Cat-G project areas. They will place and grade beach compatible sand along the central and south segments of Estero Island which was lost due to major Hurricane Ian.

Below is the project that will be funded under this funding agreement:

Beach Renourishment:

The Town of Fort Myers Beach seeks to contract with a qualified contractor to purchase, transport, place, and grade beach compatible sand along segments of Estero Island, Fort Myers Beach, FL. The Town of Fort Myers Beach will contract professional services for the design, engineering, monitoring, environmental and willing costs associated with the beach renourishment. Funds will be used to dredge sand to place on beach for beach restoration for damage caused by major Hurricane Ian. Additionally, a dune will be built along the central and south segments of Estero Island where the FEMA Cat-B project Emergency Berm was created from 182S-210. The Town also experienced additional sand loss due to major Hurricane Ian along Estero Island, the mitigation work consists of filling in scour holes and filling in beach public access areas that got eroded out. Cat-G project areas will not be funded under this agreement.

III. SCOPE OF WORK

- A. Funds have been allocated to the Recipient for the Beach Renourishment Project on Estero Island, Florida. Funds shall be utilized in accordance with all local, state, and federal regulations.
- B. Eligible costs include all eligible costs under State Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas. Eligible costs include engineering reports, permitting, inspections, required environmental studies, design and construction costs for beach management, the creation of sand dunes, filling scours, and dredging along Estero Island.
- C. The project's measurable outcome is Estero Island Beach Restoration to satisfy Florida Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas.
- D. The Recipient shall provide an initial timeline. Table SW-1, "Initial Timeline and Estimated Allocation Schedule" or other similar instrument as approved by the Division may be used.

IV. TASK PRODUCTS

- A. Per Scope-of-Work Item III.D, Recipient shall prepare an initial timeline with key milestone activities/tasks schedule, including estimated start and end dates for each activity. Table SW-1 may be used to meet this deliverable.
- B. The Recipient shall provide the Division with copies of before photographs to document site conditions, site work progress, and completed site work.
- C. The Recipient shall provide the Division with the procurement documents, if the Recipient went out to bid for the projects listed and receipts for all purchases.
- D. The Recipient shall provide the Division with copies of pertinent site work regulatory reviews and permits for all projects under this agreement.
- E. The Recipient shall provide the Division with copies of all task products submitted to the Florida Department of Environmental Protection Agreement Number 23LE4.
- F. The Recipient shall provide the Division with copies of bid-ready construction documents and specifications for review and comment by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- G. The Recipient shall provide the Division with copies of as-built documents for review by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.
- H. The Recipient shall provide a completion report. The completion report shall demonstrate that the project meets the requirements for the projects.

V. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
- 2. Disallow all or part of the cost of the activity or action not in compliance;
- 3. Withhold further funding; or,
- 4. Take other remedies that may be legally available.

VI. SCHEDULE OF WORK

- A. No later than 30 days after the agreement's execution date, the Recipient shall provide the Division with Task Product IV.A for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- B. By April 30, 2024, and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline and submit an invoice for work accomplished in accordance with the Division approved cost allocation table referenced in Task Product IV.A.
- C. By mutually agreed upon date(s), the Recipient shall provide the Division with Task Products IV.B through F for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- D. By March 31, 2026, the Recipient shall provide a copy of the certificate of occupancy or completion or other appropriate written acceptance of completed work, or certification letter from the civil engineer showing that work meets specification of design, close-out documentation and final payment invoice.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Table SW-1. Initial Timeline and Estimated Allocation Schedule			
Project Name(s): Beach Renourishment			
PROJECT PHASE	Start Date	End Date	LAP Funds (FY 2023-2024)
Board Contract Approval			
Architectural & Engineering Services Firm Selection			
Site Survey and Soil Testing			
Spatial Needs Assessment			
Preliminary Design, 100% complete			
Permits			
Regulatory Review			
Bid Document(s) Development & Award			
Notice to Proceed/Mobilization			
Construction Project Management & Special Inspections			
Construction 25% Complete			
Construction 50% Complete			
Construction 100% Complete			
Sub-Totals		\$8,000,000	
TOTAL Estimated Project Cost			

A/E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment B

Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment C **Statement of Assurances**

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmental/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.
- (6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect

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a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.

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- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment D **Warranties and Representations**

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Codes of Conduct

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from _____

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment E

<u>Certification Regarding</u> <u>Debarment, Suspension, Ineligibility</u> <u>And Voluntary Exclusion</u>

Subcontractor Covered Transactions

- (1) The prospective subcontractor, NATIONAL MEETING SERVICES INC., of the Recipient 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 Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

NATIONAL MEETING SERVICES INC.

By: [Signature]
Signature

NATIONAL MEETING SERVICES INC.
Recipient's Name

William CASTLE President
Name and Title

DEM Contract Number

235 HATFIELD AVE SUITE 200
Street Address

ITD-25-05-PW
Project Number

Clermont FL 34711
City, State, Zip

9/15/2025
Date

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

ATTACHMENT F
FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT

Section 287.138, Florida Statutes, prohibits a Florida "Governmental entity"¹ from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual's personal identifying information if that entity is associated with a "Foreign Country of Concern."² Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a "controlling interest,"³ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled "Recipient" is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: <u>NATIONAL MEETING SERVICES INC.</u>		
Recipient FEIN: <u>22-3392696</u>		
Recipient's Authorized Representative Name and Title: <u>William Castle President</u>		
Address: <u>235 HATTEN AS AVE SUITE 200</u>		
City: <u>Clermont</u>	State: <u>FL</u>	Zip: <u>34711</u>
Phone Number: <u>201-628-2850</u>		
Email Address: <u>WCASTLE@NMSNJ.COM</u>		
Certified By: <u>[Signature]</u>		
AUTHORIZED SIGNATURE		
Print Name and Title: <u>William Castle President</u>		
Date: <u>9/15/2025</u>		

¹ As defined in Section 287.138 (1)(d), Florida Statutes.

² As defined in Section 287.138 (1)(c), Florida Statutes.

³ As defined in Section 287.138 (1)(a), Florida Statutes.



PO Box 491
Kearny, NJ 07032
(201) 246-1115 Fax (201) 997-6520
Toll Free 1-888-448-0009

Fort Myers Beach ITB-25-05-PW

Name: City of Fort Myers Beach
Address: 2525 Estero Blvd
City: Fort Myers Beach State FL ZIP 33931
Phone:

Date: 9/29/2025
Rept: J. Castle
Atn: M.Ashton
Terms: 30 Days

Item No.	Qty	Description	Unit Price	TOTAL
<u>1</u>	2500	Supply and Installation of 5/8 x 3/4 Mach 10 R900i Multi-Carrier Meter with Antenna	\$ 510.00	\$ 1,275,000.00
<u>2</u>	250	1" MACH 10 R900i Multi-Carrier Meter with Antenna	\$ 636.00	\$ 159,000.00
<u>3</u>	3000	R900 Cellular Antenna PLUS	\$ 60.00	\$ 180,000.00
<u>4</u>				\$ -
				\$ -
<u>4</u>				
<u>5</u>				
<u>6</u>				
<u>7</u>				\$ -
<u>10</u>				\$ -
<u>11</u>				\$ -
				\$ -
Total				\$ 1,614,000.00

Office Use Only

National Metering Services, Inc. Your full service meter contractor. Meter sales, service, meter system installation & turnkey packages available. Meter reading and billing services.

► Certified Meter Testing ▲ Wi-Fi ▲ Composite Lids ◀

Thank You

bidder

Meters

5/8" cost per meter #2500

Town cost \$353

Ackerman Plumbing

Cathcart \$1,224 \$3,060,000

National Metering Serv \$455 \$1,137,500

\$510 \$1,275,000

Utilties One \$236 \$590,000

Vanguard \$461 \$1,152,500

Antennas

1" cost per meter #250		Cost per antenna #3000	
	\$425		\$37
\$1,350	\$337,500	\$160	\$480,000
\$599	\$149,750	\$41	\$123,000
\$636	\$159,000	\$60	\$180,000
\$425	\$106,250	\$269	\$807,000
\$633	\$158,250	\$51	\$153,000

Curb stops		Spuds		Box an
5/8	1	5/8	1	Box
\$950	\$975	\$350	\$360	\$690
\$176	\$218	\$26	\$33	\$175
\$176	\$218	\$26	\$33	\$175
\$254	\$318	\$58	\$69	\$614
\$140	\$206	\$24	\$29	\$160

nd lid Bid without mltipling as needed items

lid

\$335 \$3,883,894

\$69 \$1,412,042

\$69 \$1,614,697

\$480 \$1,505,973

\$67 \$1,465,521

Total bid proposed.

\$3,881,160

\$202,655

\$1,619,790

\$202,655

\$1,822,445

\$1,505,044

\$1,641,624

	National Metering Service		
	5/8" cost per meter	#2500 meters	1" cost per meter
	\$454.80	\$1,137,000.00	\$599.35
	\$510.00	\$1,275,000.00	\$636.00
Cost difference	\$55.20	\$138,000.00	\$36.65
Total Cost difference			

e

#250 meters	Cost per antenna	#3000 antennas.
-------------	------------------	-----------------

\$149,837.50	\$41.00	\$123,000.00
--------------	---------	--------------

\$159,000.00	\$60.00	\$180,000.00
--------------	---------	--------------

\$9,162.50	\$19.00	\$57,000.00
------------	---------	-------------

\$204,162.50

1. **Request:**

Meeting Date: November 3, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH ACCEPTING AN AMENDED UTILITY EASEMENT FROM THE LEO JAMES DIBIASI LIVING TRUST, UTD 08/20/2025; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

During its public meeting on the 11th day of September, the Town Council accepted a Utility Easement from Leo J. Dibiasi, as Trustee of the Leo J. Dibiasi and Valerie J. Dibiasi Revocable Living Trust dated August 20, 2014 as part of a settlement agreement dated April 9, 2025, a copy of which is attached as Exhibit "C" to the proposed Amended Utility Easement Agreement. Prior to the Town's acceptance of the Utility Easement Agreement on the 11th day of September, 2025, title to the property upon which the utility easement is located was conveyed to The Leo James Dibiasi Living Trust, UTD 08/20/2025. Acceptance by the Town of an Amended Utility Easement Agreement is needed to fulfill the requirements of the settlement agreement from the current owner of the property where the utility easement is located before final disbursement of the funds agreed upon in the settlement agreement.

Attachments:

1. Res 25-319 Amended Utility Easement Dibiasi
2. Amended Utility Easement Dibiasi

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

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 - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Approved - 10/27/2025
Final Approval - 10/27/2025

RESOLUTION NUMBER 25-319

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
FORT MYERS BEACH ACCEPTING AN AMENDED UTILITY
EASEMENT FROM THE LEO JAMES DIBIASI LIVING TRUST,
UTD 08/20/2025; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Sec. 2(B), Art. VIII of the Florida Constitution and Sec. 166.021, Florida Statutes, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and may 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, during its public meeting on the 11th day of September, the Town Council accepted a Utility Easement from Leo J. Dibiasi, as Trustee of the Leo J. Dibiasi and Valerie J. Dibiasi Revocable Living Trust dated August 20, 2014 as part of a settlement agreement dated April 9, 2025, a copy of which is attached as Exhibit “C” to the proposed Amended Utility Easement Agreement; and

WHEREAS, prior to the Town’s acceptance of the Utility Easement Agreement on the 11th day of September, 2025, title to the property upon which the utility easement is located was conveyed to The Leo James Dibiasi Living Trust, UTD 08/20/2025; and

WHEREAS, acceptance by the Town of an Amended Utility Easement Agreement is needed to fulfill the requirements of the settlement agreement from the current owner of the property where the utility easement is located; and

WHEREAS, the action proposed in this Resolution is in the best interest of the residents of the Town.

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

Section 1. That the above recitals are true and correct and incorporated by reference as though fully set forth herein and are adopted as the legislative and administrative findings of the Town Council.

Section 2. That the utility easement as contained in the Amended Utility Easement Agreement is accepted by the Town as required by the referenced agreement.

Section 3. That this Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was 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 3rd day of November 2025 by the Town Council of the Town of Fort Myers Beach,
Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Vose Law Firm, Town Attorney

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

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

Nancy Stuparich, Esq.
Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789

AMENDED UTILITY EASEMENT

THIS AMENDED UTILITY EASEMENT ("Easement"), is made this ____ day of October, 2025, by and between e Leo James Dibiasi, as Trustee of The Leo James Dibiasi Living Trust, UTD 08/20/2025 ("Grantor") and the Town of Fort Myers Beach, Florida, a Florida municipal corporation ("Grantee"), whose mailing address is 6231 Estero Blvd., Fort Myers Beach, Florida 33931-4417.

RECITALS:

WHEREAS, Grantor is the owner of that certain parcel of real property located in the Town of Fort Myers Beach, Lee County, Florida more particularly described in Exhibit A and shown on the sketch attached as Exhibit B ("the Property") by virtue of that certain Quitclaim deed dated August 20, 2025 and recorded on August 28, 2025 in the Official Records of Lee County, Florida as Instrument No. 2025000232114; and

WHEREAS, Grantee is the owner of certain underground utility improvement, facilities and systems, and all related appurtenances ("Utility Improvements") located on a portion of Grantor's Property (hereinafter referred to as "Easement or Easement Property") as shown on Exhibit A-1; and

WHEREAS, pursuant to a settlement agreement executed by Grantor's predecessor in title and Grantee on April 9, 2025, a copy of which is attached as Exhibit "C," Grantee requested, and Grantor's predecessor in title agreed to grant Grantee an exclusive easement as provided herein for the construction, operation, maintenance and use of Grantee's Utility Improvements; and

WHEREAS, Grantor is agreeable to the terms and conditions contained herein and the execution of this Amended Utility Easement to correct the name of the Grantor in a Utility Easement previously recorded as Instrument 2025000276947 in the Official Records of Lee County, Florida by Grantor's predecessor in title.

NOW, THEREFORE, in consideration of the sum of Eighty-Five Thousand Dollars (\$85,000.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by this reference as fully as if set forth herein verbatim.
2. **Grant of Easement.** Grantor hereby grants, declares, dedicates, creates and establishes for the use and benefit of Grantee's utility system an exclusive perpetual easement upon, under, over, though, and across only the Easement Property, for the construction, installation, reconstruction, distribution, operation, maintenance, repair, replacement, cleaning and use of the Utility Improvements and any other rights associated therewith or otherwise useful or necessary in connection with the use and enjoyment of the Easement Property, together with the rights of

ingress and egress over and upon the Easement Property for the purposes of maintenance, replacement, repair and cleaning (collectively, "Grantee's Work") of the Utility Improvements.

Grantor warrants that Grantor has fee simple title to and possession of the Easement Property and that it has the right and authority to grant this Easement, and that Grantee, its successors and assigns shall have all of the rights to the Easement Property not otherwise inconsistent with the easement as stated herein. Grantor hereby reserves unto itself, and its successors and assigns, the right to utilize the Easement Property for such purposes as deemed necessary, advisable, appropriate or convenient by Grantor that do not interfere with Grantee's rights under this Easement, including but not limited to, the exclusive right to use, pass and repass over and upon the Easement Property, and to construct, reconstruct, replace, install, maintain and repair any improvements located or to be located over, under, across and upon the Easement Property, or any part thereof, including but not limited to a dock. The parties acknowledge that Grantor intends to construct a dock which extends over the Easement Property, which shall be removeable upon reasonable notice from Grantee to allow Grantee physical access to its improvements. Grantor shall be responsible for obtaining any required permits for construction of the dock, the cost of the dock and fees, and restoration of the Easement Property to allow Grantee's continued use and enjoyment of the Easement granted herein. Notwithstanding the foregoing, Grantee shall have the right upon reasonable notice to Grantor to alter or make improvements on the Easement Property required for its continued occupancy and access to its Utility Improvements.

This Easement and the obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and the benefits and burdens hereof shall run with the land. No action shall be taken by the Grantee, its agents, contractors or others on the property that would cause damage outside the Easement Property to the remaining property or the improvements located thereon.

3. **Release or Amendment of Easement.** This Easement shall not be released or amended in any manner without the written consent of Grantee.
4. **Enforcement.** The easements, covenants and agreements contained herein shall be enforceable by suit for damages, specific performance, declaratory judgment and/or injunctive relief, in addition to any other remedy provided by law or equity.

[Signatures to Follow]

IN WITNESS WHEREOF, the Grantor has caused this Utility Easement to be executed in Grantor's name.

Leo James Dibiasi, as Trustee of The Leo James
Dibiasi Living Trust, UTD 08/20/2025

Signed, sealed, and delivered in

STATE OF FLORIDA
COUNTY OF LEE

Print Name: LEO DIBIASI

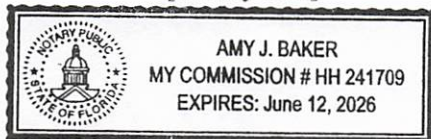
Witness: Claudia S Briten
Print Name: [Signature]
Address: 6231 Estero Blvd
City/State: Fort Myers, FL 33931

Witness: Lisa Hollywood
Print Name: Lisa Hollywood
Address: 6231 Estero Blvd
City/State: Fort Myers Beach, FL 33931

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of physical physical presence or
online notarization, this 21 day of October 2025, by Leo James Dibiasi, as Trustee of The Leo
James Dibiasi Living Trust, UTD 08/20/2025, who is personally know to me or who has produced
FL Driver License as identification.

[Notary seal]



[Signature]
Print Name Amy J. Baker
Notary Public, State of Florida
My Commission Expires: June 12, 2026

ACCEPTANCE BY TOWN

| This **AMENDED UTILITY EASEMENT** was accepted for public use by the Town of Fort
| Myers Beach, Florida, as authorized by action of the Town Council of the Town of Fort Myers Beach,
| Florida, at its meeting held on the 3rd day of November, 2025.

ATTEST:

**TOWN OF FORT MYERS BEACH,
FLORIDA**, a Florida municipal corporation

Amy Baker, Town Clerk

Dan Allers, Town Mayor

Date: _____

Date: _____

**Approved as to form and legality for use and reliance
only by the Town of Fort Myers Beach, Florida:**

Vose Law Firm, LLP, Town Attorney

EXHIBIT "A"

A parcel of land upon which infrastructure owned, operated and maintained by the Town of Fort Myers Beach which is shown in Exhibit A-1 and which is located within the following described property:

**Description of a Parcel of Land
Lying In
Government Lot 2, Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Portion of Outlot A, El Sol, Unit No. 1)**

A parcel of land lying in the State of Florida, County of Lee, Town of Fort Myers Beach, situated in Government Lot 2, Section 33, Township 46 South, Range 24 East, being that portion of Outlot A as shown in the Plat of El Sol Unit No. 1, a subdivision as recorded in Plat Book 11 at Page 63, public records of Lee County, lying adjacent to Lazy Way, 50.00 foot Right-of-Way as described in Miscellaneous Book 35 at page 459 and more particularly described as follows:

Beginning at the northwest corner of said Outlot A, thence N89°14'15"E along the north line of said Outlot A for 10.00' to the westerly line of a 60.00' wide canal as shown on said subdivision Plat of El Sol Unit No. 1, thence S00°46'21"E for 66.00 feet to the southerly line of said Outlot A; thence S89°14'15"W, along said southerly line for 10.00 feet to the westerly line of said Outlot A and the Easterly Right-of-Way line of Lazy Way, a 50.00 foot wide Right-of-Way as described in Miscellaneous Book 35 at Page 459, thence N00°46'21"W, along said westerly line for 66.00 feet to the Point of Beginning..

Containing 660 square feet (0.02 acres), more or less.

Bearings are based on the State plane co-ordinate system Florida West Zone NAD83/2007.

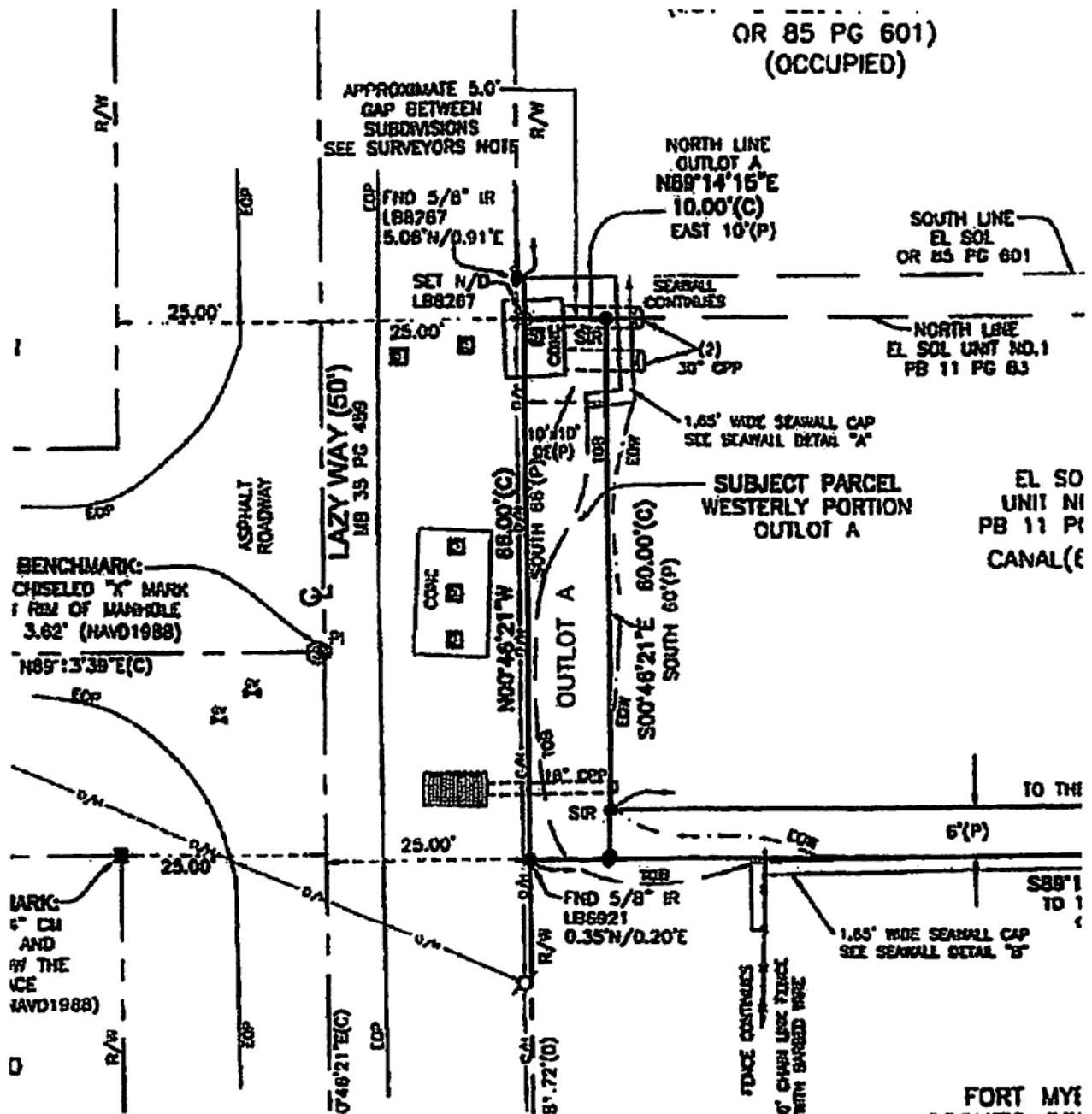
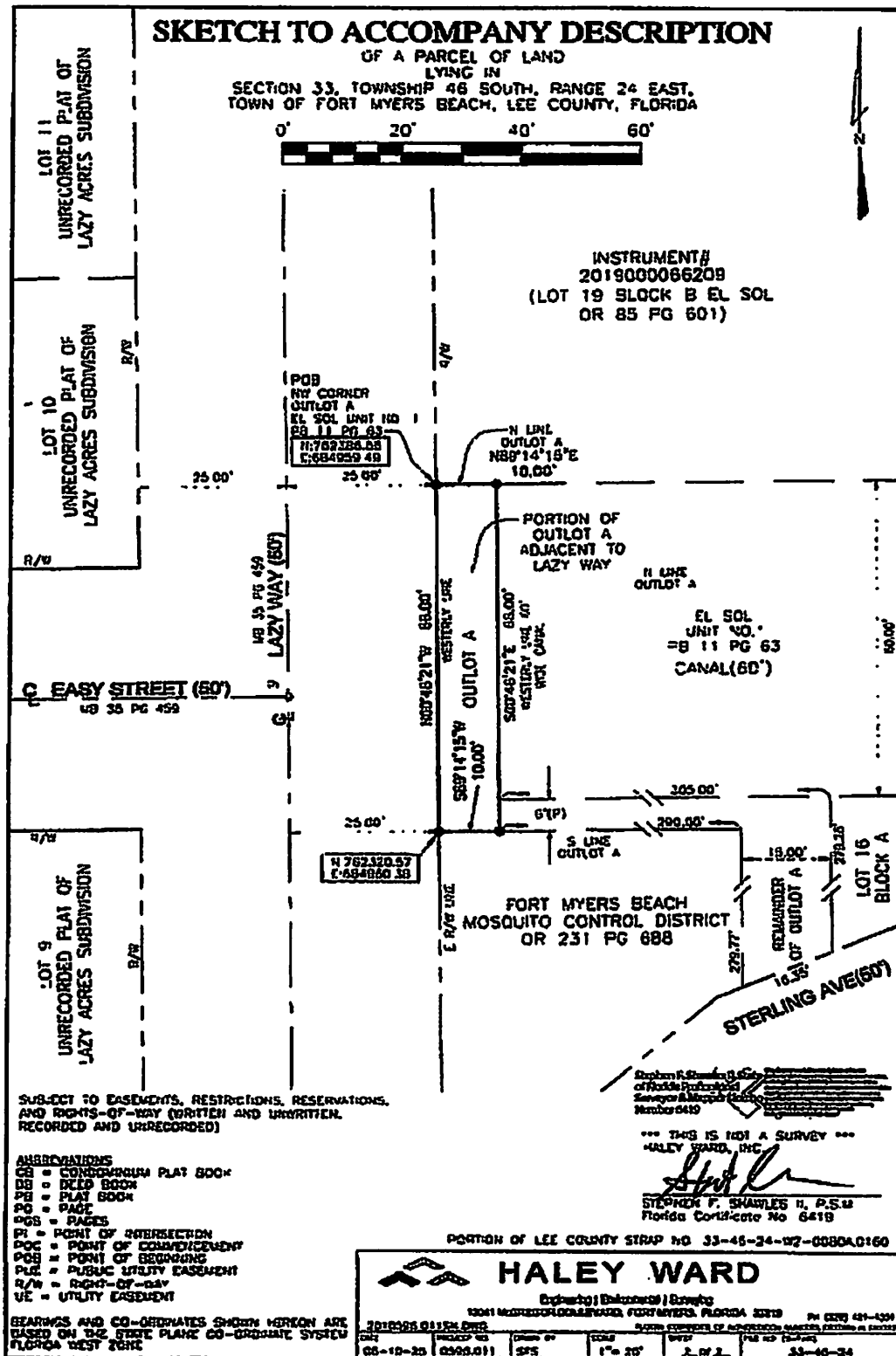
EXHIBIT A-1

EXHIBIT "B"



Settlement Agreement

LEO J. DIBIASI, TRUSTEE OF THE LEO J. DIBIASI and VALERI J. DIBIASI REVOCABLE LIVING TRUST, dated August 19, 2014 (collectively "Dibiasi"), and the TOWN OF FORT MYERS BEACH, hereby enter into this Settlement Agreement to formalize the agreements reached by the parties as resolution of Case No. 23-CA-005377 filed in the Circuit Court in the 20th Judicial Circuit in and for Lee County, Florida as follows:

1. The undersigned have agreed to settle all claims upon the following terms:

- (a) The Town will pay Dibiasi the total sum of \$85,0000 which includes compensation to Dibiasi and all attorney's fees and costs (inclusive of expert costs) following recording of the easement further described in Paragraph 1(b) below.
- (b) Dibiasi will grant the Town an easement for the drainage structures and an easement for the pipe which currently runs through the property together with rights to access the easement area. The Town shall be responsible for maintenance of the easement area. Prior to delivery, the easement shall be released from any and all existing encumbrances, unless otherwise accepted by the Town, with the exception of any existing mortgage(s), which will be subordinated to the Town's easement. The easement will be prepared by the Town and subject to review and approval by the Dibiasi's Attorney. The Town will be responsible and pay for the cost of a survey identifying the easement area. The Town shall be responsible for obtaining a

title report prior to delivery of the easement. Thereafter, the easement shall be presented to the Town Council for acceptance into the Town's records and recorded in the Official Records of Lee County, Florida at the Town's expense.

- (c) The Town will pay the mediator costs. Each party shall pay their own attorney fees.
- (d) Dibiasi will execute a specific release of any and all claims against the Town emanating from the inverse claim which shall be provided prior to recording of the easement. Such release shall be drafted by the Town and subject to the review of Dibiasi's attorney.

2. Upon execution of this Settlement Agreement and the Town's receipt of the specific release, the parties shall file a joint dismissal of this lawsuit with prejudice.

3. The parties agree and acknowledge that the foregoing terms of settlement are acceptable and have been approved the Town Council at a public meeting on the 17th day of March, 2025.

Signed, sealed, and delivered in the presence of:

Print Name: Clayton C. Johnson
Witness

Print Name: Leah M. Mena
Witness

LEO J. DIBIASI, as TRUSTEE OF THE
LEO J. DIBIASI and VALERI J.
DIBIASI-REVOCABLE LIVING TRUST,
dated August 19, 2014

Date: 4-3-2025

TOWN COUNCIL OF FORT MYERS
BEACH, FLORIDA

ATTEST:

BY: Amy Bale
Town Clerk

Date: April 7, 2025

BY: Dan Allers
Dan Allers, Mayor

Date: 4/7/2025

APPROVED AS TO FORM

BY: Nancy Strickland
Town Attorney