



Fort Myers Beach Town Council

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

Agenda

Monday, May 4, 2026

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. PRESENTATION

A. Presentation: Tidal Basin

An update on the current Elevation Grant and other HMGP projects in the Town.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Proclamation - Professional Municipal Clerks Week

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

IX. APPROVAL OF MINUTES

A. Town Council - April 6, 2026

B. Management & Planning Session - April 8, 2026

C. Town Council - April 20, 2026

X. CONSENT AGENDA

A. Resolutions 26-082 through 26-085; 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 26-086 through 26-089; Extension of Local Emergency - Tropical Storm Helene

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

- C. Resolutions 26-090 through 26-093; Extension of Local Emergency - Tropical Storm Milton

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

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Ordinance 26-07; Smoking and Vaping

This legislative agenda item is a Second Reading and Final Public Hearing on proposed Ordinance 26-07.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

XIII. ADMINISTRATIVE AGENDA

- A. Special Event: 4th of July Fireworks Show & Parade

Approval of a Special Event for the Town of Fort Myers Beach Fourth of July Parade and Fireworks on July 4, 2026, including a parade on Estero Blvd. beginning at Bay Road to Old San Carlos Blvd. from 9:30 AM to 12:00 PM and a fireworks display from approximately 9:15 PM to 11:30 PM, including use of the Town's right-of-way, associated road closures, and waiver of the Town's noise ordinance, as requested by the Town of Fort Myers Beach, and subject to approval by the Fort Myers Beach Fire

Control District, Lee County Sheriff's Office, and all required agencies.

B. Resolution 26-095; Quit Claim Deed to Vidalin

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE CONVEYANCE OF CERTAIN SURPLUS REAL PROPERTY BY QUITCLAIM DEED TO JOHN S. VIDALIN AND CAROL T. VIDALIN; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID QUITCLAIM DEED; AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY ACTIONS TO EFFECTUATE THE CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.

C. Resolution 26-076, Approve Agreement with Opulent Outlines, LLC RFQ-26-02-AD

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND OPULENT OUTLINES, LLC UNDER RFQ-26-02-AD FOR THE FORT MYERS BEACH ENGINEERING & ARCHITECTURAL SERVICES BAY OAKS COMMUNITY POOL REHABILITATION PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$135,000.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

D. Resolution 26-093; Award of ITB-26-10-EN for Estero Island Canopy Restoration

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-26-10-EN TO TIDEWATER LANDSCAPE OF FLORIDA, LLC AS THE LOWEST, RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND CANOPY RESTORATION PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND TIDEWATER LANDSCAPE OF FLORIDA, LLC SUBJECT TO LEGAL REVIEW AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; 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.

TOWN OF FORT MYERS BEACH

Proclamation

Whereas, Municipal Clerks, are among the oldest public servants and serve a vital, time-honored role in local government; and

Whereas, the Clerk's Office provides a critical link between our residents and their governing bodies; and

Whereas, Municipal Clerks have pledged to serve as the central source of information on local government operations, upholding neutrality and delivering equitable service to all; and

Whereas, Municipal Clerks in our community pursue ongoing professional development to strengthen the Clerk's Office and enhance service to our residents; and

Whereas, it is appropriate to recognize the accomplishments of the Office of the Municipal Clerk;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fort Myers Beach, Florida, that the week of May 3 through May 9, 2026, is hereby recognized as

Professional Municipal Clerks Week

Given under my hand and the seal of the office of the Mayor this 4th of May 2026.

Dan Allers, Mayor



Fort Myers Beach Town Council

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Monday, April 6, 2026

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford, Council Members John King, Rebecca Link, and John McLean.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Allers announced the following change: Under XIII. Administrative Agenda, the Castle Beach Condo Association item will be replaced with a special event permit item. Town Manager McKannay noted that this permit is in connection with the Glow by the Gulf event in mid-April.

Council Member King moved to approve the final agenda as amended, seconded by Council Member McLean.

The motion carried unanimously.

V. PUBLIC COMMENT

Chris Rydell King, Anchorage Advisory Committee Chair, announced that Cruiser Appreciation Day is this Sunday at Bayside Park. She thanked Council, town staff, Harbor Master Curtis Ludwig, PIO Abigail Eberhart, and the Anchorage Advisory Committee. She also recognized the following monetary sponsors: Florida Marine Contracting & Recovery, LLC, Fly Heli Tours, Sam Lurri, John and Kathy Nash, and Ed Schoonover. She then acknowledged the following participating organizations: Bay Oaks, the Coast Guard Auxiliary, Estero Island Garden Club, Fort Myers Beach Art Association, Fort Myers Beach Chamber of Commerce, Fort Myers Beach Yacht Club, Friends of the Library, Friends of the Mound House, Keep Lee County Beautiful, Marine Environmental Resource Task Force, Native Plant Society, Pod Protectors, San Carlos Bay Sale and Power Squadron, Turtle Time, Inc., What's Up FMB, and the FMB Lions Club. She welcomed all to attend and meet new people and make connections.

Ed Corea expressed his wishes that there would be more progress for the

development of Wyndham Gardens. He believes that the property would be a big benefit to the community. He would like Council to find a path, move forward, and pivot as needed.

Howie Hoffman of the Fort Myers Beach Softball League Triple Deuces thanked all for the wonderful season. He appreciated everyone's support.

VI. PRESENTATION

A. Lee County Property Appraiser - Honorable Matt Caldwell

Lee County Property Appraiser - Honorable Matt Caldwell

The Honorable Matt Caldwell, Lee County Property Appraiser, presented the outlook of the tax roll for 2026. He noted that the operative date is January 1st. Factors for valuation include ownership, as well as the use and character of the property. Honorable Caldwell stated that a draft would be published on June 1, 2026, with official numbers provided on July 1, 2026. Council will then use that data for its budget decisions and adopt a millage rate. The Lee County Property Appraiser's office would then prepare opinions, which would be included in the trim notice. Mr. Caldwell noted that the just value, or the market value, has shown a slight decrease. The taxable value, however, remains largely the same. He explained that the majority of properties are covered by the non-homestead 10% annual assessment cap and the Save Our Homes Homestead 3% assessment cap. While taxes may increase when there is a downward market trend, the taxable value will never exceed the just value. In cases where there is a significant decrease in the market, taxes may also decrease. Mr. Caldwell reported that a restoration constituted a majority of the total construction value of around 400 million dollars. New taxable construction represented a much smaller percentage. He pointed out that the town has a significant number of condominiums, a category which showed some of the largest downward trends in the market.

Council Member McLean asked to confirm the numbers for new reconstruction and restoration. Mr. Caldwell provided a legislative summary of the standard post-disaster statutory formula for tax relief. He stated that properties that were inhabitable as of January 1st would be removed from the tax roll, and, once they become habitable, will return as new construction with retained cap benefits, depending on statutory limits. He stated that around 66 million would truly add taxable value. Council Member McLean inquired if the homestead benefits would be ending next year. Mr. Caldwell responded that they were not and noted that he looks for good faith efforts in rebuilding and that it would come to an end this year. He reported that around 300 of 25,000 properties ultimately did not show sufficient evidence. Notice was sent out to these properties. He additionally noted that in most cases, the owners did not wish to rebuild and have moved.

Council Member Link asked how the office determines if someone has returned to their home. Mr. Caldwell noted factors like new permits, individuals claiming the property as a mailing address for licenses and voter registration, and observations from personal visits. He stated that, in the

beginning, the standards were more broad. However, the office has become stricter as more time has elapsed since the hurricane. Council Member Link also inquired about cases where homeowners see reduction in building value and increases in land value. Mr. Caldwell responded that such adjustments were often the products of FEMA's fifty-percent restrictions and the scarcity of buying opportunities in ideal locations.

Vice Mayor Safford inquired about the outlook for 2027 and 2028. Honorable Caldwell emphasized the unpredictability of the market and identified persistent inflation as its single largest driver. He also mentioned events such as the COVID real estate boom and individuals returning following the storm. He likened the rate in the future to be similar to that of 2012-2014.

Council Member King extended his appreciation to the office for their work. He asked if all but the 300 properties were back or would be back by January. Mr. Caldwell answered that 300 properties did not show any efforts and that around 2,000 to 3,000 properties are looking to be done by this year. The council member then inquired about predictions on the governor's proposals for removing ad valorem and homestead credits. Mr. Caldwell stated that he was leaning towards the belief that no action would take place. He highlighted the complexity of the policy and provided that there is currently a lack of agreement. He announced that the Taxation and Budget Reform Commission will be seated on January 27. He believes that any ballot issues would most likely revolve around the homestead credit. He expressed his preference for changing the credit from a fixed number (\$50,000) to a percentage, which would be more equitable and would better adapt to inflation.

Mayor Allers noted that the numbers presented were encouraging. He stated that he is still hearing concerns from individuals about the different adjustment trends for land value and building value, especially when owners invest a significant amount of money to rebuild their homes. Mr. Caldwell highlighted the change in buyers. They are no longer looking for single-household properties. He provided that owners should not rely on property tax appraisals for whole-house projects. Instead, they should seek a private appraisal. Mayor Allers asked if those other valuations would then cause increases to the owner's property taxes. Mr. Caldwell stated that he does not use those reports.

Town Manager McKannay thanked Mr. Caldwell.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member McLean highlighted the successes of the various events last week. Council Member Link expressed her thanks to town staff, Town Manager McKannay, Mayor Allers, Abigail Eberhart, and Deputy Town Manager, Dr. Kohler, for the Open Town Hall. She believes there should be more of these events.

Vice Mayor Safford thanked the seasonal residents and community for the successful season.

Council Member King extended his congratulations to the Fire Department and Fire Station 31. He also expressed his thanks to town staff, the Mayor, and the Town Manager for their work on the Open Town Hall. Mayor Allers wished Tom Yozzo a happy retirement.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Appointment of Members to the Local Planning Agency****Appointment of Members to the Local Planning Agency**

Mayor Allers announced that there is one applicant for the one vacant position, Ed Schoonover.

Council Member McLean voted for Mr. Schoonover. Council Member Link voted for Mr. Schoonover. Vice Mayor Safford voted for Mr. Schoonover. Council Member King voted for Mr. Schoonover. Mayor Allers voted for Mr. Schoonover. All votes have been verified by all members of Council.

Council Member King moved to appoint Ed Schoonover to the Local Planning Agency, seconded by Vice Mayor Safford.
The motion carried unanimously.

Council Member King noted that Mr. Schoonover may need to resign due to his current involvement in three committees. Mayor Allers asked if the resignation needed to be done immediately. Town Attorney Stuparich commented that she will look into it and that a waiver may be possible.

IX. APPROVAL OF MINUTES**A. Town Council Meeting - March 2, 2026**

Council Member McLean moved to approve the minutes as corrected, along with the Town Council minutes of March 16, 2026 (as corrected) and the Town Council Management & Planning Session minutes of March 5, 2026, seconded by Council Member King.

The motion carried unanimously.

B. Town Council Management & Planning Session — March 5, 2026

Council Member McLean moved to approve the minutes, along with the Town Council minutes of March 2, 2026, and of March 16, 2026 (as corrected), seconded by Council Member King.

The motion carried unanimously.

C. Town Council - March 16, 2026

Council Member McLean noted that one correction under "Proposed Ordinance: Smoking/Vaping": the last word in the last sentence of the second paragraph should be "latter" not "former."

Council Member McLean moved to approve the minutes as corrected, along with the Town Council minutes of March 2, 2026 and the Town Council Management & Planning Session minutes of March 5, 2026, seconded by Council Member King.

The motion carried unanimously.

X. CONSENT AGENDA

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

The motion carried unanimously.

- A. Resolutions 26-060 through 26-063; Extension of Local Emergency - Tropical Storm Debby

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

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

The motion carried unanimously.

- B. Resolutions 26-064 through 26-067; Extension of Local Emergency - Tropical Storm Helene

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

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

The motion carried unanimously.

- C. Resolutions 26-068 through 26-071; Extension of Local Emergency - Tropical Storm Milton

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

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

The motion carried unanimously.

XI. ITEMS REMOVED FROM CONSENT AGENDA**XII. PUBLIC HEARINGS****A. Ordinance 26-07; Smoking and Vaping**

This legislative agenda item is a First Reading and Public Hearing on proposed Ordinance 26-07. If approved at First Reading, a Second Reading and final adoption hearing will be scheduled for May 4, 2026 at 9:00 AM or at another time identified by Town Council.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reiterated that the ordinance is currently on first reading and that there was a policy discussion at the last Management & Planning Session. She provided a summary of the legality of the ordinance. While the state government has generally preempted the regulation of smoking, there is carve-out language allowing local governments to regulate smoking and vaping in public parks or beaches within their jurisdictions. In the case of Fort Myers Beach, this would include Bodwitch Point Park, Lynn Hall Memorial Park, and the Pier. She stated that the state has already defined smoking and vaping, with the former term expressly excluding unfiltered cigars. Deputy Town Manager, Traci Kohler said that she had received some questions about the proposed ordinance's effects on grant eligibility. While a smoking ordinance is rarely mandatory, it may serve as a tiebreaker, tipping the scales in the town's favor in grants related to environmental protections and beach cleaning initiatives. She noted that the ordinance can also be cited in grant narratives for the purposes of tourism, public health, visitor experience and sustainability.

Mayor Allers noted that there was a scrivener's error and that Crescent Beach Park was not included.

Council Member McLean asked whether the definition also covered non-tobacco products that are smoked. He provided herbal cigarettes as an example. Town Attorney Stuparich stated that she would look into the question.

Council Member Link emphasized that the filters are a problem for wildlife. She provided that she had a neighbor who would roll her own cigarettes because of her concerns for the environment. Town Attorney Stuparich asked if there is a request for a carve-out for unfiltered cigarettes (such as rolled cigarettes) and noted the potential difficulties in enforcement.

Vice Mayor Safford expressed his concerns about vaping, particularly about

disposable vaping products.

Mayor Allers noted that he received a question on whether an individual smoking inside a car, located at a beach access, would violate the ordinance. Town Attorney Stuparich responded that there probably would not be enforcement in that case and also provided that exclusions can be placed in the ordinance for the specific areas. Mayor Allers stated that he did not want to amend any language at this time.

Public Comment:

Hunter Shamlian, owner of Paradise Vape and Smoke on Fort Myers Beach at Seagate Plaza, agreed that littering is the biggest issue on beaches. He noted that users have a greater tendency to hold onto battery products, which are expensive. He believed that such ordinances should take place at state parks, where people generally congregate with families. He, however, asserted that, on the open beach, individuals tend to use nicotine products when they drink and pointed out that these consumers bring revenue to local businesses. He expressed hope that strict enforcement would not create negative impacts on his business.

Sally Kreuscher, Director of Community Health and Benefit at Lee Health and chairperson of Tobacco Free Florida, provided that Tobacco Free Florida represents a coalition of local organizations with the purpose of advancing community health. She listed partners, including the School District of Lee County, the American Heart Association, Drug-Free Lee, the Youth Services Coalition, the Florida Department of Health, and the National Guard Counterdrug Program. She noted that some of the individuals from these organizations are present at the meeting. She expressed their position in support of the ordinance, which they believe serves to protect resident health and wellbeing while also preserving the beauty and charm of the community. Ms. Kreuscher provided that tobacco is one of the leading preventable causes of disease and death. She referred to similar ordinances from the city of Sanibel, the city of Fort Myers, and the Lee County Board of County Commissioners, noting that there were few enforcement issues in those cases. She added that this ordinance will help create healthier environments, decrease litter, promote healthier lifestyle choices, motivate users to quit tobacco, and reduce secondhand smoke, which is especially danger to children, older adults, and individuals with chronic health conditions. While she did point to the potential benefit to the local tourism industry, she emphasized the importance of safeguarding public health.

Public comment closed.

Mayor Allers inquired if it would be possible to strengthen the language on littering of battery products. Town Attorney Stuparich responded that enforcement would be through immediate citation. Town Manager McKannay emphasized the prioritization of education. He noted that if individuals then willfully choose not to comply, then actions would be taken. All violations must be witnessed by and then acted upon by compliance officers.

Council Member Link agreed on the use of education and of a softer approach at the beginning of enforcement. She stated that she would like to

see signs at or near beach locations. She also suggested the use of escalating penalties for repeat violations.

Council Member King moved to approve the ordinance for a second reading on May 4, 2026, seconded by Vice Mayor Safford.

The motion carried unanimously by roll call vote.

XIII. ADMINISTRATIVE AGENDA

- A. Resolution 26-073; Dune Management Plan Memorandum's of Agreement
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE TOWN MANAGER TO EXECUTE MEMORANDUMS OF AGREEMENT BETWEEN THE TOWN AND BEACH FRONT PROPERTY OWNERS IN ACCORDANCE WITH THE TOWN OF FORT MYERS BEACH DUNE MANAGEMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.

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

Mayor Allers asked if these Memorandums of Agreement would allow for flexibility while still following the town's Dune Management Plan. Mr. Chustz responded affirmatively and noted that these agreements would allow for variation from the schematics while still following the town's code on salt-tolerant vegetation for the coastal area.

Council Member King inquired if individuals signing up for easements were provided with this information. Mr. Chustz answered that they were and that this was outlined in the plan.

Council Member Link inquired if these agreements would be available for the public to view. Mr. Chustz believes the documents will be on public record.

Town Attorney Stuparich asked for the number of memorandums that currently exist. He responded that there is one at this time but gave an estimate of 24 to 48 future agreements. The Town Attorney expressed her concerns about recordkeeping, as these documents would not come forth to Council and thus would not be recorded within the minutes. Mr. Chustz noted that he was open to suggestions. Mayor Allers cautioned the use of posting under the term "permit." Town Attorney Stuparich identified recording as a costly but simple method and noted the importance of visibility during the due diligence search for property transfers. She, in response to Council Member's Link request for consistency, provided that a standard memorandum of understanding exists and recommended that any significant deviations be brought forward to the Council.

Council Member McLean sought confirmation that the memorandums would allow for options beyond the three choices of planting. Mr. Chustz responded affirmatively, citing examples and needs for town oversight in some of these options.

Mayor Allers asked Town Attorney Stuparich if it would be possible to add a

memorandum tab that would be visible during a due diligence search. She responded that this would be a viable option.

Council Member Link inquired about the penalties for noncompliance. Mr. Chustz provided that there are various avenues, including treating the issue as a code violation. He also mentioned that there were methods under the Dune Management Plan.

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

The motion carried unanimously by roll call vote.

B. Resolution 26-072, L0195 FDEP Grant Approval for Downtown Stormwater Mitigation Phase I

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION THROUGH THE FY25-26 STATE APPROPRIATIONS FOR THE FORT MYERS BEACH STORMWATER DOWNTOWN MITIGATION PHASE I PROJECT IN THE AMOUNT OF \$292,500.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS; PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet.

Council Member King requested an overview of the matching and funds. Jeff Hauge, Community Services Director, provided that the projects submitted were in the downtown area and that this was a tiered system throughout the town. He noted that this location can flood heavily, which would impact how individuals can leave the island if there is an issue around Estero. He added that they are applying for stormwater funds and that this would be another pot of funding they would be able to use.

Vice Mayor Safford inquired if duck bills now exist for all outflows. Mr. Hauge responded that there were and that they discovered, later on, that private ones are present that will back up the system. They will continue to reach out to owners and investigate the matter. Vice Mayor Safford then asked if the town could require owners to put out duckbills or pay to have them placed.

Mr. Hague noted that the town can highly recommend them. Mayor Allers posed a question regarding easements. Mr. Hauge is unaware of any that exist but will follow up. Town Attorney Stuparich offered the use of licenses to allow for town equipment on private property. She stated that she will coordinate with staff.

Council Member McLean confirmed with Mr. Hauge that the item was previously budgeted.

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

The motion carried unanimously by roll call vote.

C. Castle Beach Condo Association – AMENDED

Termination of Easement with Castle Beach Condo Assoc. and entering into Maintenance Agreement. (Documents to follow.)

Agenda Item C was **pulled from the agenda** and **replaced with a Special Event Permit request** titled: *“Glow by the Gulf, a New Beachside Wellness Experience.”*

Mayor Allers read the revised item into the record.

Town Manager McKannay explained that the Special Event Permit item did not meet the standard agenda deadline due to timing constraints; however, it had been reviewed and approved by staff, the Public Safety Committee, and other relevant parties.

Dawn Miller, representing the applicant, provided overview of the event.

Council Member McLean expressed support for the event and had no questions.

Council Member Link asked if there was any feedback from Santini Plaza and if there were any parking impacts. Dawn reported a positive response, as the event would draw additional traffic and potential revenue for the area and confirmed there are no anticipated parking concerns.

Vice Mayor Safford thanked Dawn for her efforts in coordinating events off-season.

Council Member King echoed his remarks and welcomed back Daniel Ren.

Mayor Allers also expressed his appreciation for the event and noted the potential use of a recurring Special Event Permit for future occurrences. Dawn confirmed the event will be held annually.

Council Member King moved to approve the Special Event Permit “Glow by the Gulf, A New Beachside Wellness Experience” seconded by Council Member Link.

The motion carried unanimously by roll call vote.

XIV. FINAL PUBLIC COMMENT

None

XV. TOWN MANAGER'S ITEMS

Town Manager McKannay extended his congratulations to Ed Schoonover on his appointment and noted that the staff looks forward to working with him.

He also provided an update on canal dredging. He noted that he reached out to the Jacksonville District Corps of Engineers. He has connected with their staff on the application process for congressionally approved projects. He emphasized the role of maintenance for funding eligibility. He noted that there are no guarantees but that there is progress. Staff will continue moving forward.

Regarding negotiations with the Fort Myers Beach School District, Town Manager McKannay reported that he and the superintendent agreed to pass along discussions with Council and the school board. He believes that there will be a school board workshop and school board in the near future. Additional details have not been released at this time.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich thanked Council for their appointment of Ed Schoonover. She recognized Tom Yozzo for all of his work and contributions to the Code Enforcement Department.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Safford announced that the Community Foundation is holding their Casino Night at Margaritaville on Saturday. He also reminded all that the Cruiser Appreciations Day is on Sunday. He hopes that both events will be well-attended. Lastly, he noted that the final Charter Review Commission will be held on April 7 and that the TDC meeting will be on Thursday.

Council Member McLean thanked Tom Yozzo and his support of the town. As part of the Anchorage Advisory Committee, he noted that Cruiser Appreciations Day would be well-attended and a great event overall. He also called attention to the open slot on the committee and requested an announcement for recruitment purposes. He has worked with Chair King on the committee handbook and will be providing it to staff before eventually coming before Council.

Mayor Allers wished the best for both events this week.

XVIII. ADJOURNMENT

Council Member King moved to adjourn. The meeting adjourned at 10:38 a.m.



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Wednesday, April 8, 2026

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford and Council Members John King, Rebecca Link, and John McLean.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: Shoreline Protection Due Diligence Protection Study (Wave Wall)

Project update from JR Evans Engineering

Elizabeth Fountain, Felicia Munford, and Austin Wise from J.R. Evans Engineering, P.A. provided an update on the current completed work, findings, and next steps on the current shoreline due diligence study. Ms. Fountain stated that the firm has done an island-wide data collection and analysis. They used drones to gather footage that captured the entire island's conditions and conducted site visits to specific properties to characterize existing conditions and assist with coastal analysis. The firm also completed island-wide spatial analysis to document all existing surge information that is available through FEMA, as well as a site-specific wave propagation modeling analysis to identify the criteria for shoreline protection features. The team focused on the target top elevation needed for walls and structures to mitigate the wave action enough to lower the risk of damage to landward structures. Mr. Wise then reported that, during the island-wide data and spatial analyses, the firm first looked at the island as a whole and identified priority areas, locations that would be subject to the greatest amount of damage. One of the exhibits, a flood zone map, was projected during the presentation. He explained the various boundaries and the corresponding wave heights for each area. He noted that the exhibit was based on FEMA's identified conditions for a 100-year storm, or a 1% annual chance storm. The second portion of the analysis focuses on maximum stillwater elevation, or

maximum storm surge elevation. Such data would indicate what the elevation would be, if the water is completely still. Wave height would be added to this number. The team found that the center of the island would have the highest levels, with lower values towards the ends. Ms. Fountain noted that the middle of the island, due to its concave form, draws in the surge. Mr. Wise added that because Estero Island is bowl-shaped, the area would catch the greatest amount of water, which does not spread until it reaches a specific height. He said that the firm is still in the process of reviewing the zoning and planning criteria on the island but emphasized that this work is still in progress and can be very site-specific. The team is currently looking at the concentration of land uses, like commercial or condominium. Beach fortification would benefit all properties behind those improvements.

Mayor Allers asked if the team used zoning districts to determine the process for building fortification. Ms. Fountain clarified that the analysis was used to determine the design criteria, as they believed there would be variations and unique opportunities in different parts of the island.

Ms. Fountain reported on the findings of the site-specific wave modeling and noted that structures would need a 7.5 to 8.5 feet to reduce wave height and go from a VE to an AE zone category. She cited multiple factors that impact a property's specific requirements, including ground elevation and the presence of additional improved property.

Mayor Allers confirmed with the team that the elevation would be based on the actual elevation. He also asked how high the wall would be, as compared to the town's sand berm project. Ms. Fountain answered that the project would be landward and would not interfere with the engineered beach and dune plantings. She noted that this fortification would be the second line of defense but would be able to withstand the forces of a 100-year event. Mayor Allers then inquired if, in the event of such a storm, the sand berm would eventually be pushed up against, or even over, the wall. She responded that that could certainly be the case and also noted that the team is currently working on hydrodynamic modeling as a visual demonstration of this analysis.

Ms. Fountain reported that there would ultimately be about a two to three feet difference between the top of the wall and ground elevation. Mr. Wise added that this would be based on the current ground level, which can be supplemented with additional nourishment. Such smaller improvement opportunities can bolster the wall and assist during smaller storms.

The team presented illustrations of potential structures for site-specific areas, including Times Square and a typical single-family house structure. In both locations, Mr. Wise noted that there would be continuity through overlapping structures, which would break any incoming waves and allow beach access to individuals. He also stated that the purple dashed line represents what FEMA identifies as a primary frontal dune (PFD). He disagreed with the agency's identification, stating that the area is flat and does not have the characteristics of a PFD. There was a question from Council on the team's proposal to place the structures behind the setback line. Mr. Wise provided

that it was a decision choice. The team also explained that the hydrodynamic modeling will help to capture any potential risks to other properties created by the structures.

Mayor Allers inquired if the change in the flood zone maps would also reach more inland properties. Ms. Fountain responded that this would most likely not be the case. Nearby properties, however, may have one foot of their base elevation lowered. Council Member McLean asked what beach accesses would look like. Ms. Fountain believed that there would be a typical boardwalk or breaks with an offset. She also pointed out that walls do not need to be straight and can take on multiple shapes or forms. Council Member Link confirmed with the team that breaks would be needed at the beach accesses. The team presented visual examples of the structures. Mayor Allers requested photos of the projects for Bonita and Marco for the next presentation, to show a better understanding of what the structures would look like locally.

The next site-specific study was on Newton Park, a public space towards the center of the island. Mayor Allers confirmed with staff member Chadd Chustz that the illustration currently does not show the beach nourishments and requested that staff provide this data to the firm. Ms. Fountain noted that the studies would verify the structural capacity of the existing wall. Vice Mayor Safford asked if investigations would need to be conducted on the entire wall or a portion of the wall. She responded that the latter would be sufficient.

Council Member Link questioned if scour protection would be needed along the wall. Ms. Fountain answered that there would need to be landward protection, and the team has proposed a splash pad, which could be a pedestrian path or sidewalk. Council Member Link then stated she was more concerned about the seaward side and sand erosion. Mr. Wise expressed his preference for scour protection entirely around the wall but noted the permitting issues. One alternative is to build a stronger wall with deeper paneling and to replace sanding as needed. Another potential method is to use rock formations, with enough sand covering to meet sea turtle nesting standards. Ms. Fountain said that, for developed areas like Times Square, scour protection is not as much of a concern.

The last site-specific study focused on Castle Beach. The limited amount of space does not make it ideal for building large structures. However, this location may be a great candidate for ecological restoration with an added series of dunes of approximately five feet. Council Member King noted that there may be existing critical wildlife and nesting birds in that particular area. The firm's next steps include creating hydrodynamic models and conceptual cross-sections, as well as identifying potential funding sources and strategies. They are also working in parallel with property owners, including some at Times Square, for specific properties' wave mitigation structures. Mayor Allers confirmed with the team that such plans would be integrated with the overall town project. There was a question about the status of the approval process. Ms. Fountain responded that they were very close to completion, with a current pause in state permitting until an ultimate plan is finalized.

FEMA has also provided conditional approval. She described the most recent approval at the state level for Hickory Island. They will receive certification in the near future. Ms. Fountain asked if Council had any requests for additional locations to be reviewed at this time. She believes that the site-specific studies shown today represent the island as a whole.

The team then transitioned into the topic of public spaces and structure features. Ms. Fountain emphasized that these structures can be aesthetically pleasing and fit in with its environment. Mayor Allers commented that it would be interesting to see the public's views. She agreed and noted that she had a similar idea of a survey to identify the community's priorities and needs. He added that property owners may provide essential information in what trade-offs they would be willing to accept.

The group provided two additional discussion points to Council: additional target areas and the possibility of review of a pilot project opportunity at the public parking area near 1240 Estero Boulevard. Mayor Allers noted that it may be a good idea to discuss this project with the property owners on either sides, so that there would be a larger sample size. He has personally been in contact with both, and they have expressed their interest in involvement. Ms. Fountain then described a current study that the Florida Gulf Coast University is conducting on hybrid dune conditions and structures underneath dunes.

She noted that they would love to be involved and that it would be a good opportunity for the town to show their support in their programs. There were signs of support voiced by some Council Members, with no objections to the involvement. These topics are being discussed and taught in coastal engineering classes in several Florida universities. Mr. Wise added that, during his own schoolwork, he was taught to use a holistic approach before identifying limitations based on the space. There were ways to incorporate nature into hardened structures, gaining benefits from both aspects. Council Member Link mentioned the potential funding opportunities that may be available if the town became involved with the program.

Council Member King asked if the team is considering a 500-year event or a 100-year event. Mr. Wise responded that, for this town, it would be stronger than a 100-year event.

Vice Mayor Safford and Council Member Link thanked the team.

Council Member McLean also expressed his appreciation and commented that the town should prioritize placing this information before the public. He also highlighted that, once structures are built, adjoining properties will face increasing needs to follow suit, as they could face greater risks in exposure. He noted that this pattern can help properties along the beach to willingly participate. Vice Mayor Safford agreed and cited to similar cases in the past. Mayor Allers emphasized the importance of education, which can be used as an investment to ease the buy-in process between the town and the owners. Council Member King asked about the classifications for Hurricane Milton and Hurricane Helene. Mr. Wise noted that those would be closer to 25-year or 50-year storms, with Hurricane Ian being a 100-year storm. There was a subsequent inquiry from the Council on how the walls would break a wave

with a stillwater elevation of 11 feet. Mr. Wise responded that approximately 80% of the wave would be above that level, and that the wall would break the entirety of the wave, dissipating its energy throughout. Mayor Allers commented that, with the decrease in energy, the structure would also reduce scouring.

Council Member McLean inquired about the process of determining and predicting whether a FEMA line would be moved. Ms. Fountain noted that there would be similar analyses to the ones done for this project. The team would also conduct a structural and coastal analysis. She identified the various FEMA requirements for particular points of the design. A technical review would be conducted by the agency, who ultimately determines classification as a certified flood mitigation structure. There are also several steps in the process, including a FEMA conditional letter of map revision, operation and maintenance plan, and notice to the town, who must sign and acknowledge the proposed revision. Council Member McLean commented that the town should prioritize building resiliency, rather than simply meeting the minimum established standards. Ms. Fountain agreed.

Council Member Link requested the cost range for meeting the requirements for wall maintenance, as well as a balanced set of analyses, with one group of students reviewing from the environmental perspective and another from the mitigation standpoint. Mayor Allers added that the team should also explore funding opportunities that coincide with maintenance. He also believed that the town will need to educate and respond to the public on maintenance-related costs.

Ms. Fountain listed the following next steps: finalization of modeling efforts, creation of conceptual cross-sections, identification of grant and funding opportunities, and the production of a final deliverable. She predicted these steps would be completed between the end of May and early June. Mr. Wise added that the hydrodynamic modeling, due to its detailed nature, may cause the date to be slightly pushed back. Mayor Allers proposed that, for the next presentation, the meeting be structured like a town hall setting. Town Manager McKannay stated that he was also considering a public information event and that invitations can be sent out to the public, media, academia, and other groups to ensure that all sides and issues are represented. He also noted that this presentation is available on YouTube and that information will be provided to the public on accessing the meeting.

At the conclusion of the presentation, Mr. Wise showed one last photo of Estero Bay of an oyster bar dissipating incoming waves. He noted that, since the picture was taken on a sunny day, it would not illustrate exactly what would occur during a storm. However, he hoped that this example would help to show the effects of wave mitigation wall. Mayor Allers thought that the image was very useful. Council Member Link asked if mitigation could exist in the water. Ms. Fountain stated that there are options available, including reef balls. However, they may impact boat and water access. Mr. Wise added that these structures may also add hazards and impact tides and waves. They may also be visually unappealing.

B. Per Council's request, and update on the Town's CRA process

Per Council's request, an update on the Town's CRA process

Town Manager McKannay provided a brief introduction of the item. Frankie Kropacek, Community Development Director, began with a background of the Community Redevelopment Agency (CRA). They are currently focusing on the downtown district, Old San Carlos and Times Square. While the rough draft of the resolution contained only Times Square, they have now expanded it to include the entire downtown district — all the way to Pearl Street and encompassing the entirety of the Diamond Head Resort. The intention was to isolate the commercial development and exclude all residential areas.

Council Member King asked for a definition of the CRA's purpose. Mr. Kropacek responded that the agency is tasked with taking the incremental tax revenues and serving a function similar to the Small Business Administration. He highlighted its role in determining the necessities of a specific area. He also referred to rebuilding projects, including Bayside Veterans Park, which was achieved a couple of weeks ago.

Mr. Kropacek noted the success in obtaining a grant to assist with the comp plan. The scope of the funding was then expanded to include AECOM. They are working with the CDBGR on a CRA study. He predicted that they would be able to present their findings to Council by mid-summer. If approved, they would then present to the Board of County Commissioners (BOCC). Once all the steps are completed, and the study is acknowledged by the board, they should be able to start by Labor Day of this year. Informational meetings with stakeholders are scheduled throughout the timeline. He characterized this study as a win-win opportunity for the town and noted that this is the time to act.

Council Member McLean expressed concerns that revenue generated in a specific area must be spent there. He commented that the south end of the island needs more support, which may not be offered due to the current structure. Mayor Allers pointed out that the town may be able to use TIFF funding for existing projects that allow for such revenue use, then reallocating normal tax revenue to those areas. Mr. Kropacek stated that a majority of costs is related to infrastructure, and funding is typically provided from the normal tax base.

Town Manager McKannay outlined the next steps from a governance perspective. Council would need to give its approval, then appoint a director and a board that would manage the CRA and report back with its findings. Mr. Kropacek provided Cape Coral and Fort Myers as examples of the positive impacts that a CRA can offer. He asserted that the agency can offer benefits to the town, including canal dredging for water taxi access.

Vice Mayor Safford asked if, after its establishment, the board would be able to represent different areas of the island. Mr. Kropacek answered that, once that CRA or TIFF area is requested, and a board is created, that board can then oversee the entire island.

Council Member Link noted that CRAs can be wonderful but also acknowledged, for the public, that this would mean an increase in property tax and a restriction of those funds for specific use. She expressed that she also believed that the CRA should not be limited to the downtown area. She believes that a lot of projects are already directed to this location and that the town must focus on both residents and tourists. She also wished to consider if the Council (or some of its members) can participate as board members.

Mayor Allers asked if it was typical to have boards serve as an advisory council that reports back to the town for final approval. Mr. Kropacek stated that that was his understanding. Town Attorney Stuparich noted the importance of compliance with the specific process outlined by statute. These include noticing requirements and adoption of certain resolutions. She provided that the CRA is both a separate legal entity and a special district that is dependent on the Council. She identified the finding of necessity study as the single highest priority at this point in time. Following this step, they could then review and address the criteria. Council Member Link expressed her agreement and hoped that the town would tie this into their comprehensive and strategic plans. Deputy Town Manager Traci Kohler noted that the strategic plan refers to the finding of necessity as both an action item and an objective.

Town Attorney Stuparich inquired about an expected date for the finalization of the study. Mr. Kropacek provided that a draft has been completed and that the findings should be before Council by the end of May.

Vice Mayor Safford also noted that Council should consider this as a comprehensive package. Council Member Link asked if he believed that the CRA should cover more than just the downtown area. He responded that there can be a multistep process, with the first stage being the recommended location. Council Member Link stated that she would like to see detailed ways that the CRA would be able to help reallocate funding. She also hopes that the agency could contribute to the wave mitigation wall project. Mayor Allers explained the historical background of discussions on both topics and how the issues are intertwined. Mr. Kropacek asserted that there are potential opportunities for the CRA to assist with mitigation construction, including replacement of water and sewer lines.

Council Member King noted that the town has been trying for at least a couple of years to form a CRA. He believes that Council should begin the process and focus on the big picture. He also acknowledged the disproportionate focus on the north end of the island. Vice Mayor Safford noted that, two years ago, the body considered this issue but any decisions made would have been rushed. Council Member McLean expressed his appreciation for the expertise and compliance with the process.

Mayor Allers stressed the need for a good plan, as it will ultimately be decided upon by the BOCC. Approval would also create costs for the county. He looks forward to having something more tangible to discuss and give directions to the staff, before voting and sending the plan to the county level.

Town Manager McKannay stated that the purpose of this discussion is to receive input from Council. Staff will review and come back to the body.
Mr. Kropacek recognized Jason Freeman and his essential role in this process.

IV. AGENDA MANAGEMENT

A. April 2026

Council Member McLean announced that there is an open position on the Anchorage Advisory Committee and requested that Council move forward in filling the position.

Council Member Link would like to see a demonstration on the town's use of the new technology for short-term rentals. Mayor Allers suggested bringing in the hired consultants to provide a presentation.

Vice Mayor Safford stated that the Charter Review Commission has held its final meeting and will bring forth five charter change recommendations at the Council meeting on April 20, 2026.

Town Attorney Stuparich followed up on concerns around the Local Planning Agency appointment. Due to his multiple committee roles, Mr. Schoonover has submitted his resignations from his positions on the Anchorage Advisory Committee, the Bay Oaks Recreational Campus Advisory Board, and the Charter Review Commission. Mr. Schoonover may still apply, and the Town Attorney believed that this process would be the best course of action, given his resignation and the lack of a waiver from Council. Vice Mayor Safford provided that the vacant position on the Charter Review Commission may not need to be filled, since the body does not expect to meet in the future. Town Attorney Stuparich noted that the Commission terminates on April 20, 2026. She asked Council to allow the Town Clerk to post the vacancies. There were no objections to the request.

Town Manager McKannay provided that, for the Management & Planning Session scheduled on May 7, 2026, the item labeled "Leadership Forum Strategic Planning" will actually be an opportunity for Council to participate in the strategic planning. Deputy Town Manager Traci Kohler reported that, following discussion on the bicycles, there would be a planning session that should end around 1:00 p.m. There would not be separation to make this into a full-day event.

V. ADJOURNMENT

The meeting was adjourned at 11:22 a.m.



Fort Myers Beach Town Council

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

Minutes

Monday, April 20, 2026

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Mayor Dan Allers, Vice Mayor Scott Safford, Council Members John King, Rebecca Link, and John McLean.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

The motion carried unanimously.

V. PUBLIC COMMENT

None

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Proclamation: Drinking Water Week

The Town of Fort Myers Beach recognized May 3-9, 2026 as Drinking Water Week

Mayor Allers read the proclamation recognizing May 3–9, 2026, as Drinking Water Week. Town Manager McKannay called up the utilities team and acknowledged their work in maintaining the island's drinking water.

B. Friends of the Mound House Check Presentation

On behalf of the Friends of the Mound House, Nancy Smith, outgoing Treasurer, and Katherine Clark, incoming Treasurer, presented a check in the amount of \$25,000 to the Town of Fort Myers Beach. They expressed their delight in supporting the Mound House and their appreciation to the town and staff for their excellent work and maintenance. The organization is dedicated to supporting operations and programming at the historical site. They thanked the town for its ongoing support.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Prior to the Charter Review Commission's recommendations, Town Council received reports from these Advisory Committees:

AAC Report: Anchorage Advisory Committee Chair Chris King recounted the success of Cruiser Appreciation Day. She thanked Beach Talk Radio for their promotional and AV support. Brainstorming has already begun for next year's event. They are looking at ways to increase traffic, including co-hosting an event with a built-in audience. She provided a brief overview of the finances before, during, and after the event, noting a remaining balance of \$4,603.84. She proposed to transfer \$1,600, or whatever amount needed, to Council for the purpose of purchasing a one-year boat slip for the town's second boat on the south end of the island. She suggested that the funds be added to the 2026-2027 budget and distributed amongst the various departments accordingly. Council Member King asked if a budget amendment would need to come back before Council. Town Attorney Stuparich responded affirmatively.

As the Council Liaison, Council Member McLean moved to accept the Anchorage Advisory Committee's offer to fund the purchase of a boat slip for the town's second boat, seconded by Council Member King.

The motion carried unanimously.

MERTF Report: Marine and Environmental Resources Task Force Chair David Nusbaum reported on the committee's most recent meeting. Environmental Projects Manager Chadd Chustz updated the task force on the fish kill and identified post-rainfall fertilizer release as the most likely cause of the incident. At this time, there is no recommendation, but the group will continue to monitor and advise if another fish kill occurs. He also mentioned the committee's participation at Cruiser Appreciation Day and noted that the booth was a success. The task force handed out speed zone maps for the Back Bay to educate residents and boaters. He emphasized the importance of public education, noting that excessive vessel speeds not only endanger marine wildlife but also damage seagrass habitats that are essential to the survival of manatees. Mari Torgerson has worked with groups like MERTF and AAC and paid for the printing of the hand-outs. He thanked her for her work for this cause. Chair Nusbaum announced that the applications for the Mulholland Award are currently being accepted. Individuals, businesses, and organizations are eligible for nomination. The award promotes awareness, education, and the preservation of the community's natural resources. He encouraged all to consider and turn in applications. Additionally, he provided that turtle nesting season begins on May 1st and reminded all to ensure lights and blinds are in compliance with the Town's Ordinance. Shorebird nesting

season has already begun. Dogs are not permitted in the CWA and should be leashed. Least terns are pairing up, and nest-building will soon begin. Ropes and bollards will be set up to

protect the area. FWC Biologist Heather Hill will try to provide walkways through these locations. Vice Mayor Safford inquired about Ms. Torgerson's work on the no-wake signs. Chair Nusbaum responded that she has been working on this issue and can follow up with additional information. Both expressed their appreciation for Ms. Torgerson's efforts. Council Member Link inquired about the submission deadline for the Mulholland Award. Chair Nusbaum noted that they have extended the deadline from April and that MERTF will be convening on May 2. However, because the meeting will be jointly held with the AAC, the task force may need to call a special meeting, and it may be until June before they can bring forward a recommendation to the Council. He recommended that all submit their applications as soon as possible. There was confirmation that the form was available on the website. Mr. Dunlap added an update on Loggerhead's renovations on Fishtail Marina, which will begin around June 1, 2026.

A. Charter Review Commission Recommendations

Charter Review Commission Chair Dunlap thanked the Council for appointing an excellent team of members and alternates. He also expressed his gratitude to the town staff and the Council Liaison, Vice Mayor Stafford. The Charter Review Commission met monthly from November to April, with a set deadline of April 6, 2026. They were able to accomplish all tasks without exceeding the budget of zero dollars. The body began by developing a guiding principle that the Town Charter should be limited in scope to afford to Council the greatest amount of flexibility to set policy and procedures. There was a thorough and comprehensive review of the legal document by the Commission. Mr. Dunlap met with Town Manager Will McKannay, Deputy Manager Traci Kohler, and Dr. Robert Lee, an Associate Professor at Florida Gulf Coast University and former City Manager of the city of Naples. Dr. Lee had noted that their charter was, overall, well-written and that major changes were not needed. Mr. Dunlap brought up the history of Dillon's Rule for municipal governments in Florida. Dr. Lee had explained that the form of government must support the municipality during tough times. Mr. Dunlap stated that the Charter Review Commission is not recommending any modifications to the current Council-Manager form of government. Mr. Dunlap reviewed recommended changes provided in the letter to Council. He also referred to the analysis matrix, which shows all sections that the Commission reviewed. Mayor Allers asked if the changes would be presented one by one or as a package on the referendum. Town Attorney Stuparich answered that each item will be listed separately. Council Member McLean inquired if the removal of the outdated language, such as the fourth proposal, would need to be done through referendum. The Town Attorney responded by stating that the items may need to be on the ballot but mentioned a potential exception.

under statute for an administrative change, which would require a vote by Council. Council Member Link asked if the first recommendation is a duplication of state law or an emphasis on the town's standard of ethics. Town Attorney Stuparich responded that they are noting this from a policy perspective. Ordinances already exist regarding ex-parte communications and quasi-judicial proceedings. Florida law also provides rules on the acceptance of unlawful gifts. These are in the procedural rules and procurement code. Council Member Link inquired if the charter should set the compensation or outline the process to do so. Mr. Dunlap stressed the importance of flexibility for the Council. He also said that the compensation provided in the original language of the Charter has not been consistent with the cost of living adjustments and peer groups, with the exception of the city of Sanibel. Council Member Link brought up a potential link between compensation and workload. Mr. Dunlap answered that this proposal will allow for a process to adjust. Council Member Link commented that, for the third proposed change, there should be consistent language in the provisions for filling vacancies for the Mayor and the Vice Mayor. She thanked Mr. Dunlap and the Charter Review Commission. Vice Mayor Safford also expressed his appreciation. He described the rationale behind the language and the consideration of multiple vacancies at one time. Mr. Dunlap also noted that the Governor will appoint if a certain number of vacancies arise. Council Member King and Mayor Allers thanked the Charter Review Commission.

VIII. APPROVAL OF MINUTES

No minutes.

IX. CONSENT AGENDA

X. PUBLIC HEARINGS

XI. ADMINISTRATIVE AGENDA

A. Special Event - Annual JobuFest Concert

Approval of a Special Event including the waiver of enforcement of the Town's open container and noise ordinances during the Annual JobuFest Concert, to be held at The Whale on May 30, 2026 from 8:30 am to 6:00 pm on May 30, 2026, as requested by Dawn Miller of The Whale, and subject to further approval by the FMB Fire Control District and Lee County Sheriffs Office.

Mayor Allers read the item into the record. Dawn Miller, owner of The Whale, explained the creation of JobuFest. She would like to continue the event this year and noted that, due to the current circumstances, Sandy Bottom's was not an ideal location. They hope to hold the event in the parking lot at The Whale and return to the original location next year. The event will run until 6:15 p.m. She outlined the entertainment and activities. Council Member Link thanked Ms. Miller for reaching out to the residents and community. Mayor

Allers also expressed his appreciation.

Council Member Link moved to approve the Special Event Permit “Annual Jobufest Concert,” seconded by Vice Mayor Safford. She modified her motion to add a change to the timeframe to end at 6:15 p.m. This was seconded by Vice Mayor Safford.

The motion, as modified, carried unanimously by roll call vote.

B. Charter Recommendations

Discussion on Charter Review Commission recommendations and direction to staff.

For the third recommendation, Council Member Link proposed a change to make the language on filling vacancies for Mayor and Vice Mayor consistent. She requested that the provision now read: “the vice mayor shall assume the office of mayor until the expiration of the term of the vacant mayoral seat.” Town Attorney Stuparich noted that she had no objections to the proposed modification. Council Member McLean requested that, when possible, charter changes should go through the administrative path, rather than be placed on the ballot.

Town Attorney Stuparich will work with Town Clerk Baker on the next steps. Some language will need to be cleaned up in the ordinance column of the analysis matrix. The charter changes would require adoption of an ordinance with two readings. She will return to the Council with a drafted ordinance on correcting the scrivener’s errors, and, at the first public hearing, the body can decide whether to move forward. For the substantive changes, she will need to draft language that would show exactly what would appear on the Charter. There is a statutory process that would need to be followed, and, therefore, this portion would require more time. For scheduling, she deferred to Town Clerk Baker, who noted that this would need to be finished before the Council recesses in June. The deadline to provide information to the Supervisor of Elections is early July. Town Attorney Stuparich emphasized the tight scheduling and stated that they should be returning with materials for the following Council meeting. Vice Mayor Safford also remarked on the short amount of time and commented that he would like to see as few items as possible on the ballot. Council Member King inquired about the charges associated with the referendum items. Town Clerk Baker responded that there is a fee for the election, with no additional charge for each measure.

Mayor Allers and Council Member King both agreed with Vice Mayor Safford’s and Council Member McLean’s remarks on placing fewer issues on the ballot.

Vice Mayor Safford moved to terminate the Charter Review Commission, seconded by Council Member McLean.

The motion carried unanimously by roll call vote.

Vice Mayor Safford moved to approve the presented charter recommendations based upon the discussion, seconded by Council Member McLean.

The motion carried unanimously by roll call vote.

C. Resolution 26-080; Termination of Easement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TERMINATING A TEMPORARY BEACH ACCESS AGREEMENT CONTAINING A TEMPORARY EASEMENT TO ALLOW FOR THE PLANTING OF VEGETATION ON DUNES LOCATED ON PROPERTY OWNED BY CASTLE BEACH CONDOMINIUM ASSOCIATION; AUTHORIZING THE MAYOR TO SIGN THE TERMINATION AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD A COPY OF THE TERMINATION AGREEMENT IN THE OFFICIAL RECORDS OF LEE COUNTY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Environmental Projects Manager Chadd Chustz noted that the previous president of the homeowners association signed the easement agreement but the current leadership does not wish to continue. Town Attorney Stuparich referred Council to the drafted agreement that was prepared. She highlighted the removal of the prevailing party attorney fee award, explaining that, in the case of litigation, both parties would now pay their own fees. The recording and legal description information were also missing. She requested that, should Council approve this item, that it would be subject to a legal sign-off so that a copy of the signed document would be attached, as an exhibit, into the record to indicate the termination of the easement. There will also be a time period where Mr. Chustz and his team would have the opportunity to conduct plant removal. Mr. Chustz reported that, during discussions, the organization requested around 15 feet on each side, which he noted was neither substantial nor in the spirit of the town's dune management plan. He believed the better solution would be for plant removal and relocation. Mayor Allers asked who would be paying for the cost of these services. Mr. Chustz responded that the town would bear the costs. He estimated that the project would take a few hours on public work's time. The removed planting will be relocated to a nearby location next to the CWA Lagoon. Mayor Allers confirmed that this project would not cost a substantial amount of time or funds. Council Member King asked how maintenance would occur following the termination. Mr. Chustz responded that the organization will be responsible. Council Member Link referred to the image on page 35 and requested additional information on the location of the easement. Mr. Chustz provided that there is also a neighborhood access easement, which is not related to this agreement but was depicted. Council Member McLean also inquired about post-termination maintenance. The Environmental Projects Manager responded that the organization would lose the benefits of the Dune Management Plan and that the area would require state and town permitting activities. He is unsure if they will be pursuing a mitigation wall as a supplement. Town Attorney Stuparich emphasized that the organization is aware that this is now their responsibility. Council Member Link asked if this was documented. The Town Attorney noted that this was provided for in the third paragraph.

Council Member King moved to approve the resolution for the termination of

the easement, subject to the legal sign-off, seconded by Mayor Allers.
The motion carried unanimously by roll call vote.

D. Resolution 26-074; Renewal of Submerged Lands Lease BOT 360344775 (Mound House)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A RENEWAL FOR THE SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE (BOT 360344775) WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROVIDE FOR THE USE AND ENJOYMENT OF THE OBSERVATION/FISHING PIER LOCATED AT THE MOUND HOUSE; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Environmental Projects Manager Chadd Chustz read the use of the property in accordance with the lease. He noted that this was needed because any waters that are navigable at the time of statehood is considered to be submerged state lands. Council Member McLean asked if there was anything that would restrict the Mound House being a potential stop on a water taxi or ferry. Mayor Allers indicated that there would be mooring of recreational vehicles or tour vessels, the latter of which is commercial. Council Member McLean expressed his concerns about restricting access points to the facility. Mr. Chustz said that he could follow up with more clarification and noted that this resolution is for a renewal. Council Member Link voiced her support.

Council Member King stated his appreciation for the fee waiver.

Council Member McLean moved to approve the resolution, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

E. Resolution 26-077; RFQ-22-25-AD Ongoing Miscellaneous Services, Kimley-Horn Associates, Inc.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO EXTEND THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN AND KIMLEY-HORN ASSOCIATES, INC. UNDER RFQ-22-25-AD "ONGOING MISCELLANEOUS SERVICES" FOR AN ADDITIONAL YEAR; AND PROVIDING AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Council Member King asked about the costs. Environmental Projects Manager Chadd Chustz noted that this would be a contract renewal, with an original agreement for a vulnerability analysis and an adaptation plan. The fee structure is based on task order. There was a follow-up question on the funding source. Mr. Chustz responded that it may come from general funding or from grants. Council Member McLean inquired if there was a provision listing specific projects or outlining a mechanism for contracting in the future.

Mr. Chustz answered that there is nothing identified for the future and noted that the contracted study would provide the town with the ability to seek future grant funding. They wish to keep the group on board should future projects be needed. Mayor Allers asked if some of the funding going forward could be used in the CDBG funding approved for planning. Mr. Chustz said that it would not be possible.

Council Member King moved to approve Resolution 26-077; RFQ-22-25-AD Ongoing Miscellaneous Services, Kimley-Horn Associates, Inc., seconded by Vice Mayor Safford.

The motion carried unanimously by roll call vote.

F. Resolution 26-079, STA 4 RFQ-24-06-AD - CEC Construction Services Bird Monitoring - 2026 Beach Truck Haul

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #4 OF CONTRACT RFQ-24-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES AND SHOREBIRD MONITORING ASSOCIATED WITH THE TOWN OF FORT MYERS BEACH CENTRAL SEGMENT DUNE REPAIR AND SCOUR FILL BEACH SAND TRUCK HAUL PROJECT FOR A COST OF \$61,711.00; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz reviewed the background of the request as stated on the blue sheet. Council Member King asked about the funding sources. The project is on the previously unengineered beach and would qualify for FDEM funding with no match from the town or TDC. There would be plenty of funding remaining.

Council Member King moved to approve Resolution 26-079, STA 4 RFQ-24-06-AD - CEC Construction Services Bird Monitoring - 2026 Beach Truck Haul, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

G. Resolution 26-075; Additional Funding for RFP-26-01-PW, Tidewater Landscaping Inc.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO APPROVE ADDITIONAL PURCHASE ORDERS OR SUPPLEMENTAL TASK AUTHORIZATIONS AS NEEDED FOR THE COMPLETION OF RESTORATION WORK TO PRIVATE PROPERTY FOLLOWING UTILITY CONSTRUCTION ACTIVITY PURSUANT TO THE TERMS AND CONDITIONS BETWEEN THE TOWN AND TIDEWATER LANDSCAPING INC. IN AN AMOUNT NOT TO EXCEED \$215,000.00; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager McKannay reviewed the background of the request as stated on the blue sheet. Community Services Director Jeff Hauge reported that this was a bid landscaping for a utility repair. The original allocation of \$75,000 was used,

and additional funding is needed for remaining work around water meters or swales. The proposed amount should last until the end of the year. Mayor Allers asked if there were preventative measures or other ways to alleviate the cost for the town. Environmental Projects Manager Chadd Chustz responded that the work done was very in-depth and that landscaping was needed. Council Member Link remarked that Tidewater Landscaping Inc. was a professional group that is very conscientious of neighbors and residents. Vice Mayor Safford asked about finances. Finance Director Joe Onzick commented that costs would come from either the stormwater fund or the water fund, depending on the specific work involved. Both funds should be able to cover for the expenditures. He added that the value proposed is the budgeted amount and that staff may not plan on using all of that money. Vice Mayor Safford provided that the value is \$215,000.

Council Member Link moved to approve Resolution 26-075; Additional Funding for RFP-26-01-PW, Tidewater Landscaping Inc., seconded by Council Member McLean.

The motion carried unanimously by roll call vote.

H. Resolution 26-078, ITB-26-05-EN, Dune Repair and Scour Fill Truck Haul Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-26-05-EN TO EARTH TECH ENTERPRISES, INC. AS THE LOWEST, RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND DUNE REPAIR AND SCOUR FILL TRUCK HAUL PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE EARTH TECH ENTERPRISES, INC. SUBJECT TO LEGAL REVIEW AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz reviewed the background of the request as stated on the blue sheet. Mayor Allers asked for the location of the beach access for dumping sand. Mr. Chustz responded that there will be two areas in the contract, Newton Park along Strand View and Dakota Access. He added that there is a contract provision that allows the contractor to enter agreements with private property owners to do work in those areas. Mayor Allers inquired if notice has been sent out to these two locations. Mr. Chustz stated he will send out communications to alert the residents. Council Member McLean requested an estimated date of completion and expressed his concerns about whether this project would be completed before turtle nesting season. The staff member responded that the contract accounts for 30 calendar days, with 5 calendar days for substantial completion. The town has an agreement for turtle monitoring services and will follow the same permit, process, and FWC approval as previous projects. Council Member McLean commended the team on their work. Vice Mayor Safford asked if the sand would be new. Mr.

Chustz provided that the staff would know more once they enter into negotiations. There are around six options to choose from. He noted that truck sand would be used. Council Member King confirmed with staff that the area would be about three to four blocks north of Miramar Street and ending around two to three blocks south of Sterling Avenue.

Council Member King moved to approve Resolution 26-078, ITB-26-05-EN, Dune Repair and Scour Fill Truck Haul Project, seconded by Council Member McLean.

The motion carried unanimously by roll call vote.

XII. FINAL PUBLIC COMMENT

None

XIII. TOWN MANAGER'S ITEMS

Town Manager McKannay commended the Town Clerk's Office and Human Resources for hosting an Employees Beach Cleanup on May 26, 2026, in recognition of Earth Day. Starting at Bay Oaks at 7:00 a.m., this initiative reflects the town's ongoing commitment to environmental stewardship, coastal preservation, and employee engagement in supporting the community they serve. In consultation with the Town Attorney, Town Manager McKannay provided the following list for scheduled meetings: 1) a regular Council meeting on June 1, 2026; 2) a special Council meeting on June 3, 2026 for the London Bay project; 3) a regularly scheduled Town Management & Planning Session on June 4, 2026; 4) a regular Council meeting on June 15, 2026; and 5) a special Council meeting on June 29, 2026 for a similar purpose.

Council Member King asked about the status for the project updating the former Town Hall into a parking lot. Town Manager McKannay stated that the town staff is working diligently on this matter and will bring it forward to Council at one of the future pre-scheduled meetings. There will be a request for an exception for parking and other required approvals. He emphasized that staff will be ensuring that the process is followed properly, especially for lighting and drainage.

Mayor Allers commented that he hopes that concessions on the applicants' requests would not place an extraordinary strain on staff for deadlines, especially with the break in July. Town Manager McKannay confirmed that he has spoken with the planners and that the staff is comfortable with the dates. Town Attorney Stuparich noted that, during these proceedings, a continuance can be requested, which would be approved or denied by Council.

XIV. TOWN ATTORNEY'S ITEMS

No items.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King congratulated the Anchorage Advisory Committee for their success in the Cruiser Appreciation Day event. He also thanked the Laguna Shores Homeowners Association for the invitation to their recent meeting.

Vice Mayor Safford noted that he will be requesting remote attendance for the Council meeting on June 15, 2026. Town Attorney Stuparich provided that a motion will be considered at that meeting and thanked the Vice Mayor for letting

the Council and staff know, as this information will help them determine if a quorum would be present.

Council Member Link acknowledged Fort Myers Beach Foundation for their successful casino night event. She expressed concern about the exceptions made in scheduling and meetings, stating that she is worried that it may set a precedent. Council Member McLean said that he was available during the month of July and would be happy to attend any meetings necessary. He hopes that staff is not too rushed in meeting the necessary deadlines. He also noted the success of the Cruiser Appreciation Day event, which had great community involvement. He recognized Chair King's ideas for the future, mentioning the strong positive outlook. He requested that the openings on the AAC and CELCAB be noticed.

Mayor Allers updated Council on his discussions with Commissioner Mulicka about the bicycle and golf cart parking at the base of the bridge. Their office and staff are looking at funding sources before presenting to the Commission for approval or denial. They have a month-to-month agreement with a contractor that is going to work on one of the gulfside businesses there. Council Member Link asked how this would impact the previous traffic studies, as this would introduce additional vehicles that may not have been considered before. Mayor Allers believes that both would still be considered as vehicles and that there would not be a significant impact, as there were no changes in the discussions on the design. Both the entrance and exit previously exist. The only potential change would be the addition of an outreach center. There were follow-up questions on the original plans for the area and on the final decision coming from the Commission. The Mayor responded that the original proposal was for storage but that Commissioner Mulicka's office offered parking as a potential use. He confirmed that it would be at the discretion of the Commission. He provided the historical background, noting the transition of ownership from Margaritaville to the town and then to the county. Mayor Allers explained that this use was brought up due to the shortage of bike parking spots in the Times Square area.

Vice Mayor Safford confirmed with Town Clerk Baker that there are no scheduled Council meetings on July 6 and July 20.

XVI. ADJOURNMENT

Council Member King moved to adjourn. There were no objections, and the meeting was adjourned at 10:37 a.m.

1. **Request:**

Meeting Date: May 4, 2026

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:

Continues the Local State of Emergency issued for Tropical Storm Debby

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. 26-082, Extension of Local Emergency - Debby 05.19.26 - 05.25.26
2. 26-083, Extension of Local Emergency - Debby 05.12.26 - 05.18.26
3. 26-084, Extension of Local Emergency - Debby 05.19.26 - 05.25.26
4. 26-085, Extension of Local Emergency - Debby 05.26.26 - 06.01.26

Financial Impact:

Expenditures related to response and recovery efforts for Tropical Storm Debby have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

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

Created/Initiated - 4/22/2026
Approved - 4/22/2026
Approved - 4/26/2026
Approved - 4/27/2026
Approved - 4/27/2026

RESOLUTION NUMBER 26-082

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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-083

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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-084

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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-085

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.
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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.
 - (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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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: May 4, 2026

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:

Continues the Local State of Emergency issued for Hurricane Helene

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. 26-086, Extension of Local Emergency - Helene 05.05.26 - 05.11.26
2. 26-087, Extension of Local Emergency - Helene 05.12.26 - 05.18.26
3. 26-088, Extension of Local Emergency - Helene 05.19.26 - 05.25.26
4. 26-089, Extension of Local Emergency - Helene 05.26.26 - 06.01.26

Financial Impact:

Expenditures related to response and recovery efforts for Hurricane Helene have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

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
Joe Onzick, Finance Director
nancy stuparich, Town Attorney

Created/Initiated - 4/22/2026
Approved - 4/22/2026
Approved - 4/26/2026
Approved - 4/27/2026

Amy Baker, Town Clerk
William McKannay, Town Manager

Approved - 4/27/2026
Final Approval - 4/28/2026

RESOLUTION NUMBER 26-086

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

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

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

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

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

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
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- (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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-087

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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-088

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.
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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.

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

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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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-089

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

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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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5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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: May 4, 2026

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:

Continues the Local State of Emergency issued for Hurricane Milton

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. 26-090, Extension of Local Emergency - Milton 05.05.26 - 05.11.26
2. 26-091, Extension of Local Emergency - Milton 05.12.26 - 05.18.26
3. 26-092, Extension of Local Emergency - Milton 05.19.26 - 05.25.26
4. 26-093, Extension of Local Emergency - Milton 05.26.26 - 06.01.26

Financial Impact:

Expenditures related to response and recovery efforts for Hurricane Milton have been incurred and are being tracked under applicable emergency and storm-related accounts. The Town anticipates seeking reimbursement through eligible state and federal disaster assistance programs, including FEMA, as applicable.

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

Created/Initiated - 4/22/2026
Approved - 4/22/2026
Approved - 4/26/2026
Approved - 4/27/2026
Approved - 4/27/2026

RESOLUTION NUMBER 26-090

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

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

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

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

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

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

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

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

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

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

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

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

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

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

(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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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 26-091

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

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

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

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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.

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ADOPTED this ____ day of May 2026, 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

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ADOPTED this ____ day of May 2026, 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
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Vose Law Firm, LLP, Town Attorney

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(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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of May 2026, 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: May 4, 2026

This legislative agenda item is a Second Reading and Final Public Hearing on proposed Ordinance 26-07.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Florida Statutes, Section 386.209, preempted local governments from regulating smoking in public buildings. In 2022, the law was amended to permit counties and municipalities to further "restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction, but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars." The law as amended also allowed municipalities and counties to regulate the use of vapor-generating devices. Lee County recently adopted Ordinance 25-14 to prohibit smoking and vaping in county parks. The proposed ordinance amends the Town's current ordinance in accordance with Section 386.209 and regulates smoking and vaping in public parks and beaches, including county parks located within the territorial boundaries of the Town of Fort Myers Beach. It does not conflict with Lee County Ordinance 25-14 or restrict or regulate the use of unfiltered cigars.

A smoking ordinance is rarely mandatory, but can serve as:

A. A policy strength

Shows proactive governance and alignment with modern public-space standards.

B. A tie-breaker

When proposals are otherwise equal, communities with:

- Environmental protections
- Health policies
- Clean-beach initiatives

may score higher.

C. Supporting documentation

Can be cited in grant narratives under:

- Sustainability

- Public health commitment
 - Environmental stewardship
 - Visitor experience enhancement
-

Situations Where It Could Matter More for Fort Myers Beach

Given Fort Myers Beach's profile as a tourism-driven coastal community, smoke-free policies may strengthen:

- Beach renourishment or coastal management narratives
 - Blue Flag-style environmental certifications
 - Marine debris reduction initiatives
 - Eco-tourism branding
 - Family-friendly destination marketing
 - Post-hurricane "build back cleaner and safer" initiatives
-

Strategic Consideration

If the Town ever considered such a policy, it could be framed as:

"A public health, environmental protection, and visitor-experience measure aligned with coastal sustainability and family-friendly tourism goals."

The draft ordinance was reviewed by the Town Council at their Management and Planning Meeting on March 5, 2026 with direction to Town staff to schedule the draft ordinance for first reading. At first reading April 6, 2026, questions were asked regarding whether enforcement of non-filtered and herbal cigarettes could also be excluded similar to non-filtered cigars. The regulation of smoking is pre-empted to the state. The Florida Legislature exercised its authority to exclude non-filtered cigars from the authority granted to local government. Legally, a municipality cannot create additional exclusions from regulation related to subjects that are pre-empted to state regulation.

Crescent Beach Park was also added to the ordinance as a county park located within the Town.

Staff was directed to post signs regarding the prohibition and to provide educational materials to the public. Sample signs observed in Pinellas County are attached for informational purposes only.

Attachments:

1. NS Second Reading Ord 26-07- Smoking and Vaping Prohibition (1)
2. Ch_2022-213 Vaping and Smoking
3. Lee County Ord. 25-14
4. Rev. Business Impact Statement- Smoking and Vaping Prohibition Ord. 26-07
5. Pinellas Sample Sign 2
6. Pinellas Sample Sign 1
7. Pinellas Sample Sign

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

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

Created/Initiated - 4/7/2026
Approved - 4/9/2026
Approved - 4/17/2026
Final Approval - 4/28/2026

ORDINANCE NO. 26-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers 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, Florida Statutes, Section 386.209, previously known as the Florida Clean Indoor Air Act ("Act"), pre-empted local governments from regulating smoking in public buildings; and

WHEREAS, in 2022, the Act was amended and renamed as the Florida Clean Air Act, and permitted counties and municipalities to further "restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction, but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars."; and

WHEREAS, as amended Section 383.209 now further provides "[t]his section does not preclude the adoption of county or municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part."; and

WHEREAS, Lee County recently adopted Ordinance 25-14 to include vaping as a prohibited activity in its county parks; and

WHEREAS, Bowditch Park, Lynn Hall Memorial Park, and the pier are county parks located in the territorial boundaries of the Town of Fort Myers Beach; and

WHEREAS, the Town’s current regulations concerning smoking do not include regulations regarding smoking and vaping in the Town’s public parks or beaches; and

WHEREAS, a first reading of the title of this Ordinance occurred at a public hearing before the Town Council on April 5, 2026, 2026, and the Town Council voted to approve scheduling a second reading of this Ordinance and a public hearing on May 4, 2026, 2026; and

WHEREAS, the Ordinance was advertised in the News Press and a Business Impact Estimate was published on the Town’s website on the 16th day of April 2026, which is 10 days prior to the Town Council’s second reading of the title to the Ordinance and public hearing; and

WHEREAS, a second reading of the title to the Ordinance was heard on May 4, 2026, 2026 and followed by a public hearing regarding the adoption of this Ordinance; and

WHEREAS, the Ordinance is not in conflict with Lee County Ordinance 25-14 and does not regulate or restrict the use of unfiltered cigars; and

WHEREAS, it is in the best interest of the health and safety of the residents of the Town of Fort Myers Beach for the Town Council to adopt an ordinance to prohibit smoking and vaping in all of the Town’s public parks, and beaches, including, Bowditch Park, Lynn Hall Memorial Park, Crescent Beach Park and the Lee County’s pier, as authorized by Section 386.209, Florida Statutes.

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

SECTION 1. The above “Whereas” clauses are adopted herein by reference.

SECTION 2. Section 18-30 of the Town of Fort Myers Beach Code of Ordinances is hereby amended to read as follows:

Section 18-30. Regulated Behavior

[...]

(f) Smoking and Vaping. Pursuant to F.S. Ch. 386, the Florida Clean Air Act, ~~No person shall smoke or vape within the confines of those recreation centers and community buildings designated by the town manager~~ the boundaries of any public park or public beach in the Town of Fort Myers Beach, including but not limited to Bowditch Park, Lynn Hall Memorial Park, Crescent Beach Park and the pier which are owned by Lee County and located within the territorial boundary of the Town of Fort Myers Beach.

1) The term “smoke” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, with the exception of unfiltered cigars.

2) The term “vape” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

3) The term “public beach” shall include beach access areas.

SECTION 3. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall become effective upon adoption.

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 were as follows:

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of _____, 2026 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 _____, 2026.

CHAPTER 2022-213

Committee Substitute for House Bill No. 105

An act relating to the regulation of smoking by counties and municipalities; revising the title of part II of ch. 386, F.S.; amending s. 386.201, F.S.; revising a short title; amending s. 386.209, F.S.; authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances; providing an exception; amending ss. 381.84 and 386.211, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part II of chapter 386, Florida Statutes, entitled “INDOOR AIR: SMOKING AND VAPING,” is renamed “SMOKING AND VAPING.”

Section 2. Section 386.201, Florida Statutes, is amended to read:

386.201 Short title ~~Popular name.~~—This part may be cited as by the ~~popular name~~ the “Florida Clean Indoor Air Act.”

Section 3. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any county or municipal ~~municipal or county~~ ordinance on the subject; however, counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars. School districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of county or municipal ~~municipal or county~~ ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

Section 4. Paragraph (h) of subsection (3) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The

program shall include the following components, each of which shall focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(h) *Enforcement and awareness of related laws.*—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Florida Clean Indoor Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

Section 5. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean ~~Indoor~~ Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean ~~indoor~~ air state and that smoking and vaping are prohibited except as provided in this part.

Section 6. This act shall take effect July 1, 2022.

Approved by the Governor June 24, 2022.

Filed in Office Secretary of State June 24, 2022.

LEE COUNTY ORDINANCE NO. 25-14

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF LEE COUNTY, CHAPTER 20 (PARKS AND RECREATION), ARTICLE II (PUBLIC CONDUCT IN COUNTY PARKS); PERTAINING TO SMOKING AND VAPING AT PUBLIC PARKS AND PUBLIC BEACHES; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Board of County Commissioners of Lee County, Florida (the "Board") is the governing body in and for Lee County, Florida; and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Board has adopted Ordinance 18-12, which was amended by Ordinance 18-27 and Ordinance 20-11, pertaining to public conduct in county parks (the "Lee County Parks and Recreation Ordinance"); and

WHEREAS, on August 1, 2023, the Board adopted the "Code of Ordinances of Lee County, Florida," as the official codification of all ordinances of a general and permanent nature; and

WHEREAS, the Lee County Parks and Recreation Ordinance has been codified in the Lee County Code of Ordinances at Chapter 20, Article II; and

WHEREAS, the Board has determined that it is in the interest of the public health, safety and welfare that the Lee County Parks and Recreation Ordinance be amended to prohibit smoking and vaping at all public parks and public beaches, in accordance with Florida Statutes Section 386.209, as amended.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida that in order to promote the public health, safety and welfare of the citizens of Lee County, Florida the following Ordinance is hereby enacted:

SECTION ONE: AMENDMENT TO CODE OF ORDINANCES, CHAPTER 20

The Code of Ordinances of Lee County, Chapter 20 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 20 – PARKS AND RECREATION

ARTICLE II. – PUBLIC CONDUCT IN COUNTY PARKS

Sec. 20-28. Conduct.

[Subsection (a) remains unchanged.]

(b) *Smoking.* Pursuant to F.S. Ch. 386, Florida Clean Indoor Air Act, as amended from time to time, no person shall smoke or vape within the confines of any school property or within the boundaries of any public indoor park facility or public beach. ~~No e-cigarette or vaping use is permitted on school property or indoor park facility.~~

- 1) The term "smoke" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, with the exception of unfiltered cigars.
- 2) The term "vape" means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

[Remainder of subsection is unchanged.]

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION THREE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code of Ordinances. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Attorney, or the County Manager or his designee, without the need for a public hearing.

SECTION FIVE: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SIX: EFFECTIVE DATE

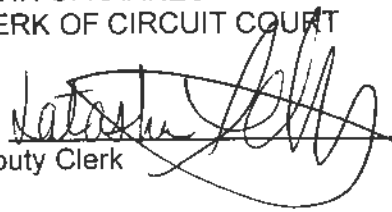
This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Mulicka. The vote was as follows:

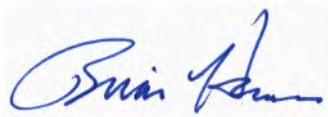
Kevin Ruane	Aye
Cecil L Pendergrass	Absent
David Mulicka	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 17th day of June, 2025.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

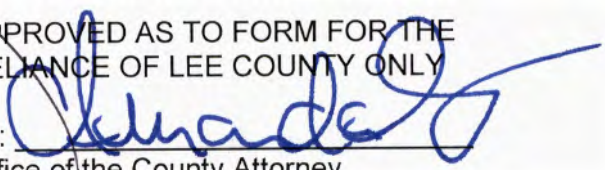
BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Kevin Ruane, Chair **BRIAN HAMMAN**



APPROVED AS TO FORM FOR THE
RELiance OF LEE COUNTY ONLY

By: 
Office of the County Attorney

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 25-14
(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Smoking & Vaping

SECONDARY KEYFIELD

DESCRIPTOR: Parks

OTHER KEYFIELD

DESCRIPTOR: Beaches & Shores

ORDINANCE DESCRIPTION: Smoking & Vaping in Parks & Beaches
(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: Lee County
Code of Ord.
Sec. 20-28

AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____

REPEAL #2: _____ ; REPEAL #4: _____

(FOR OFFICE USE ONLY):

COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____

KEYFIELD 2 CODE: _____

~~KEYFIELD 3 CODE: _____~~



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

June 23, 2025

Kevin Karnes
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 25-14, which was filed in this office on June 23, 2025.

Sincerely,

Alexandra Leijon
Administrative Code and Register Director

AL/dp

RECEIVED

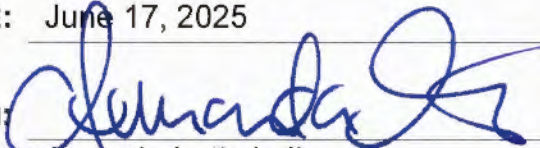
By Latasha Seth at 2:55 pm, Jun 23, 2025

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA HAND DELIVERY

DATE: June 17, 2025

To: Commissioner Ruane
Chair, Board of County
Commissioners

FROM: 
Amanda L. Swindle
Assistant County Attorney, Senior

**RE: Ordinance No. 25-14
Public Hearing to Amend Ordinance to Prohibit Smoking & Vaping at County
Parks and Public Beaches
Agenda Item 9:30PH60 - June 17, 2025**

Attached, approved as to form, please find the original of the above-referenced ordinance adopted by the Board of County Commissioners on June 17, 2025.

The original ordinance is attached to the memorandum for execution. Kindly execute the ordinance at your earliest convenience and then forward to the Records Management Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Claudia Curtin, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention via email.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than June 27, 2025. Also attached please find the Data Retrieval form to accompany the ordinance when transmitted to the State.

Thank you for your prompt attention to this matter.

Attachment

VIA EMAIL ONLY:

Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Claudia Curtin, Records Program Manager
leeclerkminutes@leeclerk.org
Lauren Schaefer, Legal Administrative Specialist (for ordinance history)

2025 JUN 20 PM 12:52
RECEIVED
MINUTES OFFICE

AGENDA ITEM REPORT

DATE: June 17, 2025
DEPARTMENT: County Attorney
REQUESTER: Amanda L. Swindle
TITLE: Conduct Public Hearing to Amend Ordinance to Prohibit Smoking, Vaping at County Parks, Public Beaches

I. MOTION REQUESTED

Conduct Public Hearing to Amend Chapter 20 of the Lee County Code of Ordinances, Parks & Recreation, to Prohibit Smoking & Vaping at County Parks & Public Beaches.

II. ITEM SUMMARY

Currently, Chapter 20 of the Lee County Code of Ordinances prohibits smoking at schools and indoor park facilities. This amendment will expand the prohibition to smoking and vaping at all county parks and public beaches, with certain exceptions, in accordance with Florida Statutes Section 386.209, as amended. The ordinance will continue to be enforced by Parks & Rec, including the appeal process. The fine schedule will continue to be \$100, \$200, and \$300 for a first, second, and third offense.

The Executive Regulatory Oversight Committee reviewed the proposed amendment to the Code on May 14, 2025, and voted 6-1 to recommend its adoption.

III. BACKGROUND AND IMPLICATIONS OF ACTION

Florida Statutes Section 386.209 has generally preempted the regulation of smoking to the state, with certain exceptions, including the ability for local governments to prohibit smoking at schools and indoor park facilities. The statute was amended in 2019 to further allow local governments to prohibit smoking and vaping at all county parks and public beaches. Unfiltered cigars are exempt under the statute.

Currently, Chapter 20 of the Lee County Code of Ordinances prohibits smoking at schools and indoor park facilities. This amendment will expand the prohibition to smoking and vaping at all county parks and public beaches, with certain exceptions, in accordance with Florida Statutes Section 386.209, as amended. The ordinance will continue to be enforced by Parks & Rec, including the appeal process. The fine schedule will continue to be \$100, \$200, and \$300 for a first, second, and third offense.

The Executive Regulatory Oversight Committee reviewed the proposed amendment to the Code on May 14, 2025, and voted 6-1 to recommend its adoption.

IV. FINANCIAL INFORMATION

Current Year Dollar Amount:	No funding required.
Included in the Current Budget?:	N/A
Fund:	N/A
Comments:	

Is this a revenue or expense item? No
Is this Discretionary or Mandatory? Discretionary
Will this item impact future budgets? No
Program:
Project:
Account Strings:
Fund Type?

V. RECOMMENDATION

Approve

ATTACHMENTS:

Smoking Vaping Ordinance, FAIS - Smoking & Vaping, Business Impact Statement - Smoking and Vaping

REVIEWERS:

Sandra Kokotilo, County Attorney
Amanda Swindle, County Attorney
Richard Wesch, County Attorney
Mack Young, Parks & Recreation
Anne Henkel, Budget Services
Peter Winton, County Manager

Created/Initiated - 6/4/2025
Approved - 6/5/2025
Approved - 6/5/2025
Approved - 6/9/2025
Approved - 6/9/2025
Final Approval - 6/9/2025

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 18-30 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO PROHIBIT SMOKING AND VAPING IN THE TOWN'S PUBLIC PARKS, AND IN COUNTY PARKS AND BEACHES LOCATED IN THE TERRITORIAL BOUNDARIES OF THE TOWN; DEFINING THE TERMS "SMOKE" AND "VAPE;" EXCLUDING FROM REGULATION UNFILTERED CIGARS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, 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 Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - 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.

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

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

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

The proposed ordinance prohibits smoking and vaping in certain public locations within the Town of Fort Myers Beach in order to protect community interests in safety, aesthetic, and cleanliness.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, 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 [City's/Town's/Village's] regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

No direct impact on private, for-profit businesses anticipated.

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

Zero.

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: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] 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 [City/Town/Village] 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.

Prohibited on Beach

Prohibited on Beach and in Park

Pinellas County Ordinance Chapter 90.
Failure to Comply May Result In Fines.

Smoke-Free Beach



Cigarette butts and vaping supplies contain plastics and toxins that are harmful to birds and sea life.

No smoking or vaping on this beach

Pinellas County
Code Section 90-7

  **\$118 fine**



RECYCLE CIGARETTE BUTTS HERE



TAMPA BAY WATCH



Pinellas County Ordinance Chapter 90.
Failure to Comply May Result In Fines.

Who left their

nicotine, arsenic, formaldehyde
cadmium, lead and chromium

on my beach?

(Yep, that's all in a
cigarette butt.)



Cigarette butts and vaping supplies contain plastics
and toxins that are harmful to birds and sea life.

No smoking or vaping on this beach

Pinellas County
Code Section 90-7



\$118 fine



RECYCLE
CIGARETTE
BUTTS
HERE

Cigarette butts placed
here will be recycled.
Learn more
at terracycle.com



TAMPA BAY
WATCH

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Prohibited on Beach



Prohibited on Beach and in Park



Pinellas County Ordinance Chapter 90
Failure to Comply May Result in Fines.

Help them kick the habit.



Cigarette butts and vaping supplies
contain plastics and toxins that are
harmful to birds and sea life.

No smoking or vaping on this beach

Pinellas County
Code Section 90-7



\$118 fine

1. **Request:**

Meeting Date: May 4, 2026

Approval of a Special Event for the Town of Fort Myers Beach Fourth of July Parade and Fireworks on July 4, 2026, including a parade on Estero Blvd. beginning at Bay Road to Old San Carlos Blvd. from 9:30 AM to 12:00 PM and a fireworks display from approximately 9:15 PM to 11:30 PM, including use of the Town's right-of-way, associated road closures, and waiver of the Town's noise ordinance, as requested by the Town of Fort Myers Beach, and subject to approval by the Fort Myers Beach Fire Control District, Lee County Sheriff's Office, and all required agencies.

Why the action is necessary:

Approval is needed for the waiver of the Town Noise Ordinance, use of Town Right of Way, and the event is estimated to have over 500 participants.

What the action accomplishes:

Approves the Special Event Permit and all applicable waivers of Town Ordinances in regard to the fireworks show, transportation of fireworks, and use of Town property for the parade and the logistics of the participants' parade floats.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nora Skipper

5. **Background:**

Requesting approval for the Town of Fort Myers Beach Fourth of July Parade and Fireworks event to be held on July 4, 2026. The event includes a morning parade beginning at Bay Oaks Recreation Center and traveling north along Estero Boulevard to Old San Carlos Boulevard, followed by an evening fireworks display launched from a barge offshore.

The parade is scheduled from 9:30 AM to 12:00 PM and will require temporary road closures along Estero Boulevard for participant and spectator safety. The fireworks display is scheduled from approximately 9:15 PM to 11:30 PM. Attendance is anticipated to be approximately 30,000 participants and spectators.

The event is sponsored and organized by the Town of Fort Myers Beach as well as What's Up FMB, and will include coordination with Lee County Sheriff's Office, Fire District, Coast Guard, and other applicable agencies for traffic control, public safety, and marine operations.

Approval is requested for any necessary road closures, use of the Town right-of-way, applicable waivers including noise ordinance considerations, and use of Town property for the participants' parade floats. All required department approvals, safety plans, and permitting requirements will be completed prior to the event.

This is an annual community event that has been held previously and is intended to celebrate Independence Day while supporting local tourism and community engagement.

Attachments:

1. 4th of July Permit and Planning Application
2. 2026 TOFMB 4th of July Rules and Regulations

3. Map Of Staging Area

Financial Impact:

The barge is being donated and the cost of the Fireworks is being funded by "What's Up FMB"

6. Alternative Action

Deny the special event application and its waivers.

7. Management Recommendations:

Approve the Special Event Permit.

8. Recommended Approval:

Nora Skipper,
Thomas Yozzo, Emergency Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 4/13/2026
Approved - 4/13/2026
Approved - 4/27/2026
Approved - 4/27/2026
Approved - 4/27/2026
Final Approval - 4/27/2026



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.
2021
- ☐ 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 Town of Fort Myers Beach 4th of July Parade and Fireworks
Attach separate sheet of paper with detailed description of event

Date(s) and times of event July 4th, 2026 9:30am – 12:00pm (Parade) 9:15pm – 11:30pm (Fireworks)

Address of event On Estero Blvd Bay Road to Old San Carlos (parade) & Barge (fireworks)

Expected # of participants/attendees 30,000

Sponsoring Organization Town of Fort Myers Beach

Organization address 6231 Estero Blvd, FMB, FL 33931

Contact Person/Phone# Jeff Hauge / 239-788-7766

E-mail jhaug@fmbgov.com

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

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

How many Spaces? _____ How many hours _____

Extension of Premises? Y _____ N ☒ ABT Form _____ How many days? _____ (Over 3 days needs to go to Council)

Letters of Permission to use Property _____

Letters of Permission to use Parking _____ Parking Plan _____

Site Plan _____ Insurance _____ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

Requires Council Approval:

Waiver of open container Y ☐ N ☐ Waiver of Town parking fees Y ☐ N ☐

Waiver of Noise Ordinance Y ☐ N ☐ Recurring Event Y ☐ N ☐

Applicant Signature Jeff Hauge

Printed Name Jeff Hauge

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: _____

No. of dumpsters: _____ Type of dumpsters: _____

Who is responsible for clean-up and payment: _____

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: _____

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



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: 03/21/2026		Date of Event: July 4, 2026
Location: Estero Blvd from Bay Oaks Rec Center (parade start) to Crescent ST		
Event Start Date/Time: 9:30am(parade) 9:15 pm (Fireworks)		Event End Date/Time: 12:00pm (Parade) 11:00pm(Fireworks)
Setup Date: July 3 rd (Fireworks) July 4 th (Parade)	Setup Time: TDB with Fireworks Company. 7:30am Parade	Inspection Time:
Event Sponsor: Town of Fort Myers Beach		
Sponsor Contact: Jeff Hauge	Sponsor Phone #: 239-788-7766	Sponsor Email: jhaug@finbgov.com
Anticipated Number of Attendees: 30000	Anticipated Number of Event Workers: 30	
Will there be carnival or mechanical rides: N	Number of Stages: 0	
Total Number of Vendors: 0	Total Number of Hot Food Vendors: 0	
Number of Tents larger than 20 x 20: 0	Number of 10 x 10 Tents: 0	

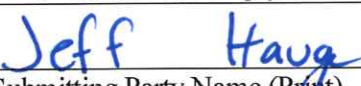
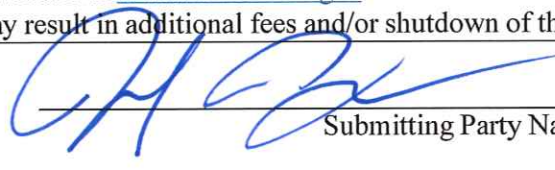
ery vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact
ormation for the responsible party below.

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 an 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 firecode.
3. All vendors should review FMBFD guidelines, on our website at www.FMBFirefl.gov
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

 _____ Submitting Party Name (Print)	 _____ Submitting Party Name (Sign)
Date: <u>3/21/26</u>	

OUTDOOR FESTIVAL and SPECIAL EVENT GUIDEBOOK

The purpose of this guidebook is to establish responsibilities for event promoters, sponsors, and vendors.

Event Sponsor: The Event Sponsor assumes overall responsibility for overseeing the setup and activities of the event, and ensures compliance with all applicable fire and life safety codes.

The Event Sponsor shall:

1. Ensure completion and approval of all required permits from the Fort Myers Beach Fire District, Town of Fort Myers Beach and/or Lee County.
2. Provide a site plan to the FMBFD with the following information:
 - a. Name of all streets and areas that are included in the event.
 - b. Location(s) of fire lanes (minimum 20 feet) width.
 - c. Location of all stages, non-food booth vendors, food vendors, and all displays. Provide details for cooking operations and displays that use heat-producing appliances.
 - d. Identify all emergency exits.
 - e. Identify any fire hydrants that are in the vicinity of the event.
 - f. A list of all food vendors with the type of food and cooking method is required.
 - g. Event Sponsor is responsible for distributing a copy of the Fire District's requirements to the hot food vendors.
 - h. Event radios (if used) shall be provided with a list of assigned channels.
 - i. **PARADE FLOATS:** Refer to float inspection/checklist provided on page 6 of this document.

Event Vendors: Event Vendors are responsible for the safe operation of their booth, display and/or attraction. All vendors shall coordinate with the Event Sponsor on the event setup, take down times, and ensure their setup complies with the following:

1. Fire lanes, fire department connections, and building access is clear and unobstructed.
2. Be prepared, at any time, for a fire inspection and correct any cited deficiencies prior to event start time.
3. Shall ensure all fire and life safety code requirements are maintained for the duration of the event.

Fire Department Special Event Staff: FMBFD staff will conduct an inspection on the special event prior to the scheduled start day and time. If required, correction notices shall be issued and a follow-up inspection will be required prior to opening. Fire inspections will include, but is not limited to, the following:

1. Hot food vendors – cooking operations, setup, extinguishing systems, fire extinguishers.
2. Fire Department Access – minimum 20 foot width; vertical clearance of 13.5 foot.
3. Access to fire hydrants, fire department connections, fire alarm panels, and command centers.
4. Event egress – accessible exits, required signage.
5. Rides and displays – inspect for safety and proper state certification tags.
6. Generators and propane tanks – location of fuel, stable base provided.
7. Stages – location of stage setup, extension cords used, fire extinguisher provided.
8. Non-Food vendors – setup, required fire extinguisher provided operations.
9. Beer and wine gardens – setup, exits marked, required fire extinguisher provided.
10. Pyrotechnic displays and open flame effects. **REQUIRES SEPARATE PERMIT** – Refer to permit application/checklist provided on page 8 of this document.

Pyrotechnic Displays and Open Flame Effects: Pyrotechnic displays require a separate permit from the FMBFD. Refer to permit application and checklist provided on page 7 of this document. The FMBFD shall review all open flame and theatrical flame effects. Open flame effects shall include, but are not limited to the following:

1. Fire dancing
2. Stage props and effects
3. Fire eating
4. Magic acts

Access for Fire Apparatus: During large events, it is important to maintain access points for apparatus. This includes not only fire trucks for suppression, but also other emergency vehicles including medical units. To ensure a safe event, all fire access requirements shall be enforced at all times.

Access through the event shall include the following:

1. A designated fire lane, no less than 20 feet wide with a vertical clearance of no less than 13.5 feet.
2. Access roads that exceed 150 feet with no exit, shall be provided with a means to turn around. A FMBFD representative shall approve all turning radiuses.
3. Any designated fire accesses shall be clearly identified with signage indicating "Fire Access – No Parking".

Access to Structures: Access to structures and walkways shall be provided as required by FMBFD. Identified access points shall be reviewed at the time of permit submittal and may vary depending on the building and the venue. Access to the following shall be required:

1. All exterior doors and openings
2. Fire control rooms
3. Fire pump rooms
4. Parking structures
5. Exterior utility distribution vaults

Access to Water Supplies: Event Sponsors, Vendors, and all other event staff shall be required to maintain a 15-foot clearance around all fire hydrants and other water supply connections. If a setup is found to be blocking access to water supplies the set-up shall be immediately relocated. Access to the following shall be maintained at all times:

1. Fire Hydrants
2. Fire Department Connections
3. Post indicator valves – fire backflows – OS&Y valves

Event Egress: This section shall apply to two (2) types of events:

1. Fenced events – commonly located in parks or other large open areas.
2. Blocked streets – commonly done at events where main streets and cross streets are closed.

Fenced Events: These events typically take place in a park or other large open area where the designated area for the event is closed off by temporary fencing.

1. The number of exits shall be in addition to what is defined as the main entrance of the event. Three (3) exits shall be provided when the site accommodates 1,000 to 3,000 attendees and four (4) exits shall be provided when the site accommodates more than 3,000 attendees.
2. Exits shall be spaced equally along the perimeter of the fence. The maximum travel distance between exits shall not exceed 400 feet of travel. Additional exits shall be added, if needed.
3. The width of exits on temporary fencing shall be no less than 48 inches or approximately one (1) panel width.
 - A. A member of security shall staff every exit. The security provider shall be able to provide a gate assignment roster upon request.
4. Emergency exits shall be marked by one (1) of the following:
 - A. Exit signs shall have a white background with contrasting red letters.
 - B. Exit signs shall measure, at a minimum, 18 inches x 24 inches.
 - C. Sign letters shall measure 12 inches in height.
 - D. Signs shall be placed at the top center of exit panels.

Blocked Streets: Some events will require that main or cross streets be blocked from vehicular traffic. These types of closures shall account for fire and emergency vehicles and public egress.

1. Exits shall be located at each end of any street closure. Cross streets shall also have emergency exit access.
2. A fire lane, no less than 20 feet wide and no less than 13.5 feet high, shall be maintained as designed by FMBFD.

TENTS, CANOPIES and TEMPORARY MEMBRANE STRUCTURES

Tents and canopies used for occupancy and/or cooking operations are subject to a fire inspection.

Sources of Ignition: Smoking is prohibited in or around tents, canopies, and temporary membrane structures. “No Smoking” signs shall be clearly posted. Fireworks, open flames, and any other device that is capable of igniting combustible materials shall not be used in any area in or around tents, canopies, and temporary membrane structures as well as around any combustible material. **Propane heaters are not permitted inside any enclosed area.**

Applications for any tent, canopy, or temporary membrane structure shall include the following:

1. A site plan with the proposed location of the tent including measurements showing distances to surrounding buildings, and/or property lines. A minimum 20-foot separation and fire access is required.
2. Proposed floor plan of the tent, showing the location and number of exits, fire extinguishers, stages, seating arrangements, tables and, any other items.
3. Certificates of flame retardant shall be submitted with the application and should be the manufacturers’ documentation attesting to the certification.
4. Any cooking and/or open flames.
5. Heaters and ventilation.
6. Items specific to the event should be included for review.

FMBFD MAY REQUEST APPLICANTS TO SUBMIT A LIFE SAFETY EVALUATION ALONG WITH A SPECIAL EVENT APPLICATION. Life Safety Evaluation:

1. Name of event, participants, and projected number of attendees.
2. Access and egress movement, including crowd density problems.
3. Medical emergency mitigation plan.
4. Fire hazards.
5. Permanent and temporary structural systems.
6. Severe weather mitigation plan.
7. Civil or other disturbances mitigation plan.
8. Mitigation plan for a hazardous material incident within or near the facility.
9. Relationships among facility management, event participants, emergency response agencies, and others that have a role in the events taking place in the facility.
- 10.

Please ensure that all items are addressed, any missing and/or incomplete evaluations will result in a delay and/or denial of the submitted application.

TENT INSPECTION CHECKLIST

☐	Fire extinguishers shall be provided by each vendor with a current state inspection tag from a licensed contractor. (Minimum size permitted is 2A:10BC). Operations conducting deep-frying shall have a K Class fire extinguisher with a current state inspection tag.
☐	Propane tanks shall be installed not less than 5 feet from tents, properly secured, and identified.
☐	“No Smoking” signs shall be clearly posted.
☐	Tents larger than 10x10 shall have the manufacturer’s flame retardant tag affixed and visible.
☐	Cooking under tents will be permitted <u>ONLY</u> when a manufacturer’s flame retardant tag is affixed to the tent, the tent is not enclosed (on any side), and only persons preparing food are permitted under the tent. Any size tent that fails to have the affixed flame retardant tag may not be used to cook under.
☐	Heavy duty <u>grounded type only</u> extension cords may be used. Wiring shall not be frayed, damaged, or spliced.
☐	Temporary lights or lamps may be used, but must be UL Listed. Wiring shall not be frayed, damaged, or spliced.
☐	Exit signs and/or emergency lights (if required) must be clearly visible.
☐	Occupant load sign (if required) must be clearly visible.
☐	Tents shall not obstruct any fire department access.

Please be advised that FMBFD inspects tents for the safety of all parties involved. These are minimum safety requirements and all parties must be in compliance.

HOT FOOD VENDOR REQUIREMENTS

The use of food booths or food trucks is regulated by FMBFD. These requirements shall apply to single vendors, freestanding booths, and food trucks. Cooking within tents containing seating is subject to additional requirements. All food vendors are subject to inspection prior to the start of the event. *Failure to comply with the following regulations may result in closure until compliance is met.*

Flame Retardant Requirements: All sidewalls, drops, and tops of tents and canopies, shall be of flame resistant material or treated with a flame retardant application as recommended by the manufacturer.

Portable Fire Extinguishers: Each food booth shall have, at a minimum, one (1) – 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. If there will be any deep fat frying or cooking that produces grease-laden vapors, a Class K fire extinguisher with a current state inspection tag from a licensed contractor, shall be provided in addition to the ABC type.

Vendor Location: Food booths shall have a clearance of at least 20 feet on two (2) sides. The booth shall not be located within 10 feet of any rides or devices. Cooking that produces sparks and/or grease-laden vapors shall not be conducted within 10 feet of a structure or combustible overhang.

Cooking Appliances: Any cooking appliance used shall be listed for its intended use.

1. Deep fat fryers are not permitted to be used under tents and shall be located at least 18 inches from the outside wall of the tent. If a fryer is to be used in conjunction with a Barbeque (BBQ), it shall be at least three (3) feet away from the BBQ. Use of fryers also requires a Class K fire extinguisher as outlined above.
2. BBQ's are not permitted to be used in food booths. In addition, any fuels are to be kept at least 10 feet away from any heat source. BBQ's that are in use shall be located at least 10 feet from a structure, combustible materials, and overhangs. BBQ's and other open flame devices located outside of a structure, shall be secured from falling and kept away from contact by the public.

Smoking: Smoking is prohibited at all times within food booths, or within 25 feet of any fuel source.

Generators: Generators shall be located a minimum of 20 feet from tents or canopies and isolated from the public by a means approved by the FMBFD.

1. Flammable liquid filled equipment shall not be used within temporary membrane structures, tents, or canopies.
2. Flammable and combustible liquids shall be stored outside and in approved/marked containers. Containers shall be located no less than 50 feet from temporary membrane structures, tents, or canopies.
3. Refueling shall be performed in an approved location not less than 20 feet from temporary membrane structures, tents, or canopies. **Refueling of hot generators is not permitted.**
4. A 2A:10BC fire extinguisher with a current state inspection tag is required for any operation with a generator.

Fuel: Fuel tanks (LPG) shall be stored outside of the structure. The tanks shall be secured (to prevent tipping) and located away from any public contact. The size of the tank is restricted to 25 pounds, unless prior approval is received from the FMBFD. Propane tanks, fittings, and hoses will be checked to ensure there are no leaks.

FLOAT INSPECTION CHECKLIST

It is recommended that owners and/or operators be advised of their compliance with these regulations.

☐	Exhaust pipes on vehicles shall not come in contact with anything flammable on floats.
☐	Exhaust pipes shall be kept clear allowing for proper ventilation of fumes and preventing a carbon monoxide hazard.
☐	All dried vegetation, or similar items being used shall be fire resistant or treated with fire retardant materials. Documentation shall be forwarded to FMBFD for review.
☐	No smoking is permitted on or around any floats.
☐	No re-fueling of generator while generator is running or hot.
☐	All generators shall be secured and provided with a shut-off switch that is easily visible and accessible.
☐	Gasoline containers shall be UL listed type safety cans.
☐	All pull behind trailers and floats shall be equipped with a 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. The fire extinguisher shall be mounted so that it is visible and easily accessible.
☐	All seating shall be properly secured to float.
☐	Trailer hitches shall be secured in the locked position by a tie strap or bolt.
☐	Trailers must have safety chains attached to tow vehicle.
☐	All extension cords shall be listed and approved for outdoor use.

Please remember that this list is subject to change and additional fire and life safety requirements may be required.

PYROTECHNICS PERMIT APPLICATION

Please be advised that application must be filed at least 30 days prior to the scheduled event. All permit fees must be paid prior to approval. Permits are non-transferable.

Date of Application: _____

Sponsoring Organization: _____

Phone/Emergency Contact Number: _____

Applicant/Company Name: _____

Phone/Emergency Contact Number: _____

Name and Address of technician: _____

Name(s) of assistants: _____

A copy of the technician's driver's license must be included along with a resume and three (3) references. Please include a copy of all assistants' drivers' licenses indicating they are a minimum of 18 years of age.

Date, Time and expected length of show: _____

Location of Display: _____

(Attach aerial site map showing required fall out and safety zones)

DISCHARGE DETAILS: Displays are only permitted to be electronically fired. Please provide detail on quantity, size, type, number of bursts (single/multiple) as well as a description of the display in the space below:

QTY	Size	Type	# of burst	Description of Display

The following documents/information must be submitted along with completed application:

1. Event Itinerary
2. Security/Fire Watch Agreement (if required)
3. Coast Guard Application and Approval Letter (if required)
4. FAA Application and Approval Letter (if required)
5. Aerial Site Plan indicating minimum setbacks/required radius, per NFPA Standard

Notification shall be given prior to the Life Safety Division arriving at the site with transport vehicle. Final approval is subject to an onsite inspection. The FMBFD reserves the right to deny or revoke any permit for unsafe conditions, acts, or non-compliance with provisions of applicable standards. Shows may be cancelled or delayed based on changes in weather or other conditions as deemed necessary by the onsite Life Safety Division representative.

ORDINANCE NO. 20-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES ENTITLED "SPECIAL EVENTS"; AND AMENDING PROVISIONS OF CHAPTERS 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PERTAINING TO SPECIAL EVENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

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

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

WHEREAS, the Town Council desires to update the Chapters of the Town of Fort Myers Beach Code of Ordinances and Fort Myers Beach Land Development Code regulating special events to clarify, improve, simplify, and create consistency among sections of the Code of Ordinances and Land Development Code; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by the proper regulation of special events and temporary uses; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 19, 2021 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

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

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. Chapter 22 of the Town of Fort Myers Beach Code of Ordinances entitled "Special Events" is hereby amended to read as follows:

Chapter 22 - Special Events

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights of way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business~~ An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) ~~Any garage sale conducted in compliance with the requirements of this chapter.~~

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ may conduct ~~or advertise~~ a special event unless a permit has been obtained from the town.

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff, then this exemption will not apply.

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;

- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

Sec. 22-67. - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- (3) ~~For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (4) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ may need to obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (5) The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;

c. Recurring special events (see section 22-76);

d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);

e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request ~~(see subsection (6)g)~~ of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;

f. Special events for which a waiver of ~~parking or other town~~ fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and

g. Special events for which a waiver of the ~~Fort Myers Beach Noise Ordinance~~ noise regulations is requested.

h. Special events, which require the closure of streets or sidewalks.

(6) Special events that occur on or near the beach or dune.

a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases, this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.

1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75 of the Fort Myers Beach Code of Ordinances.

2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied.

4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

i. During the sea turtle season (May 1 through October 31), special

event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the

individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 22-78. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-89. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

(11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041 34-3051 of the Fort Myers Beach Land Development Code.~~

~~(154) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(175) The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.~~

Sec. 22-~~910~~. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-~~89~~ and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

Sec. 22-~~10~~11. - Grounds for denial.

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a

special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

Sec. 22-~~11~~12. - Notification of denial and right of appeal.

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

Sec. ~~22-12~~13. - Litter.

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

Sec. ~~22-13~~14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. ~~22-14~~15. - Indemnification and liability insurance.

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

~~Sec. 22-15. - Signage.~~

~~(a) All signage relating to special events must comply with LDC chapter 30.~~

~~(b) Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~
(c) ~~For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 6-366. - Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter

the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.

b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events permit ~~held on the beach~~, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22 of the Code.

c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 14-11. Special events on the beach.~~

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

~~(e) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~

~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~

~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

~~(4) Site specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:~~

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68 E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922 4330.~~

~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~

~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-2. - Definitions

Garage sale or yard sale mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. ~~Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.~~ See *Residential accessory use*.

Use, temporary means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 34-2441. Special events defined.~~

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3041. - Generally.

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of ~~§ 34-3050~~ this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

~~(4) — Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.~~

(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~*Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.~~ *Signs.* A sign permit may be required for any proposed signs.

(h) ~~*Damage to public right of way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right of way as a result of the event.~~ *In lieu of.* Any proposed use, which exceeds the criteria or regulations of this code subdivision, may apply for a Special Event permit.

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~**Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.**~~

(a) ~~Location of amusement devices and other structures. Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

(b) ~~Off-street parking. Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

(c) ~~Hours of operation. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

(d) ~~Special event permit. In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~**Sec. 34-3043. Christmas tree sales.**~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) ~~No parking lot required for another use shall be used for display of trees; and~~

(2) ~~Temporary off street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

(b) ~~The maximum length of time for display and open lot sales shall be 45 days.~~

~~Sec. 34-3044. Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045. Alcoholic beverages.~~

~~Temporary one day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046. Temporary use of mobile home.~~

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) Rehabilitation or construction of damaged business or commercial uses following disaster.~~

~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(c) Conditions for use.~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047. Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities; provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company.~~

Section 11. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 12. This ordinance shall become effective upon adoption by the Town Council.

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

Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

ADOPTED this 19th day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



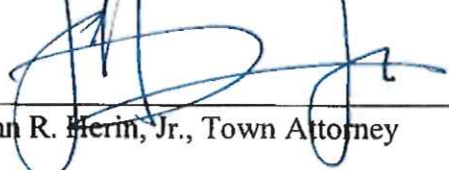
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21 day of January, 2021.

~~Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048. Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Sec. 34-3055. Special events.~~

~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~

~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

TEMPORARY CLOSING OF STATE ROAD PERMIT

MAINTENANCE
12/11

Date: 3/21/2026

Permit No. _____

Governmental Entity

Approving Local Government: Town of Fort Myers Beach Contact Person Jeff Hauge

Address 6231 Estero Blvd

Telephone 239-788-7766 Email jhaug@fmbgov.com

Organization Requesting Special Event

Name of Organization Town of Fort Myers Beach Contact Person Jeff Hauge

Address 6231 Estero Blvd, Fort Myers

Telephone 239-788-7766 Email jhaug@fmbgov.com

Description of Special Event

Event Title Fourth of July Parade & Fireworks Date of Event 7/4/2026

Start Time 9:00am / 8:00pm End Time 12:00 PM / 11:30pm

Event Route (attach map) Matanzas Pass Bridge Closure only to Island oncoming traffic from 9:00am – 12:00pm for the parade and 8:00pm – 11:30PM for the fireworks

Detour Route (attach map) During the fireworks show, vehicles can leave Estero island heading south on Estero island heading South on Estero Blvd to Bonita Beach to Tamiami Trail (US41) or can proceed to Interstate 75

Law Enforcement Agency Responsible for Traffic Control

Name of Agency Lee County Sheriff Department

US Coast Guard Approval for Controlling Movable Bridge

Not Applicable ☒

Copy of USCG Approval Letter Attached ☐

Bridge Location _____

The Permittee will assume all risk of and indemnify, defend and save harmless the State of Florida and the FDOT from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise of this event.

The Permittee shall be responsible to maintain the portion of the state road it occupies for the duration of this event, free of litter and providing a safe environment to the public.

Signatures of Authorization

Event Coordinator Jeff Hauge Signature [Signature] Date 3/21/26

Law Enforcement Name/Title _____ Signature _____ Date _____

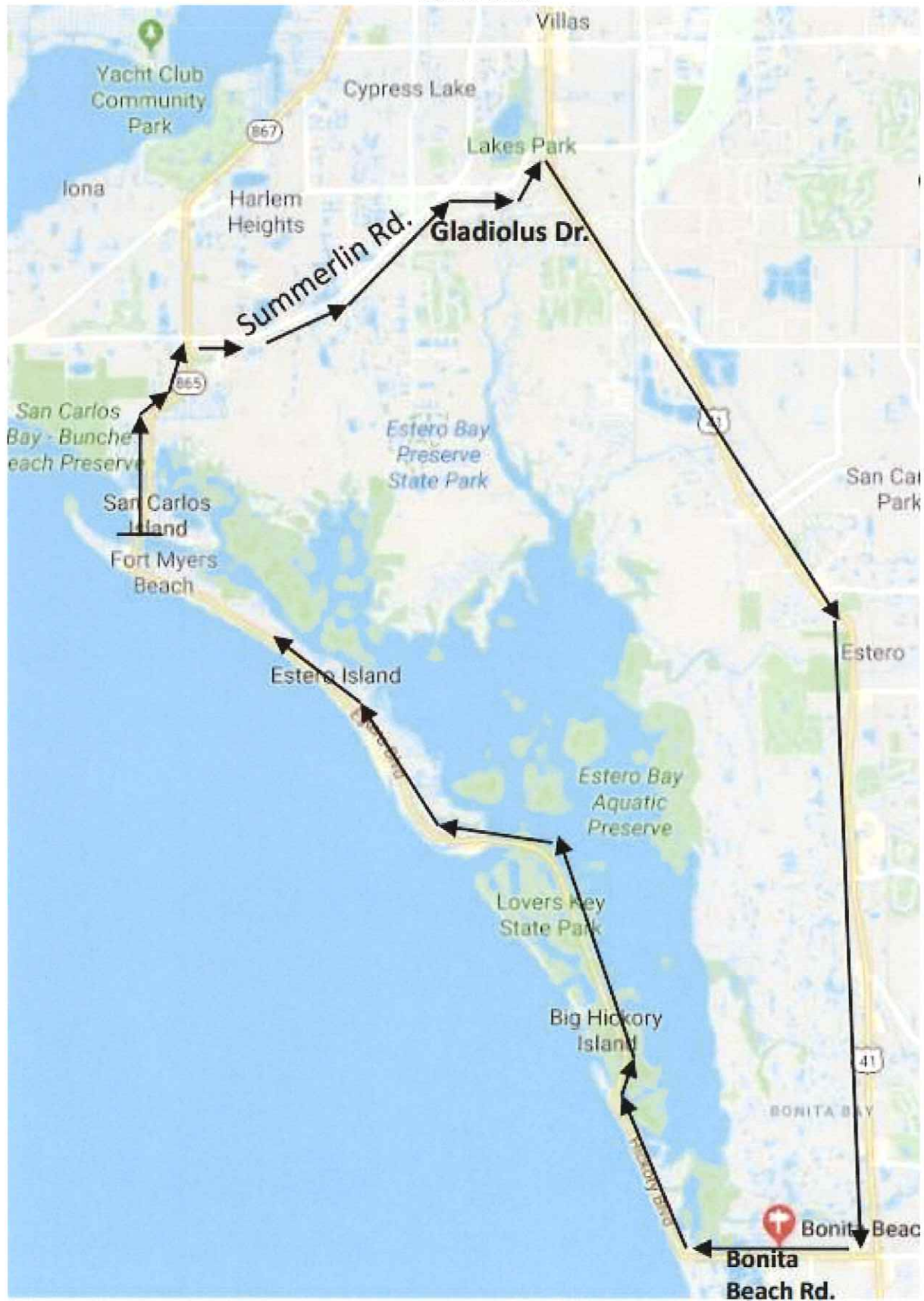
Government Official Name/Title _____ Signature _____ Date _____

FDOT Special Conditions

FDOT Authorization

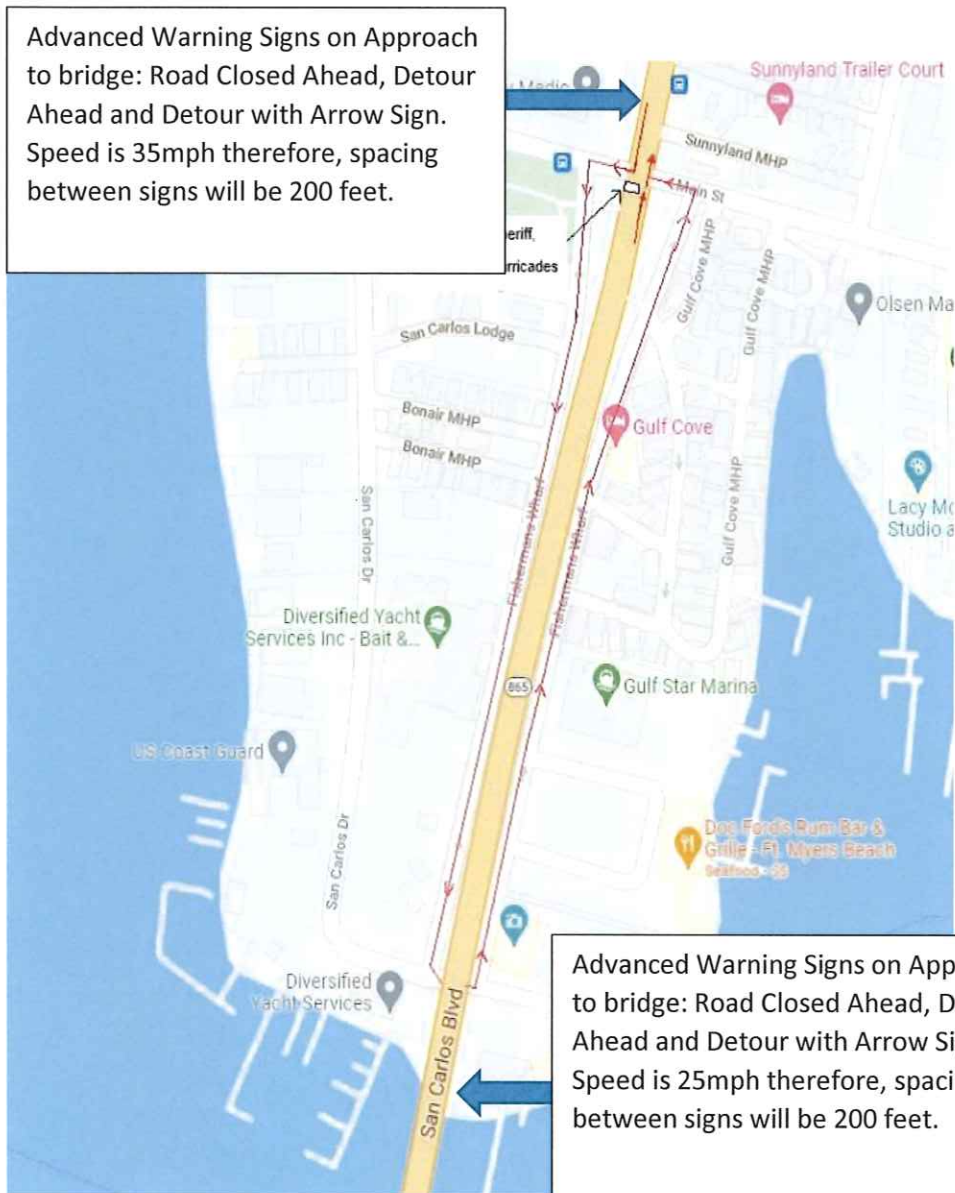
Name/Title _____ Signature _____ Date _____

Town of Ft. Myers Beach
4th of July Event
07/04/2026
Detour Route

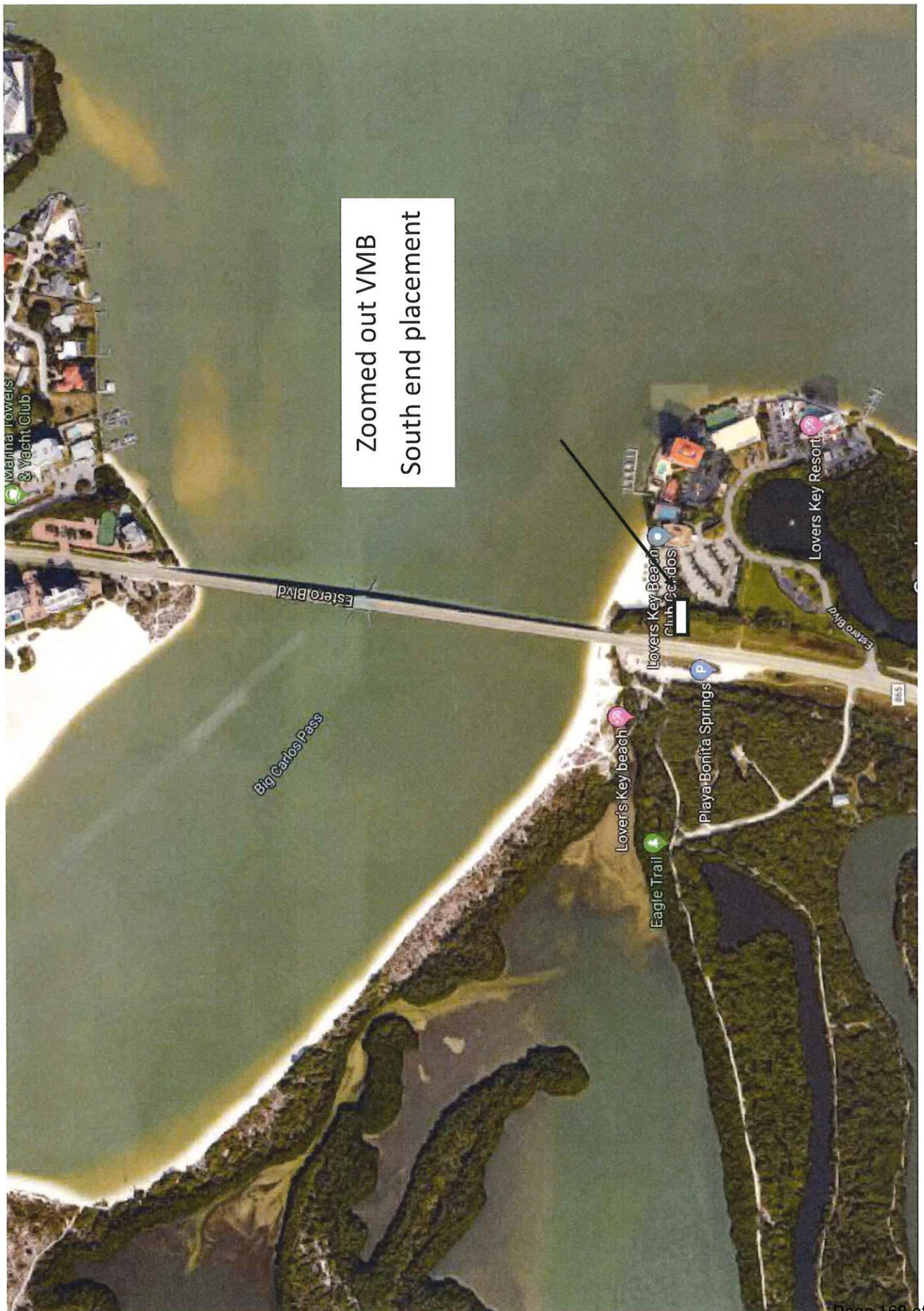


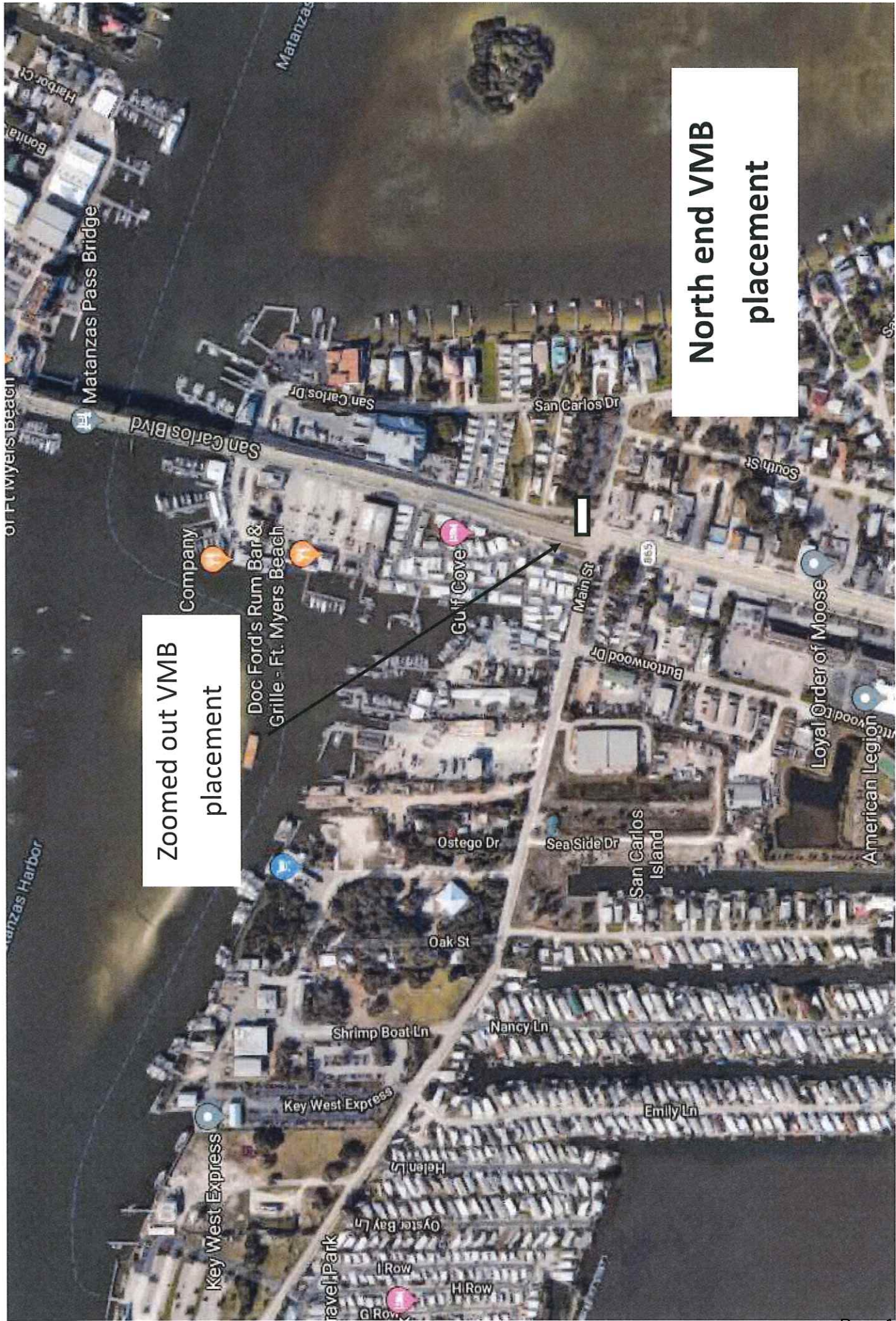
Town of Ft. Myers Beach
4th of July Event
07/04/2026
Detour Route

Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 35mph therefore, spacing between signs will be 200 feet.



Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 25mph therefore, spacing between signs will be 200 feet.





Zoomed out VMB
placement

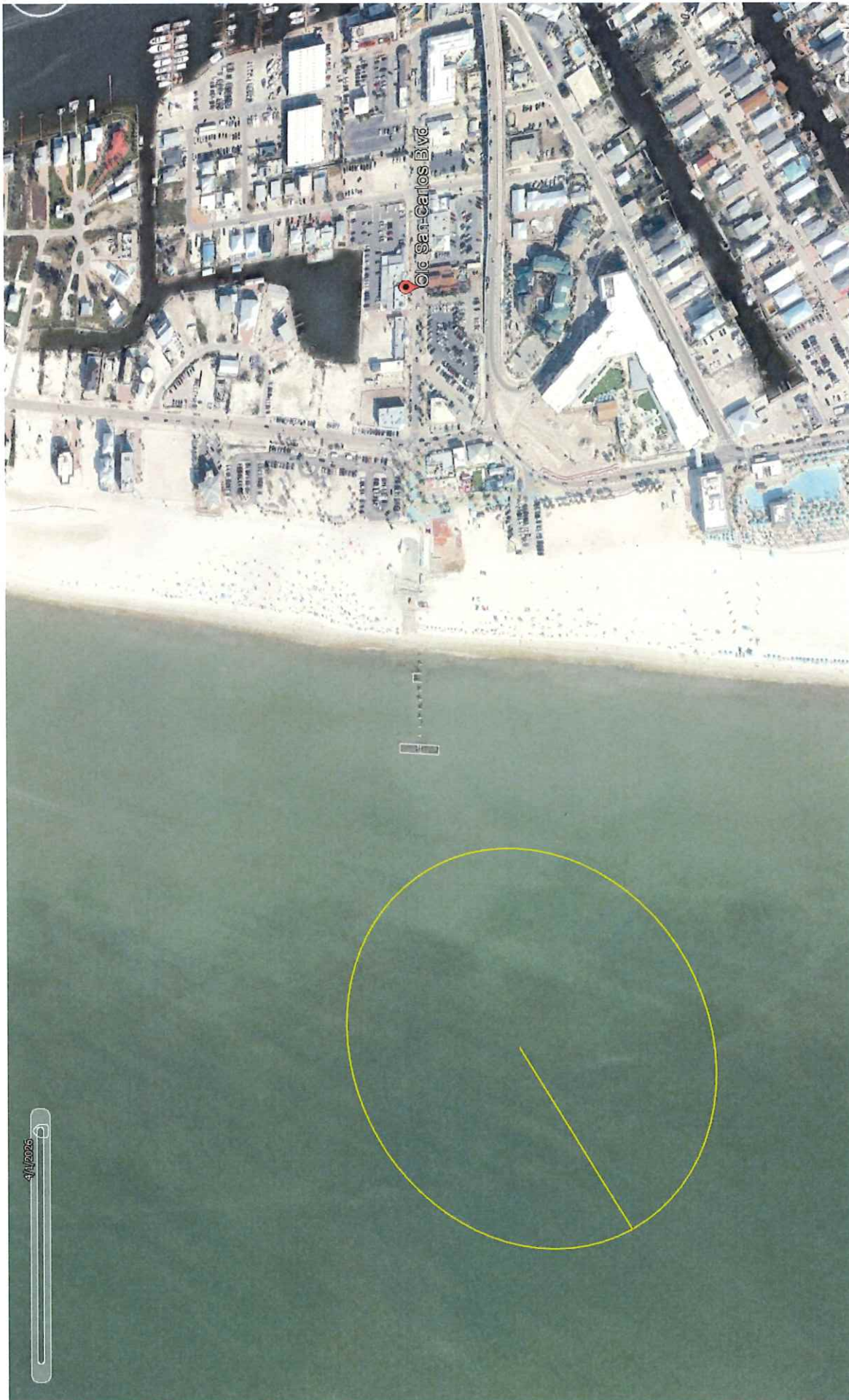
North end VMB
placement



North end VMB
placement

VMB Placement





Barge location for Fireworks

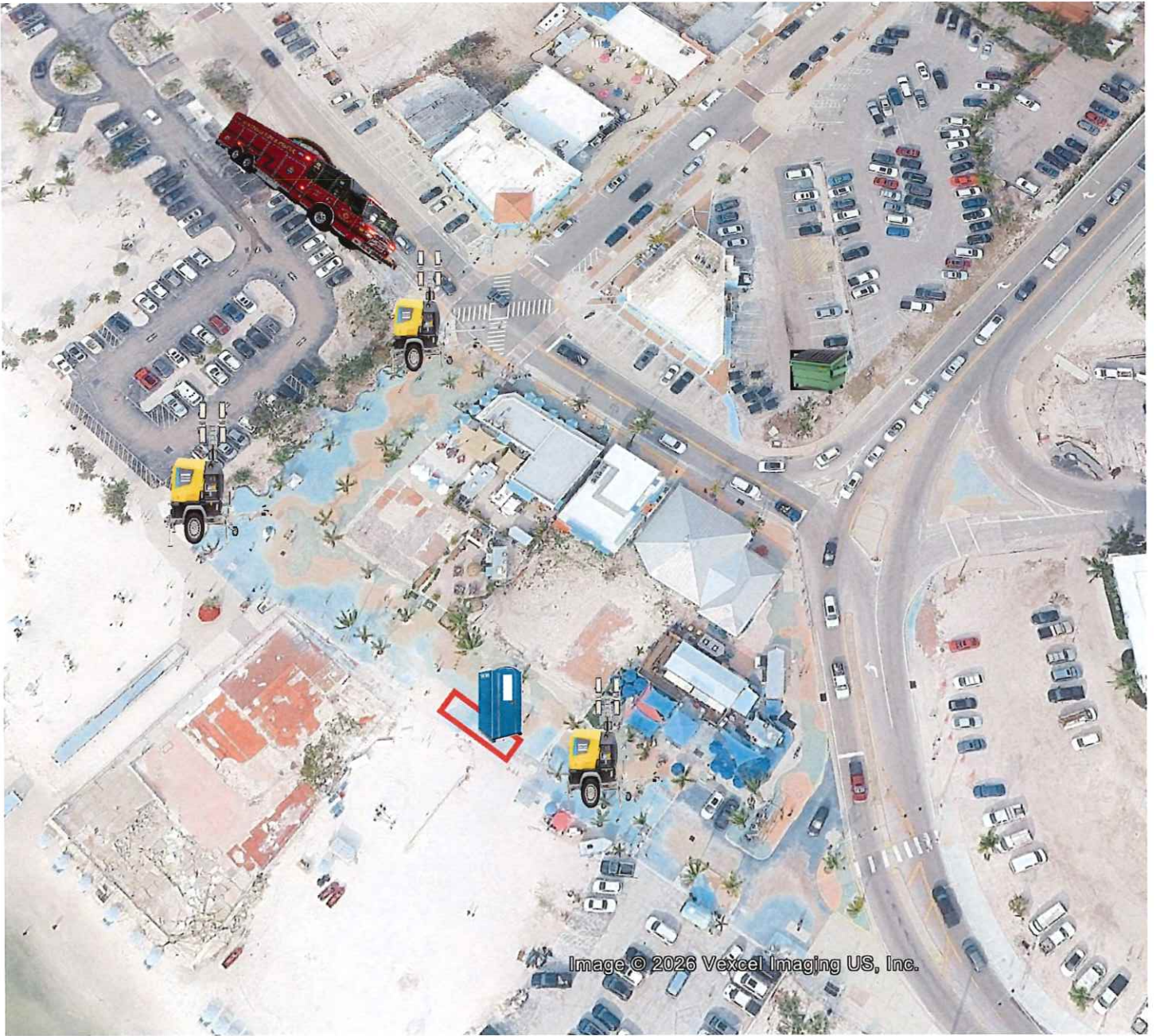


Image © 2026 Vexcel Imaging US, Inc.



[illegible]



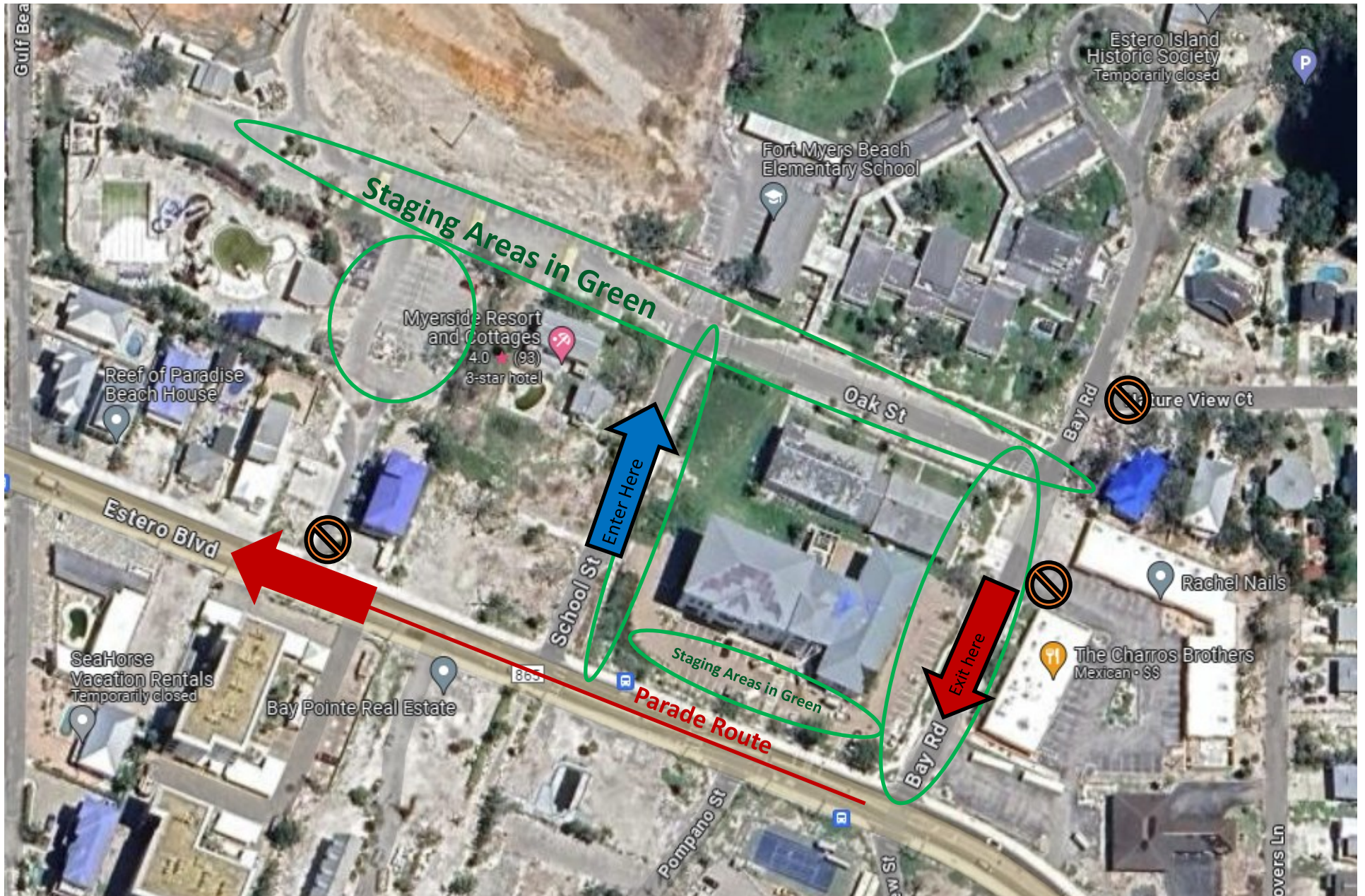
Town of Fort Myers Beach

2026 July 4th Parade

General Rules and Regulations

- 1.** All parade entries and participants are selected by the parade committee based on “show and entertainment value” offering a diverse mix to the overall parade and theme. Selection criteria is: (a) show and entertainment value of unit (b) diversity within parade group and (c) completeness of application. Understanding that a parade is an entertainment medium, the contribution of each unit is critical. Artistic beauty, use of color, special effects, originality, rider personnel, marching/dancing skills, visual appearance and holiday spirit are all considerations for selection by the committee. Costuming and decoration of all units is expected. Because of this “Total Show Concept”, THIS PARADE IS NOT TO BE A PLATFORM FOR POLITICAL CAMPAIGNS/ISSUES OR TARGETED SPECIAL GROUPS.
- 2.** All walking and marching parade participants must be a minimum of 6 years of age and supervised by an adult.
- 3.** Lineup position cannot be changed once assigned.
- 4.** Parade units (especially floats) may arrive after 7:30am in the staging area for final decorating. Due to space availability and safety for participants, there will be only ONE support vehicle allowed into the staging area for each parade unit. Support vehicles must UNLOAD and proceed to provided parking area. ALL SUPPORT VEHICLES MUST LEAVE STAGING AREA BY 2:00pm.
- 5.** No vehicles and/or riders are allowed to leave or be removed from any unit once the parade has started.
- 6.** All units and participants must be in position for line up and parade ready by 9:00am with the exception of bands.
- 7.** All buses, horse trailers, vans, and their drivers must remain in the staging area and be ready by 9:45am when instructions are given to proceed to the dispersal area by Sheriff escorted caravan. Drivers are to stay with their vehicle in the dispersal and wait for their unit.
- 8.** All audio, towing, and motorized vehicles, with the exception of antique vehicles, must be decorated in the holiday spirit.
- 9.** No excessive horn blowing or sirens is allowed by any unit.
- 10.** Any unit using sound must play one or more of the following: traditional holiday music, contemporary music of all genres will be suitable for all ages and contain no profanity. All music selections will be submitted in advance with your application to be reviewed by the parade committee.

- 11.** This is a moving parade. PLEASE No stopping to perform at any time during the parade route.
- 12.** All vehicles in the unit must arrive with a vehicle pass, which will be issued to the Unit Coordinator. No one will be admitted to the staging area and the parade itself without a pass. The distribution of these passes is the responsibility of the person signing this application (Unit Coordinator). Passes must be placed on the dashboard of the driver's side window.
- 13.** All unsafe or disabled units will be removed from the parade route and not allowed to re-enter.
- 14.** Blatant sound advertising or signage will not be allowed. Sponsor signs may be at the front or rear of the float/unit and may be 18"x36" or proportioned to the overall size of the unit.
- 15.** Any profanity, verbal or otherwise, by persons or on vehicles in the lineup area or on parade route will not be tolerated.
- 16.** During the parade units are to maintain a safe distance of at least 10' from the unit in front of them. Vehicles are to travel to the "center" of the roadway or as directed by Recreation staff or emergency personnel. Vehicles must be in good mechanical and braking condition and must have an adequate supply of gas to run engine before parade and the entire length of the parade route. Units are to maintain a safe speed of 5 mph and will watch for the unit in front of and behind them to maintain a smooth flow.
- 17.** There is a speed limit of 5 mph for all units including motorcycles and law enforcement units.
- 18.** Units may distribute candy and merchandise. However, DO NOT encourage parade viewers to come into the roadway to pick up or be handed items from your unit. Be safe.
- 19.** Any person who possesses or is "under the influence" of alcohol or drugs will be violating a Town of Fort Myers Beach ordinance and will be removed from the lineup area and the parade itself.
- 20.** The parade will be held rain or shine, unless conditions deemed dangerous to the participants are present.
- 21.** Parade official's instructions in the staging area, on parade route, and in the dispersal area must be followed. The Parade Committee has the right to eliminate any unit from the parade if the instructions are not followed or if any unit is considered unsafe to proceed down the parade route.
- 22.** The Parade Committee reserves the right to accept or reject any entry. The parade Committee reserves the right to pull a unit from the parade for any reason.
- 23.** Parade participants are asked to clean trash or debris from their area prior to beginning the parade.
- 24.** I understand that any rule violation by any member of this group may result in nonacceptance into subsequent parades.
- 25.** Parade rules as listed above have been developed for the safety and enjoyment of participants and spectators.
- 26.** Appropriate dress code must be enforced.



1. **Request:**

Meeting Date: May 4, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE CONVEYANCE OF CERTAIN SURPLUS REAL PROPERTY BY QUITCLAIM DEED TO JOHN S. VIDALIN AND CAROL T. VIDALIN; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID QUITCLAIM DEED; AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY ACTIONS TO EFFECTUATE THE CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary to allow John S. Vidalin and Carol T. Vidalin to proceed with the construction of their pool. Conveying any interest the Town may or may not have in the adjacent property through a Quit Claim Deed will remove any potential ownership uncertainty and enable the Vidalins to obtain the necessary permits and construct their pool.

What the action accomplishes:

This action authorizes the Mayor to execute a Quit Claim Deed conveying any interest the Town may or may not have in the property adjacent to the Vidalins' property. This will allow the Vidalins to move forward with the construction of their pool.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Execution of the Quitclaim Deed

4. **Submitter of Information:**

5. **Background:**

This item is being presented for discussion and approval. When the canals were originally constructed, they were dug after the lots had already been platted, which resulted in areas of mis-measurement. The parcel under consideration creates a barrier that prevents the property owner from properly constructing a pool on the property. By relinquishing any claim the Town may have on this parcel, the Town will allow John S. Vidalin and Carol T. Vidalin to proceed with the construction of their pool. The conveyance shall be by quit claim deed providing no assurances as to the Town's legal right to the property. This action minimizes the Town's liability regarding title litigation over the submerged lands.

Attachments:

1. ns RESOLUTION 26-XX APPROVING THE CONVEYANCE OF CERTAIN REAL PROPERTY BY QUITCLAIM DEED TO JOHN S. VIDALIN AND CAROL T. VIDALIN
2. Quitclaim Deed for John S. Vidalin and Carol T. Vidalin

Financial Impact:

None

6. **Alternative Action**

N/A

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

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

Created/Initiated - 4/3/2026
Approved - 4/23/2026
Approved - 4/23/2026
Approved - 4/26/2026
Approved - 4/27/2026
Approved - 4/28/2026
Final Approval - 4/28/2026

RESOLUTION NUMBER 26-095

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE CONVEYANCE OF CERTAIN SURPLUS REAL PROPERTY BY QUITCLAIM DEED TO JOHN S. VIDALIN AND CAROL T. VIDALIN; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID QUITCLAIM DEED; AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY ACTIONS TO EFFECTUATE THE CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities have the authority to convey real property for municipal purposes when deemed to be in the best interest of the public; and

WHEREAS, the Town of Fort Myers Beach ("Town") is the owner of certain real property located within Lee County, Florida; and

WHEREAS, the Town Council has determined that a parcel of land adjacent to the rear lot lines of Lots 44 and 45, Block A, HOLIDAY HEIGHTS SUBDIVISION, as recorded in Plat Book 9, Page 58, of the Public Records of Lee County, Florida, is surplus property and not needed for any Town purpose; and

WHEREAS, the Town desires to convey said parcel to JOHN S. VIDALIN and CAROL T. VIDALIN, husband and wife ("Grantees"), via Quitclaim Deed for consideration and other good and valuable consideration; and

WHEREAS, the Town Council finds that conveying the property is in the best interest of the Town and serves a valid public purpose; and

WHEREAS, the Quitclaim Deed has been prepared and reviewed, and the Town Council desires to authorize its execution.

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

Section 1. The above recitals are true and correct and are hereby incorporated herein as the findings of the Town Council.

Section 2. The conveyance of the subject property to JOHN S. VIDALIN and CAROL T. VIDALIN by Quitclaim Deed is hereby approved. The Town Manager is authorized to execute the Quitclaim Deed on behalf of the Town, and all appropriate Town officials are authorized to take all necessary actions to implement and complete the conveyance.

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	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of _____ 2026 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

This Document Prepared By and Return to:
Thomas Ringel, Esq.
Markowitz, Ringel, Trusty & Hartog, P.A.
9130 South Dadeland Blvd., Suite 1800
Miami, FL 33156
(305) 670-5000

File Number: 260175
Consideration: \$10.00

Quitclaim Deed

This Quitclaim Deed, Made this _____ day of _____, 2026 A.O., Between

TOWN OF FORT MYERS BEACH, a municipality of the State of Florida whose address is: 6231 Estero Boulevard, Fort Myers Beach, FL 33931 of the County of Lee, State of Florida, grantor, and

JOHN S. VIDALIN and CAROL T. VIDALIN, husband and wife whose address is: 5585 Avenida Pescadura, Fort Myers Beach, FL 33931 of the County of Lee, State of Florida, grantees.

Witnesseth that the GRANTOR for and in consideration of the sum of TEN DOLLARS (\$10) DOLLARS, and other good and valuable consideration to GRANTOR in hand paid by GRANTEEES, the receipt whereof is hereby acknowledged, has granted, bargained and quitclaimed to the said GRANTEEES and GRANTEEES' heirs, successors and assigns forever, the following described land, situate, lying and being in the County of Lee, State of Florida to wit:

All of that parcel adjacent to the rear lot line of Lots 44 and 45, Block A, HOLIDAY HEIGHTS SUBDIVISION, according to map or plat thereof as recorded in Plat Book 9, Page 58, of the Public Records of Lee County, Florida, lying between the lot line and the mean high water line of the adjacent waterway.

The Town Council, having reviewed this matter on the date set forth above, has found the property to be surplus and not needed for any Town purposes.

To Have and to Hold, the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of granter, either in law or equity, for the use, benefit and profit of the said grantee forever.

This Deed Was Prepared Without Examination of Title. The preparer of this instrument was neither furnished with, nor requested to review an abstract on the described property and therefore expresses no opinion as to the condition of title.

Quitclaim Deed

Page 2 of 2

In Witness Whereof, the grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

TOWN OF FORT MYERS BEACH, a
municipality of the State of Florida

Witness #1:

Signature: _____

Printed Name: _____

Address: _____

By: _____

Printed Name: _____

Title: _____

Witness #2:

Signature: _____

Printed Name: _____

Address: _____

State of Florida

County of Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this _____ day of _____, 2026, by _____ as _____ (Title) of TOWN OF FORT MYERS BEACH, a municipality of the State of Florida, who is ☐ personally known to me or who ☐ produced a _____ as identification.

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____

APPROVED AS TO FORM AND SUFFICIENCY:

Clerk for the Town of Fort Myers Beach

Attorney for Town of Fort Myers Beach

By: _____

By: _____

Printed Name: _____

Printed Name: _____

1. **Request:**

Meeting Date: May 4, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND OPULENT OUTLINES, LLC UNDER RFQ-26-02-AD FOR THE FORT MYERS BEACH ENGINEERING & ARCHITECTURAL SERVICES BAY OAKS COMMUNITY POOL REHABILITATION PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$135,000.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

In order to utilize grant funding received through the CDBG-DR program, the Town must secure an engineering/design firm for the pool through the RFQ process.

What the action accomplishes:

Allows the Town Manager to execute a negotiated agreement with this firm if authorized.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director, Conor Nally,
Contracts & Procurement
Manager

5. **Background:**

From the Request for Qualifications: The Town of Fort Myers Beach (the "Town") seeks qualifications from professional engineering and design firms to provide comprehensive design, permitting, and construction-phase engineering and inspection (CEI) services for the Parks and Recreation Revitalization Project. This project, funded in part through Community Development Block Grant Disaster Recovery (CDBG-DR) funds, aims to restore, improve, and modernize public recreation facilities that were severely impacted by Hurricane Ian. The selected firm will provide professional services as described for The Bay Oaks Community Pool Rehabilitation Project. The successful firm must have experience in post-disaster infrastructure restoration, flood mitigation planning, resilient and sustainable design, and compliance with federal procurement and CDBG-DR regulations. Through this solicitation, the Town seeks an , engineering, and design firm to provide comprehensive professional services that align with FEMA flood mitigation guidelines, CDBG-DR program requirements, and sustainable development best practices. The project will not only restore these vital community assets but also integrate resilient infrastructure solutions to protect against future climate-related threats.

Pursuant to Sec. 2-480(h)(1) of the Town's Code of Ordinances and the Consultant's Competitive Negotiation Act (CCNA), contracts for professional services consisting of Architecture, Professional Engineering, Landscape Architecture or Registered Land Surveying must be competitively negotiated in accordance with the requirements of Section 287.055 F.S. within statutory thresholds. In addition, the Town competitively bids for other professional services as further described below.

On October 6, 2025, the Town Council rejected and canceled the previous RFQ-25-10-AD qualification proposal for the Fort Myers Beach Engineering & Architectural Services Bay Oaks

Community Pool Rehabilitation Project with cause, due to lack of adequate competition as provided in the Request for Qualifications and Sections 2-480(i)(12) and 2-480(h)(5)(e) of the Town Code, and provide direction to staff to re-bid the project and the Town re-solicited as RFQ-26-02-AD, with responses due in November 2025.

In accordance with the Town of Fort Myers Beach Purchasing Ordinance 24-11, Sec 2-480 (14) the Selection Advisory Committee (SAC) consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the Town. All members of the SAC are prohibited from speaking, answering questions or having contact with any potential bidder. The SAC will review the bid and response materials prior to the SAC meeting. The committee evaluates each firm's qualifications based on past experience, express understanding of the project and proposed method of handling the project and any other criteria included for evaluation.

The Town's SAC, consisting of the Deputy Town Manager, Community Services Director, and Community Development Director, was established for the purpose of evaluating the Request for Qualifications proposals received by the Town, and met on the 9th day of December 2025 to evaluate each firm's qualifications. At the noticed public meeting, the firm was evaluated based upon the established criteria within the Request for Qualifications document. The firm was then invited for a public interview and discussion, which occurred on January 9, 2026 in which the SAC announced and deemed the response to be the most highly responsive and qualified to perform the required services. The Town Manager, after reviewing the SAC recommendation, has forwarded this to the Town Council for consideration during a regularly scheduled meeting.

The Town Council is requested to review the draft agreement and approve to continue with this project.

Attachments:

1. NS 26-076, Approving RFQ-26-02-AD Agreement with Opulent Outlines for Beach Pool Agreement Bay Oaks (1)
2. BayOaksEngineeringAuthorization_to_Contract_Template_2026_Appvd
3. 26-02-AD Opulent Contract

Financial Impact:

Payment for these services will be funded in part or in whole by a U. S Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) Program.

Responders are required to comply with all Federal Grant Requirements, 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications.

6. Alternative Action

Do not accept the contract draft and potentially rebid the solicitation.

7. Management Recommendations:

Accept the recommendation and authorize the Town Manager to execute an agreement with the firm.

8. Recommended Approval:

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Jeff Hauge, Community Services Director

Created/Initiated - 4/27/2026
Approved - 4/27/2026

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

Approved - 4/27/2026
Approved - 4/28/2026
Approved - 4/28/2026
Final Approval - 4/28/2026

RESOLUTION NUMBER 26-076

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND OPULENT OUTLINES, LLC UNDER RFQ-26-02-AD FOR THE FORT MYERS BEACH ENGINEERING & ARCHITECTURAL SERVICES BAY OAKS COMMUNITY POOL REHABILITATION PROJECT IN A NOT-TO-EXCEED AMOUNT OF \$135,000.00; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town Council approved Resolution 26-016 on February 2, 2026 which accepted the ranking and determination of Opulent Outlines, LLC as qualified and responsive pursuant to a competitive procurement process in compliance with state law and Town Code, RFQ-26-02-AD entitled “Fort Myers Beach Engineering & Architectural Services Bay Oaks Community Pool Rehabilitation Project and authorized the Town Manager to enter into negotiations with the firm; and

WHEREAS, the Town Manager with designated staff have conducted negotiations as authorized by the Town Council with Opulent Outlines, LLC to create a draft agreement and approval of the draft agreement was received by the Town’s grant oversight partners at Lee County; and

WHEREAS, pursuant to the Town’s procurement policies within Ordinance 26-06, the negotiated contract is now before the Town Council for approval; and

WHEREAS, it is in the best interest of the Town to approve the contract for the project to Opulent Outlines, LLC and execute the agreement as soon as possible.

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

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

Section 2. The Town Council hereby approves the agreement attached as Exhibit A with Opulent Outlines, LLC and authorizes the Town Manager to sign the agreement

Section 3. This resolution shall take effect immediately upon adoption.

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

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this 4th day of May 2026 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2026.



Lee County
Southwest Florida

Board of County Commissioners

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

David Mulicka
District Three

Brian Hamman
District Four

Trish Petrosky
District Five

Dave Harner, II
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing Examiner

William B. McKannay, Town Manager
Town of Fort Myers Beach
6231 Estero Blvd.
Fort Myers Beach, FL 33931

April 16, 2026

RE: Authorization to Execute Contract
Activity: # DR10263

Good afternoon,

The Office of Strategic Resources and Government Affairs (SRGA) has reviewed the complete procurement file and draft contract document for the following activity: Fort Myers Beach Engineering & Architectural Services Bay Oaks Pool Rehabilitation Project. The procurement file appears to contain the minimum necessary information required by 2 CFR 200 and 88 FR 32046. Lee County's review of the procurement file and draft contract in no way guarantees legal sufficiency or that HUD or any other auditing entity will find the solicitation acceptable or compliant. Subrecipients must also ensure compliance with their local standards, as applicable.

SRGA is hereby authorizing Town of Fort Myers Beach to proceed with execution of the contract with Opulent Outlines, LLC.

SRGA and its agents are available to participate in any pre-construction meetings to present information on the topics identified above as well as other related information including reporting requirements for Section 3, Davis Bacon and Related Acts, and Minority and Women Business Enterprise (MWBE) goals which are required for this project.

SRGA and the assigned grant manager will coordinate closely with you throughout the design and construction process to monitoring compliance with federal, state, and local requirements and ensure timely completion of work.

Thank you for your continued partnership,

Kevin Loucks, Performance Management Analyst
239-533-7366, KLoucks@Leegov.com

Lee County Strategic Resources and Government Affairs
Recovery@leegov.com
[Lee-CDBG-DR](#)

**AGREEMENT FOR
FORT MYERS BEACH ENGINEERING & ARCHITECTURAL SERVICES
BAY OAKS COMMUNITY POOL REHABILITATION PROJECT**

THIS AGREEMENT is made and entered into this _____ day of _____ 2026 by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 (“Town”), and Opulent Outlines, LLC (“Consultant”), whose address is 12557 New Brittany Blvd Ste 3 Fort Myers, FL 33907.

WHEREAS, the Town desires the Consultant to provide and perform services as further described hereinafter concerning the Public Facilities Infrastructure Program (“Project”); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the Town’s competitive solicitation process (RFQ 26-02-AD) as provided in Purchasing Ordinance 24-11, and applicable Florida law; and

WHEREAS, funding in part or in whole shall be provided by a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) Program, which requires the Consultant to comply with Federal Grant Requirements, found in 2 CFR part 200 and 24 CFR part 570, terms, conditions, and specifications; and

WHEREAS, the Subrecipient Agreement for Community Development Block Grant – Disaster Recovery (CDBG-DR) Program funding for the Project between the Town and Lee County requires completion of all work under this Agreement no later than September 31, 2026; and

WHEREAS, approval of this agreement is in the best interest of health, safety and welfare to the residents of Fort Myers Beach.

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

I. PRODUCTS AND SERVICES

The Consultant agrees to diligently provide all products and services for the Project in accordance with Exhibit A (Scope of Services), attached hereto and incorporated herein, and in accordance with the performance milestones and deliverables set forth in Exhibit B (Project Schedule and Performance Milestones). Additionally, Consultant shall provide such services in compliance with all Federal terms, conditions, provisions, certifications, affidavits, and alike, as set forth in Exhibit F, CDBG-DR Supplemental Conditions; Exhibit G, Certifications CDBG-DR Compliance Provisions; and Exhibit H, CDBG-DR Special Terms and Conditions, attached hereto and incorporated herein, which shall be inclusive of the original Solicitation with Consultant's executed proposal documents, grant funding provisions, and addenda. Consultant shall comply strictly with all of the terms and conditions of Solicitation No. RFQ-26-02-AD, as modified by its [addendum

or addenda], copies of which are on file with the Town's Clerk and are deemed incorporated into this Agreement. Only those portions of the Solicitation and Consultant's submittal that are specifically incorporated into Exhibit A shall be binding upon the parties. In the event of a conflict between the Solicitation or Consultant's submittal and the terms of this Agreement, the terms of this Agreement shall control.

II. TERM AND DELIVERY

- A. This Agreement shall commence on the Effective Date and shall continue until completion and delivery of the Project. The Effective Date shall be the date on which the last Party executes this Agreement.
- B. The Project shall be delivered in accordance with Exhibit B (Project Schedule and Performance Milestones), attached hereto and incorporated herein. The schedule shall commence on the date identified in the Notice to Proceed issued to the Consultant by the Town. The Consultant shall complete all deliverables in accordance with the milestone schedule set forth in Exhibit B. Completion of services shall be based on delivery and acceptance of the required deliverables. All work must be completed by the completion date identified in the Notice to Proceed.

III. COMPENSATION AND PAYMENT

- A. The Town shall pay the Consultant in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit C (Fee Schedule), attached hereto and incorporated herein. The total compensation payable under this Agreement shall not exceed \$135,000, unless modified by written amendment. This amount represents the maximum compensation for all services performed under this Agreement and shall be all inclusive of costs necessary to provide all products and services as outlined herein, and as supported by the Consultant's submittal in response to the Solicitation, a copy of which is on file with the Town's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Consultant shall not make any deliveries or perform any services under this Agreement until receipt of a Notice to Proceed. Town reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the Town under this Agreement are subject to the availability of an annual appropriation for this purpose by the Town. In the event of non-appropriation of funds by the Town for the services provided under this Agreement, the Town will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Consultant on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the Town shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The Town shall pay the Consultant in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Consultant's invoice and written approval of same by the Town indicating that the products and services have been provided in conformity with this Agreement. Payment shall be made based on completion and written acceptance of deliverables as set forth in Exhibit B and Exhibit C. The Town shall not be obligated to pay for services that have not been completed and accepted.
- B. The Consultant shall submit an invoice for payment to the Town on a monthly basis (unless another payment schedule is provided in Exhibit C) for those specific products and services as described in Exhibit A, and the corresponding fees as described in Exhibit C, that were completed and accepted during that invoicing period.
- C. As may be specified in Exhibit C, progress payments shall be paid monthly in proportion to the percentage of deliverables completed and accepted on those specific line items as approved in writing by the Town.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Consultant and the Town.
- B. If the Town requires the Consultant to perform additional services or provide additional product(s) related to this Agreement, then the Consultant shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The Town shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Consultant, the Consultant shall not be entitled to additional compensation.

VI. LIABILITY OF CONSULTANT

- A. The Consultant shall save, defend, indemnify and hold harmless the Town from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Consultant arising out of or in any way connected with the Consultant or subcontractor's performance or failure to perform under the terms of this Agreement.

- B. This section shall survive the termination or expiration of this Agreement.

VII. CONSULTANT'S INSURANCE

- A. Consultant shall procure and maintain insurance as specified in Exhibit D Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Consultant shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit D. These requirements, as well as the Town's review or acceptance of insurance maintained by Consultant, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by Town. To the extent multiple insurance coverages and/or Town's self-insured retention may apply, any and all insurance coverage purchased by Consultant and its subcontractors identifying the Town as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE CONSULTANT

- A. The Consultant shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Consultant under this Agreement. The Consultant shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by Town, supply a comparable replacement product or service.
- B. The Consultant warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Consultant), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Consultant shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Consultant specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
 - 1) keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the services required under this Agreement;

- 2) upon request from the Town, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the Town, all public records in possession of Consultant upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology system of the Town.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**TOWN HALL
6231 ESTERO BLVD
FORT MYERS BEACH, FL. 33931
(239) 765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

- E. The Consultant is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Consultant is not an employee, agent or servant of the Town and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Consultant's sole direction, supervision and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the Town shall be that of an independent contractor and not as employees of the Town. The Consultant shall be solely responsible for providing benefits and insurance to its employees.
- F. The Consultant shall comply with the requirements of the CDBG-DR Supplemental Conditions attached hereto and incorporated herein as Exhibit F; the requirements of the Certifications CDBG-DR Compliance Provisions attached hereto as Exhibit G; and the requirements of the CDBG-DR Special Terms and Conditions attached hereto as Exhibit H.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the Town upon acceptance by the Town.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Consultant shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Consultant to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the Town and Consultant. If the Consultant's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the Town's written approval before said changes or substitution can become effective.
- C. The Consultant specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties. The Consultant acknowledges that time is of the essence due to funding and program requirements associated with the CDBG-DR Program.
- D. The Consultant shall complete each milestone deliverable identified in Exhibit B in accordance with the corresponding due dates set forth therein (the "due dates"). Failure to achieve any milestone deliverable by its applicable due date, without an approved written extension from the Town, shall constitute a delay in performance.

The parties acknowledge that damages resulting from such delays are difficult to ascertain. Accordingly, the Consultant shall be liable for liquidated damages in the amount of \$500 per calendar day for each day of unexcused delay beyond the applicable due date for each milestone deliverable not timely completed.

The parties agree that this amount represents a reasonable estimate of damages and is not a penalty. The Consultant shall not be liable for delays beyond its reasonable control, provided that the Consultant submits a timely request for a Change Order to the Town seeking an extension of the applicable due date.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Consultant shall promptly comply with all applicable federal, state, Town and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Consultant shall conduct no activity or provide any service that is

unlawful or offensive.

XII. CONTRACT TERMINATION

- A. **MATERIAL BREACH** A Consultant may be Terminated for Cause by the Town for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. Consultant failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. Consultant failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Consultant becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Consultant becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Consultant's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Consultant or any of the Consultant's property and such appointment endangers the Consultant's proper performance hereunder; 6. A determination that the Consultant is in violation of federal, state, or local laws or regulations and that such determination renders the Consultant unable to perform any aspect of the Agreement.
- B. **OPPORTUNITY TO CURE** In the event that Consultant fails to perform a contractual requirement or materially breaches any term or condition, the Town may issue a written cure notice. The Consultant may have a period of time in which to cure. The Town is not required to allow the Consultant to cure defects if the opportunity for cure is not feasible as, determined solely within the discretion of the Town. Time allowed for cure shall not diminish or eliminate Consultant's liability for damages, or otherwise affect any other remedies available against Consultant under the Agreement or by law. If the breach remains after Consultant has been provided the opportunity to cure, the Town may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar Consultant from receiving future solicitations or other opportunities; 6. Require Consultant to reimburse the Town for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.
- C. **TERMINATION FOR CAUSE** In the event the Town determines that the Consultant has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Town has the right to terminate this Agreement, in part or in whole. If corrective action is deemed acceptable by the Town, the Town shall notify the Consultant in writing of the need to take corrective action and the date in which the corrective action must be completed. If corrective action is not completed as specified by the Town, or if such corrective action is deemed by the Town to be insufficient, the Agreement may be terminated. The Town reserves the right to withhold further payments, or prohibit the Consultant from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the

Consultant or a decision by the Town to terminate the Agreement. In the event of termination, the Town shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the Consultant shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the Consultant was not in material breach; or (2) failure to perform was outside of Consultant's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the Town provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

- D. **TERMINATION FOR CONVENIENCE** Except as otherwise provided in this Agreement, the Town may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Consultant. If this Agreement is so terminated, the Town shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the Town prior to the effective date of Agreement termination. The Town shall have no other obligation whatsoever to the Consultant for such termination.
- E. The Town reserves the right to require Consultant to repay amounts previously paid by the Town to the Consultant due to untimely completion of services, inadequate completion of services, or lack of completion of services and the Consultant shall comply with such demand within 60 days.
- F. The Town's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Consultant's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee Town, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the

exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Consultant shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The Town may, at any time, by written order to the Consultant, require the Consultant to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Consultant. Upon receipt of such an order, the Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Consultant shall not resume work unless specifically so directed in writing by the Town. The Town may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XII.

In the event the Town does not direct the Consultant to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the Town does not direct the Consultant to resume work within ninety (90) days, the Consultant may terminate this Agreement.

XV. CONSULTANT WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit C) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Consultant shall pick up the product from the Town at no expense to the Town. The Town reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Consultant shall refund to the Town any money which has been paid for same.

XVI. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties

and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.

B. The following listed documents, are attached hereto and are acknowledged, understood, and agreed to be an integral part of this Agreement:

- (1) EXHIBIT “A” entitled “Scope of Work”
- (2) EXHIBIT “B” entitled “Project Schedule”
- (3) EXHIBIT “C” entitled “Fee Schedule”
- (4) EXHIBIT “D” entitled “Insurance” (Containing copies of applicable Certificates of Insurance)
- (5) EXHIBIT “E” entitled “Consultant’s Associated Sub Consultant(s) and Subcontractor(s)”
- (6) EXHIBIT “F” entitled “Federal Supplemental Conditions”
- (7) EXHIBIT “G” entitled “Florida Statutory Requirements”
- (8) EXHIBIT “H” entitled “Certification and Affidavit Forms”

C. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Consultant may assign its rights if given written authorization by the Town and claims for the money due or to become due to the Consultant from the Town under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the Town. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the Town.

D. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

- E. The failure of the Town to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- F. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- G. Neither the Town's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- H. If the Consultant is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- I. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee Town. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee Town recognized holiday, the deadline will then fall to the next Monday or non-Lee Town recognized holiday.
- J. Any notices of default or termination shall be sufficient if sent by the parties via email, United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Consultant's Representative

Name: Paris Tobias
Title: CEO
Address: 12557 New Brittany
Bld. Ste 3
Fort Myers, FL 33907
Telephone: 239-999-0003
Email: info@opoutlines.com

Town's Representative

Name: William McKannay
Title: Town Manager
Address: 6231 Estero Blvd
Fort Myers Beach, FL
33931
Telephone: 239-765-0202
Email: will.mckannay@fmbgov.com

- K. Any change in the Town's or the Consultant's Representative will be promptly communicated by the party making the change.
- L. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- M. Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the Agreement on behalf of the party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such party with respect to the matters contained herein and as stated herein.
- N. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
1. Agreement
 2. Solicitation
 3. Consultant's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

CONTRACTOR:
Opulent Outlines, LLC

by _____
Paris Tobias, as its CEO and authorized
agent

Date: _____

CONTRACTOR'S WITNESS:

Printed Name: _____
Date: _____

TOWN OF FORT MYERS BEACH, a
Florida municipal corporation

DAN ALLERS, MAYOR

ATTEST:

(Seal)

AMY BAKER, TOWN CLERK

Date signed by TOWN: _____

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A
SCOPE OF WORK

Following this page (containing 1 pages)

EXHIBIT A - SCOPE OF WORK
BAY OAKS COMMUNITY POOL REHABILITATION PROJECT

Redesign the entire pool area at the Fort Myers Beach Community to include:

- 1.1 Complete modeling of existing structures surrounding the pool area.
- 1.2 Remodeling and updating all existing pool structures.
- 1.3 Identifying all new equipment required.
- 1.4 Design of a new slide(s) and splash pad area.
- 1.5 Redesign of all hardscape and landscape within and surrounding the pool area.
- 1.6 Design multiple uses for the hardscape, including but not limited to shaded structures, play areas, pet areas, general seating, and sunbathing areas.
- 1.7 The design concept will be a full presentation with both 2D and 3D renderings, along with video for detailed review.
- 1.8 All proposed materials and samples will be provided prior to design approval.
- 1.9 Up to two (2) rounds of revisions are included to reach a final approved concept.
- 1.10 Upon design concept approval, engineered plans will be created to meet and/or exceed all local and state requirements.
- 1.11 Upon completion of engineering, Opulent will provide all necessary detail pages required to send the project out for quote.
- 1.12 Opulent will review and advise the Town of Fort Myers Beach throughout the contractor selection process.
- 1.13 Upon final contractor selection, Opulent Outlines will have performed all responsibilities, and the contract will be fulfilled.
- 1.14 The Town of Fort Myers Beach will have the option to extend consulting services at the hourly rates set forth in Exhibit C.

EXHIBIT B
PROJECT SCHEDULE

Following this page (containing 1 pages)

EXHIBIT B - PROJECT SCHEDULE
BAY OAKS COMMUNITY POOL REHABILITATION PROJECT

Milestone	Deliverable	Due Date	Acceptance Criteria	Payment %
1. Project Kickoff	Project Kickoff, Project Management, and Communication Plan	Within 10 days of NTP	Written acceptance by Town	11%
2. Existing Conditions & Site Assessment	Existing conditions report, field verification, base mapping	May 1, 2026	Complete report accepted	11%
3. 30% Design (Concept Design)	Concept plans, preliminary layout, design narrative	June 1, 2026	Meets program requirements	15%
4. 60% Design (Design Development)	Updated plans, major systems identified, cost estimate	July 1, 2026	Review comments addressed	11%
5. 90% Design (Pre-Final)	Draft final plans, specifications, OPCC	August 1, 2026	Substantially complete	11%
6. 100% Final Design	Signed/sealed plans, permit-ready package	September 1, 2026	Ready for permitting	26%
7. Bid Support	Bid package, responses to RFIs, addenda support	October 15, 2026	Procurement-ready	15%

EXHIBIT C
FEE SCHEDULE

Following this page (containing 1 pages)

EXHIBIT C - FEE SCHEDULE

BAY OAKS COMMUNITY POOL REHABILITATION PROJECT

The total compensation payable under this Agreement shall not exceed \$135,000, inclusive of all labor, materials, overhead, profit, travel, and reimbursable expenses required to complete the Scope of Services.

The Consultant shall not be entitled to payment in excess of the NTE amount unless authorized by a written amendment executed by the Town.

Compensation under this Agreement shall be paid on a lump sum, milestone basis as set forth in Exhibit B (Project Schedule and Performance Milestones).

Each milestone represents a defined portion of the total Scope of Services. Payment shall be made only upon:

- Completion of the applicable milestone deliverables; and
- Written acceptance of such deliverables by the Town.

Partial payments for incomplete milestones shall not be made unless expressly approved in writing by the Town.

Schedule of Values

The total lump sum compensation shall be allocated across the milestones identified in Exhibit B as follows:

Milestone	Description	Payment Amount	Payment %
1	Project Kickoff, Project Management, & Communication Plan	\$15,000	11%
2	Existing Conditions & Site Assessment	\$15,000	11%
3	30% Design (Concept Design)	\$20,000	15%
4	60% Design (Design Development)	\$15,000	11%
5	90% Design (Pre-Final)	\$15,000	11%
6	100% Final Design (Permit-Ready)	\$35,000	26%
7	Bid Support Services	\$20,000	15%

Total: \$135,000 (100%)

Additional Services:

No compensation shall be paid for additional services unless:

- The services are authorized in advance by the Town; and
- A written amendment to the Agreement has been executed

Any additional services performed without prior written authorization shall be at the Consultant's sole risk.

Presentation or Meeting Event Flat Rate: **\$750.00 Daily**

Title	Hourly Rate	Daily Rate
Lead Designer	\$250	\$2,000
Design Associate	\$225	\$1,800
Clerical / Staff	\$190	\$1,500

**Timecard at standard rates*

EXHIBIT D
INSURANCE REQUIREMENTS

Following this page (containing 5 pages)

INSURANCE REQUIREMENTS

Section One. Insurance Coverage's to Be Obtained

(1) The Consultant shall obtain and maintain insurance to protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

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

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

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

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

Service and/or work to be

Indicate Name of Individual or Firm

Provided and/or Performed

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

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement. In the event the Town shall execute and issue written authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work through written agreement executed by both parties.

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

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

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

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

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

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

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

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

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

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

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

(F) The following clause must appear on the Certificate of Insurance:

“Cancellation - Should any of the above-described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the Certificate Holder named.”

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions, or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation, and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period

that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

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

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

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

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

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

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a

minimum combined single limit of \$1,000,000.

(B) Coverage shall include owned vehicles, hired, and leased, or non-owned vehicles.

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

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

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

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

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

The Consultant shall maintain all required insurance coverage throughout the term of this Agreement. The Consultant is responsible for ensuring that all Certificates of Insurance (COI) remain current and shall submit renewal certificates to the TOWN no later than ten (10) business days prior to expiration of any existing policy. Failure to provide timely COI renewals may be considered a material breach of this Agreement, the renewal COIs are to be emailed to the Finance Department.

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

Following this page (containing 1 pages)

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

CONSULTANT has identified the following Sub Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project: (If none, enter the word “none” in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Engineering Services	Markham Services, Inc 1820 NE Jensen Beach Blvd. Suite 685 Jensen Beach, Fl 34957				YES	



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



FBPE
FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL ENGINEERS

THE PROFESSIONAL ENGINEER HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

BENNETT, WAYNE MARKHAM

1820 JENSEN BEACH BLVD
685
JENSEN BEACH FL 34957-7212

LICENSE NUMBER: PE57216

EXPIRATION DATE: FEBRUARY 28, 2027

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

EXHIBIT F
FEDERAL SUPPLEMENTAL CONDITIONS

Following this page (containing 23 pages)

**SUPPLEMENTAL CONDITIONS AND CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS
REQUIRED FOR ALL CDBG-DR FUNDED PROJECTS**

1. FEDERAL FUNDING

- 1.1 When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the County or “pass-through” from another entity, the County is required to and will follow the Federal procurement standards in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 C.F.R. Part 200, Sections 200.318 through 200.327.
- 1.2 PROPOSER, further referred to as CONSULTANT/CONTRACTOR/VENDOR within this section, shall work with the County under this Agreement to assure that it will comply with the following statutes and regulations to the extent applicable:
- (1) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II
 - (2) 24 CFR Part 570 - Community Development Block Grants as amended by the CDBG-DR Consolidated Waivers and applicable Alternative Requirements Notices.
 - (3) 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
 - (4) Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
 - (5) 31 CFR Part 205 Rules and Procedures for Funds Transfers

Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the County shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the County shall consider the complexity of work, the risk to be borne by the Proposer, the Proposer’s investment, the amount of subcontracting necessary, the quality of the Proposer’s record and past performance, and industry profit rates for the surrounding geographical area. “Cost Plus Percentage” methods for determining profit may not be used.

2. EQUAL EMPLOYMENT OPPORTUNITY

- 2.1. All departments/offices administering federal funded programs, including CDBG – DR, along with their contractors, subcontractors, subrecipients, developers and other agents, must comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq.; Executive Order 13166; and the U.S. Department of Labor Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) persons, as well as any applicable Executive Orders.

3. MAINTENANCE OF RECORDS/ACCESS TO RECORDS

- 3.1. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.
- 3.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the COUNTY, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 3.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any

means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 3.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- 3.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.
- 3.6. The COUNTY and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the COUNTY deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the COUNTY.

4. DHS SEAL, LOGO, AND FLAGS

- 4.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval.

5. LOCAL VENDOR PREFERENCE EXCLUSION:

- 5.1. Local CONSULTANT/CONTRACTOR/VENDOR Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

6. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS

- 6.1. This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

7. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- 7.1. The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

8. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS

- 8.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements), and 18 U.S.C. 1001 applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

9. SUBCONTRACTS

- 9.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONTRACTOR/PROPOSER/CONTRACTORS.

10. CONFLICT OF INTEREST

- 10.1. No employee, officer, board member, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of

interest would arise when the employee, officers, 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 herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

11. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

- 11.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements.
- 11.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.
- 11.3. It shall be the CONSULTANT/CONTRACTOR/VENDOR's responsibility to familiarize themselves with all rules and regulations governing this program.
- 11.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

12. ENERGY POLICY AND CONSERVATION ACT

- 12.1. CONSULTANT/CONTRACTOR/VENDOR must follow any 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 (42 U.S.C. 6201).

13. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESS, AND LABOR SURPLUS AREA FIRMS

- 13.1. In accordance with 2 CFR Part 200.321, the CONSULTANT/CONTRACTOR/VENDOR must make efforts to ensure that small and minority businesses, veteran-owned business, and women's business enterprises, and labor surplus area firms are considered as set forth below.
 - 13.1.1 Place qualified small and minority businesses, veteran-owned business, and women's business enterprises on solicitation lists.
 - 13.1.2 Assuring that small and minority businesses, veteran-owned business, and women's business enterprises are solicited whenever they are potential sources.
 - 13.1.3 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - 13.1.4 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, veteran-owned business, and women's business enterprises.
 - 13.1.5 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, veteran-owned business, and women's business enterprises.
 - 13.1.6 Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

14. EMPLOYMENT, TRAINING, AND CONTRACTING OPPORTUNITIES FOR LOW-INCOME PERSONS,

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

- 14.1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 14.2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- 14.3. The CONSULTANT/CONTRACTOR/VENDOR agrees to send to each labor organization or representative of workers with which the CONSULTANT has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONSULTANT's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 prioritization requirements and shall state the minimum percentages of labor hour requirements established in 24 CFR 75.23(b).
- 14.4. The CONSULTANT/CONTRACTOR/VENDOR agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The CONSULTANT will not subcontract with any subcontractor where the CONSULTANT has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- 14.5. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 14.6. Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

15. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)

- 15.1. As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a preference for the purchase 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. 2 C.F.R. § 200.322 also provides specific definitions for "Produced in the United States" and "manufactured products" that states should review.

16. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)

- 16.1. 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2

17. TERMINATION FOR CAUSE AND/OR CONVENIENCE

- 17.1. **MATERIAL BREACH** A Proposer may be Terminated for Cause by the County, at the sole discretion of the Procurement Management Director, for failing to perform a contractual requirement or for a material breach of any term or condition. A material breach of a term or condition of the Agreement may include but is not limited to: 1. Proposer failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Agreement; 2. Proposer failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Agreement; 3. Proposer becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; 4. Proposer becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Proposer's proper performance hereunder; 5. Appointment of any receiver, trustee, or similar official for Proposer or any of the Proposer's property and such appointment endangers the Proposer's proper performance hereunder; 6. A determination that the Proposer is in violation of federal, state, or local laws or regulations and that such determination renders the Proposer unable to perform any aspect of the Agreement.
- 17.2. **OPPORTUNITY TO CURE** In the event that Proposer fails to perform a contractual requirement or materially breaches any term or condition, the County may issue a written cure notice. The Proposer may have a period of time in which to cure. The County is not required to allow the Proposer to cure defects if the opportunity for cure is not feasible as, determined solely within the discretion of the County. Time allowed for cure shall not diminish or eliminate Proposer's liability for damages, or otherwise affect any other remedies available against Proposer under the Agreement or by law. If the breach remains after Proposer has been provided the opportunity to cure, the County may do any one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Agreement and any related contracts or portions thereof; 3. Procure replacements and impose damages as set forth elsewhere in this Agreement, if applicable; 4. Impose actual or liquidated damages; 5. Suspend or bar Proposer from receiving future solicitations or other opportunities; 6. Require Proposer to reimburse the County for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Agreement.
- 17.3. **TERMINATION FOR CAUSE** In the event the Procurement Management Director, in his/her sole discretion, determines that the Proposer has failed to comply with the conditions of this Agreement in a timely manner or is in material breach, the Procurement Management Director has the right to terminate this Agreement, in part or in whole. The Procurement Management Director shall notify the Proposer in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Procurement Management Director, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated. The County reserves the right to withhold further payments or prohibit the Proposer from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Proposer or a decision by the County to terminate the Agreement. In the event of termination, the County shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Agreement on the open market. In addition, the Proposer shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. If it is determined that: (1) the Proposer was not in material breach; or (2) failure to perform was outside of Proposer's or its sub Proposer's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience." The rights and remedies of the County provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

- 17.4. **TERMINATION FOR CONVENIENCE** Except as otherwise provided in this Agreement, the County, at the sole discretion of the Procurement Management Director, may terminate this Agreement, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Proposer. If this Agreement is so terminated, the County shall be liable only for payment required under this Agreement for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the County prior to the effective date of Agreement termination. The County shall have no other obligation whatsoever to the Proposer for such termination.

18. TIME & MATERIAL, TIME & EQUIPMENT, FIRM FIXED PRICE LUMP SUM CONTRACTS

- 18.1. The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For a firm fixed price, lump sum, Time & Material (T&M), and/or Time & Equipment (T&E) procurements, a Purchase Order represents a CONSULTANT/CONTRACTOR/VENDOR's Notice to Proceed (NTP). Line-item Extended Price(s) shall be considered Not to Exceed (NTE) ceiling value(s). Additionally, the Total Order value for a Purchase Order represents an NTE ceiling value. If the CONSULTANT/CONTRACTOR/VENDOR anticipates exceeding either of these NTE values, they should contact the Lee County Procurement Department for a change order. If a CONSULTANT/CONTRACTOR/VENDOR exceeds a Line Item or Total Order NTE value, it does so at its own risk.

19. SUSPENSION AND DEBARMENT

- 19.1. 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 CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, 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).
- 19.2. The CONSULTANT/CONTRACTOR/VENDOR must comply with 24 C.F.R 570.609 and 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.
- 19.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR 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 Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The CONSULTANT/CONTRACTOR/VENDOR 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.

20. RECOVERED MATERIALS

- 20.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.
- 20.2. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designate items is available at <https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program>.

21. OTHER REMEDIES AND RIGHTS

- 21.1. Pursuing any of the above remedies will not keep the COUNTY from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the COUNTY waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the COUNTY for any other default by the CONSULTANT/CONTRACTOR/VENDOR.
- 21.2. Unless otherwise provided by the Contract, all claims, counterclaims, disputes and other matters in question between the COUNTY and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

22. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708) - for contracts over \$100K

- 22.1. **Overtime requirements.** No Proposer or sub-Proposer 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.
- 22.2. **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 Proposer and any sub-Proposer responsible therefor shall be liable for the unpaid wages. In addition, such Proposer and sub Proposer 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. These liquidated damages shall be calculated for each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause in paragraph (1), for each calendar day during which the individual was required or permitted to work in excess of the standard forty-hour work-week without receiving the required overtime compensation. The applicable amount for such liquidated damages is determined by the U.S. Department of Labor and can be found at: <https://www.dol.gov/agencies/whd/resources/penalties>
- 22.3. **Withholding for unpaid wages and liquidated damages.** The State of Florida Division of Emergency Management 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 Proposer or sub Proposer under any such contract or any other Federal contract with the same prime Proposer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Proposer, such sums as may be determined to be necessary to satisfy any liabilities of such Proposer or sub Proposer for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 22.4. **Subcontracts.** The Proposer or sub Proposer shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the sub Proposers to include these clauses in any lower tier subcontracts. The prime Proposer shall be responsible for compliance by any sub Proposer or lower tier sub Proposer with the clauses set forth in paragraphs (1) through (4) of this section.

23. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

23.1. Lead-Based Paint Hazards

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Proposer and sub Proposers shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The COUNTY will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

23.2. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Proposer shall observe all local, state and federal laws in purchasing and handling explosives. The Proposer shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Proposer shall notify all the COUNTYs of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Proposer or his Surety for damages that may be caused by such use.

23.3. Danger Signals and Safety Devices

The Proposer shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Proposer fails or neglects to take such precautions, the COUNTY may have such lights and barricades installed and charge the cost of this work to the Proposer. Such action by the COUNTY does not relieve the Proposer of any liability incurred under these specifications or contract.

24. CLEAN AIR ACT

- 24.1. The Proposer 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.
- 24.2. The Proposer agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 24.3. The Proposer agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

25. FEDERAL WATER POLLUTION CONTROL ACT

- 25.1. The Proposer 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.
- 25.2. The Proposer agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 25.3. The Proposer agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

26. BYRD ANTI-LOBBYING AMENDMENT

- 26.1. CONSULTANT/CONTRACTOR/VENDORS 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 nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

27. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

- 27.1. If the Federal award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and Lee County enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the County must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal Awarding Agency. See 2 C.F.R. Part 200, Appendix II(F).

28. CIVIL RIGHTS ACT OF 1964

- 28.1. CONSULTANT/CONTRACTOR/VENDOR agree that Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

29. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

- 29.1. CONSULTANT/CONTRACTOR/VENDOR agrees that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the CDBG program.

30. SECTION 503 OF THE REHABILITATION ACT OF 1973

- 30.1. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT/CONTRACTOR/VENDOR agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:
- 31.1.1 Recruitment, advertising, and job application procedures;
 - 31.1.2 Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - 31.1.3 Rates of pay or any other form of compensation and changes in compensation;
 - 31.1.4 Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - 31.1.5 Leaves of absence, sick leave, or any other leave;
 - 31.1.6 Fringe benefits available by virtue of employment, whether or not administered by the Proposer;
 - 31.1.7 Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - 31.1.8 Activities sponsored by the Proposer including social or recreational programs;
 - 31.1.9 Any other term, condition, or privilege of employment.
- 30.2. The Proposer agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 30.3. In the event of the Proposer's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- 30.4. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Proposer's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The proposer must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the proposer, a proposer will satisfy its posting obligations by posting such notices in an electronic format, provided that the proposer provides computers, or access to computers, that can access the electronic posting to such employees, or the proposer has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the proposer to notify job applicants of their rights if the proposer utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
- 30.5. E. The Proposer will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Proposer is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.
- 30.6. The Proposer will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each sub Proposer or CONTRACTOR. The Proposer will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- 30.7. The Proposer must, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

31. SECTION 504 OF THE REHABILITATION ACT OF 1973

- 31.1. CONSULTANT/CONTRACTOR/VENDOR agree that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the Assistance.

32. AGE DISCRIMINATION ACT OF 1975

- 32.1. The Proposer shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

33. VIETNAM ERA VETERANS' READJUSTMENT ACT OF 1974, SECTION 402

- 33.1. The Proposer shall comply with the provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Section 402, as amended. Section 402 prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam Era Veterans and qualified special disabled veterans.

34. CHANGES

- 34.1. Modifications to alter the method, price, or schedule of the work for any reason shall be completed following the terms and provisions of the associated contract documents. No changes to the contract documents or the performance provided shall be made unless the same are in writing and signed by both the CONSULTANT/CONTRACTOR/VENDOR and the COUNTY.

35. COPYRIGHT AND DATA RIGHTS

- 35.1. CONSULTANT/CONTRACTOR/VENDOR grant to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the CONSULTANT/CONTRACTOR/VENDOR will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

36. SEISMIC SAFETY REQUIREMENTS FOR THE CONSTRUCTION OF NEW BUILDINGS OR ADDITION TO EXISTING BUILDINGS

- 36.1. CONSULTANT/CONTRACTOR/VENDOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify compliance to the extent required by the regulation. The CONSULTANT/CONTRACTOR/VENDOR also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

37. FEDERAL LABOR STANDARDS

37.1. Applicability

i. Minimum wages and fringe benefits

All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be Posted at all times by the CONTRACTOR and its sub- CONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe

benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
2. The classification is used in the area by the construction industry; and
3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

iii. Conformance

(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(E) The Contracting Officer must promptly notify the CONTRACTOR of the action taken by the Wage and Hour Division under 29 CFR 5.5 (a)(1)(iii)(C) and (D). The CONTRACTOR must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

iv. Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

v. Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

vi. Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

37.2. Withholding

i. Withholding requirements

LCBOCC may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), LCBOCC may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

ii. Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- B. A contracting agency for its reprourement costs;
- C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- D. A contractor's assignee(s);
- E. A contractor's successor(s); or
- F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

37.3. Payrolls and basic records

i. Basic Record Requirements

A. Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

B. Information required Such records must contain the name; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

C. Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the

Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

- D. Additional records relating to apprenticeship** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

ii. Certified payroll requirements

- A. Frequency and method of submission** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to HUD if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system
- B. Information required** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- C. Statement of Compliance.** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or sub- CONTRACTOR or the contractor's or subcontractor's agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be provided under section 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5(a)(3)(i), and such information and records are correct and complete;
 2. That each laborer or mechanic (including each helper, apprentice, and trainee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of Work actually performed, as specified in the applicable wage determination incorporated into the Contract.
- D. Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).
- E. Signature** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

F. Falsification The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

G. Length of certified payroll retention The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iii. Contracts, subcontracts, and related documents The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iv. Required disclosures and access

A. Required record disclosures and access to workers The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i)–(iii), and any other documents that HUD or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of HUD or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

B. Sanctions for non-compliance with records and worker access requirements If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

C. Required information disclosures Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to HUD if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

37.4. Apprentices and equal employment opportunity

i. Apprentices.

A. Rate of pay Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be

permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Fringe benefits Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.be permitted

C. Apprenticeship ratio The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

D. Reciprocity of ratios and wage rates Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

ii. Equal employment opportunity - The utilization of apprentices and journey worker under this part shall be in conformity with the equal employment opportunity requirements of 29 C.F.R. part 30.

37.5. **Compliance with Copeland Act requirements.** The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.

37.6. **Subcontracts.** The CONTRACTOR or sub- CONTRACTOR must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

37.7. **Contract termination: debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a sub- CONTRACTOR as provided in 29 CFR 5.12.

37.8. **Compliance with Davis - Bacon and Related Act requirements.** All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

37.9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub- CONTRACTORS) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

37.10. **Certification of eligibility**

- i. By entering into the Contract, the CONTRACTOR certifies that neither it nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- ii. No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a)
- iii. The penalty for making false statements is prescribed in the U.S., Title 18 Crimes and Criminal Procedure, 18U.S.C. 1001.

37.11. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- i. By Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5; or
- iv. Informing any other person about their rights under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5.

38. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSSA)

38.1. **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.

38.2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), 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 29 CFR 5.5(b)(1). The applicable amount for such liquidated damages is determined by the U.S. Department of Labor and can be found at: <https://www.dol.gov/agencies/whd/resources/penalties>

38.3. **Withholding for unpaid wages and liquidated damages**

- i. **Withholding process** The U.S Department of Housing and Urban Development or the recipient of Federal assistance may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b) on this contract, 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 that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
- ii. **Priority to withheld funds** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- B. A contracting agency for its procurement costs;
- C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- D. A contractor's assignee(s);
- E. A contractor's successor(s); or
- F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

- 38.4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- 38.5. **Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR part 5;
 - ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR part 5;
 - iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR part 5; or
 - iv. Informing any other person about their rights under CWHSSA or 29 CFR part 5.
- 38.6. **CWHSSA required records clause** In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.
- 38.7. **Incorporation of contract clauses and wage determinations by reference** Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- 38.8. **Incorporation by operation of law** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such

contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

38.9. HEALTH AND SAFETY

The provisions of this paragraph (F) are applicable where the amount of the prime contract exceeds \$100,000.

- 38.9.1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- 38.9.2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
- 38.9.3. The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

39. COPELAND ANTI-KICKBACK ACT

- 39.1. Recipient and sub-recipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- 39.2. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to projects funded solely through the FEMA Public Assistance Program.
- 39.3. Compliance
 - 39.3.1. CONSULTANT/CONTRACTOR/VENDOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, which are incorporated by reference into the Contract.
 - 39.3.2. Subcontracts. The CONSULTANT/CONTRACTOR/VENDOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime CONSULTANT/CONTRACTOR/VENDOR shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses.
 - 39.3.3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

40. BUILD AMERICA, BUY AMERICA ACT (BABA) – INFRASTRUCTURE PROJECTS

- 40.1. If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:
 - 40.1.1. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 - 40.1.2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the

manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of Domestic content of the manufactured product has been established under applicable law or regulation; and

40.1.3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

40.1.4. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

41. INVESTING IN AMERICA

41.1. If applicable, Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, must include the following provision:

41.1.1. Signage Requirements

41.1.1.1. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

41.1.1.2. The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>

41.1.1.3. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

42. EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

42.1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as “protected veteran(s)”) in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures.
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
- iii. Rates of pay or any other form of compensation and changes in compensation.

- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- v. Leaves of absence, sick leave, or any other leave.
- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
- vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
- viii. Activities sponsored by the contractor including social or recreational programs.
- ix. Any other term, condition, or privilege of employment.

- 42.2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
- 42.3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- 42.4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.
- 42.5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico,

Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

42.6. As used in this clause:

- i. All employment openings includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
- ii. Executive and senior management means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
- iii. Positions that will be filled from within the contractor's organization means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

42.7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

42.8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

42.9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

42.10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against protected veterans.

42.11. The contractor will include the provisions of this clause in every subcontract or purchase order of \$150,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA 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 Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

- 42.12. The contractor must, 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 their protected veteran status.

End of Supplemental Conditions

EXHIBIT G
FLORIDA STATUTORY REQUIREMENTS

Following this page (containing 2 pages)

FLORIDA STATUTORY REQUIREMENTS

Supplemental Florida Statute References for Contract Compliance

F.S. 112.313(2) & 112.313(7); 112.317 – Business Relationship Disclosure

Public officers and employees are prohibited from conflicting business or employment relationships. Contractors must disclose any relationship with public employees or officials. Failure to disclose is subject to penalties under §112.317.

F.S. 119.071 – Public Records

All documents, bids, and proposals are subject to Florida's Public Records Law. Certain exemptions apply (e.g., sealed bids until notice of decision). Contractors must maintain and provide public records related to performance under the contract as required.

F.S. 20.055(5) – Inspector General Cooperation

Contractors shall comply with any Inspector General investigations, audits, or reviews and provide access to records as requested.

F.S. 218.70 – Local Government Prompt Payment Act

Agencies must promptly pay contractors for satisfactory performance. Contractors must also pay subcontractors and suppliers timely, consistent with statutory deadlines.

F.S. 218.80 – Public Bid Disclosure Act

All contracts must specify costs of permits or fees that contractors will pay. If none apply, the contract must state permitting fees paid by contractor = \$0.

F.S. 287.057(23) – Anti-Lobbying (Cone of Silence)

From solicitation issuance until award, contractors and their representatives are prohibited from lobbying or communicating with evaluation staff, officers, or agents except the designated point of contact.

F.S. 287.05701 – Prohibition on Social, Political, or Ideological Interests

Contracts must not request or consider a contractor's social, political, or ideological beliefs in determining responsibility.

F.S. 287.133(2)(a) – Convicted Vendor List

Vendors convicted of public entity crimes are prohibited from contracting with public entities.

F.S. 287.134 – Discriminatory Vendor List

Vendors placed on the discriminatory vendor list are barred from receiving public contracts.

F.S. 337.168 – Confidentiality of Estimates

Official cost estimates, potential bidder identities, and bid analysis documents are confidential until award or cancellation of the project.

F.S. 435 – Employee Background Screenings

Contractors must comply with Level 1 and Level 2 background screening for employees or subcontractors who work with vulnerable persons or as required by the contract.

F.S. 448.095 – Employment Eligibility

Contractors must use the federal E-Verify system to confirm employment eligibility of all new employees.

F.S. 607.1501(1) – Foreign Corporations

A foreign corporation may not transact business in Florida without a certificate of authority from the Florida Department of State.

F.S. 760 – Florida Civil Rights Act

Prohibits discrimination in employment and public accommodations. Contractors must comply with nondiscrimination requirements, ensuring equal opportunity regardless of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

F.S. 287.138 – Scrutinized Companies Affidavit (attached)

Contractors must certify they are not on the Scrutinized Companies Lists (Sudan, Iran, Cuba, Syria, or companies that boycott Israel). Execution of the affidavit is required as part of the contract.

F.S. 787.06 – Human Trafficking Affidavit (attached)

Contractors must affirm compliance with Florida's prohibition against human trafficking. Execution of the affidavit is required as part of the contract.

EXHIBIT H
CERTIFICATION AND AFFIDAVIT FORMS

Following this page (containing 8 pages)

VENDOR BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by the Town or Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: _____

Signature

STATE OF _____

Name/Title

COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public

TRUTH IN NEGOTIATION CERTIFICATE

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

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

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

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

Date: _____

Signature

STATE OF _____

Name/Title

COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public

PUBLIC ENTITY CRIME AFFIDAVIT

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

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

1. This sworn statement is submitted to _____
(print name of public entity)
by _____
(print individual's name and title)
for _____
(print name of entity submitting sworn statement)

whose business address is _____

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

2. I understand that a "public entity crime" as defined in Paragraph 287.233 (1)(g),
Florida Statutes, means a violation of any state or federal law by a person with respect to and
directly related to the transaction of business with any public entity or with an agency or political
subdivision of any other state or of the United States, including, but not limited to, any bid,
proposal or contract for goods or services to be provided to any public entity or an agency or
political subdivision of any other state or of the United States and involving antitrust, fraud, theft,
bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1)
(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or
without an adjudication of guilt, in any federal or state trial court of record relating to charges
brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial,
or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida
Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management

of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a “person” as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

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

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

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

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

THE INFORMATION CONTAINED IN THIS FORM.

Date: _____

Signature

STATE OF _____

Name/Title

COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public

AFFIDAVIT OF CONFIDENTIALITY

FOR THE PROJECT ENTITLED: _____

I, the undersigned, _____, am an employee of _____, the Town's provider of contracted services, and serve as a member of the Service team for the Town of Fort Myers Beach.

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

Date: _____

Signature

STATE OF _____

Name/Title

COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public

**AFFIDAVIT REGARDING LABOR AND SERVICES
AND CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED**

Effective July 1, 2024, pursuant to § 787.06(13), Florida Statutes, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services.

Effective January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the government with an affidavit signed by an officer or representative under penalty of perjury attesting that the entity does not meet any of the following criteria: (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Effective July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c), § 287.138, Florida Statutes.

Nongovernmental Entity's Name:	
Address:	
Phone Number:	
Authorized Representative's Name:	
Authorized Representative's Title:	
Email Address:	

I, _____ (Name of Authorized Representative), as authorized representative attest under penalty of perjury that _____ (Name of Nongovernmental Entity) does not: (1) use coercion for labor or services as defined in § 787.06, Florida Statutes, and (2) the nongovernmental entity is not (a) owned by a government of a foreign country of concern, (b) that a foreign country of concern does not have a controlling interest in the entity, and (c) that the entity is not organized under the laws of or has its principal place of business in a foreign country of concern, all as prohibited under § 287.138, Florida Statutes.

Under penalty of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(Signature of authorized representative)

Date

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ (Name of Affiant), who produced their _____ Driver's License as identification.
(issuing state)

Notary Public

Commission Expires

Personally Known ☐ OR Produced Identification ☐

Type of Identification Produced: _____

1. **Request:**

Meeting Date: May 4, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-26-10-EN TO TIDEWATER LANDSCAPE OF FLORIDA, LLC AS THE LOWEST, RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND CANOPY RESTORATION PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND TIDEWATER LANDSCAPE OF FLORIDA, LLC SUBJECT TO LEGAL REVIEW AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The tree canopy of the Town of Fort Myers Beach was devastated by Hurricane Ian. The Fort Myers Beach Coastal Canopy Recovery Project will plant mature, native trees to spur the recovery of tree canopy in the Town's jurisdiction. Planting locations include beach accesses, Estero Blvd and side street right of ways, Newton Park, Bay Oaks Recreational Campus, and Fort Myers Beach Elementary School. Tree plantings in these areas will benefit the community, and serve to mitigate coastal erosion and urban heat effect.

What the action accomplishes:

This action awards ITB-26-10-EN to Tidewater Landscape of Florida, LLC as the lowest responsive and responsible bidder to furnish all labor, supervision, equipment, materials, transportation, and incidentals necessary to deliver and install 74 native canopy trees and palms on Estero Island as directed by the Town of Fort Myers Beach. All work shall be performed in accordance with the requirements of Federal Financial Assistance Funding Opportunity Number 23-DG-11083112-430 and the agreement with the Florida Department of Agriculture and Consumer Services (FDACS Agreement #32104, including Amendment 1). All work associated with FDACS Agreement #32104 shall be completed no later than July 31, 2026.

This action also authorizes the Town Manager to enter into an agreement with Tidewater Landscape of Florida LLC.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

The Town of Fort Myers Beach entered into grant agreement #32104 with the Florida Department of Agriculture and Consumer Services (FDACS) on March 25, 2025, and amended to extend the agreement period to end on July 31 2026. The purpose of Florida's Urban and Community Forestry Capacity (UCF-C) grant program is to provide financial assistance to local governments, to initiate or enhance local urban and community forestry programs; and improve the urban environment within the State of Florida.

The grant funded work to be conducted includes procurement and installation of 74 native canopy trees and palms in Town beach accesses, right of ways, Newton Park, Bay Oaks Recreational Park, and FMB Elementary School Campus. The object is to restore canopy.and beautify Fort Myers Beach after the devastation caused by Hurricane Ian. All

trees will be planted with organic fertilizer (e.g. black cow) and irrigated with tree watering bags to provide regular irrigation throughout the grow in period of 60 days. Tree health will be assessed at 60 days, 6 months, and 1 year for foliage, growth and signs of disease. A report will be compiled with geolocated photos of each tree and notes on the growth and health of each tree.

Attachments:

1. NS 26-093, Award ITB-26-10 TIDEWATER Tree Grant
2. 26-10-EN TideWater Contract VS
3. Tree Price
4. Sunbiz
5. FDACS_CONTRACT_32104 executed
6. 32104 - Tree Grant Extension 20250224154851033

Financial Impact:

74 Trees at \$575 per tree will cost \$41,400. The Town will contribute 50% of the funds to match the grant, making the Town match \$20,700, funded from the Public Works Capital budget.

6. Alternative Action

Do not award ITB-26-10 to Tidewater Landscape of Florida, LLC.

7. Management Recommendations:

Award ITB-26-10-EN to Tidewater Landscape of Florida, LLC.as the lowest responsive and responsible bidder to complete the Estero Island Canopy Restoration Project.

8. Recommended Approval:

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

Created/Initiated - 4/21/2026
Approved - 4/22/2026
Approved - 4/27/2026
Approved - 4/27/2026
Approved - 4/28/2026
Final Approval - 4/28/2026

RESOLUTION NUMBER 26-093

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-26-10-EN TO TIDEWATER LANDSCAPE OF FLORIDA, LLC AS THE LOWEST, RESPONSIVE AND RESPONSIBLE BIDDER, TO COMPLETE THE ESTERO ISLAND CANOPY RESTORATION PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE TIDEWATER LANDSCAPE OF FLORIDA, LLC SUBJECT TO LEGAL REVIEW AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach is seeking to restore tree canopy, which was devastated by Hurricane Ian; and

WHEREAS, the Estero Island Canopy Restoration Project was competitively bid and advertised in accordance with the Town of Fort Myers Beach Purchasing Code Section 2-480; and

WHEREAS, Tidewater Landscape of Florida, LLC is the lowest responsive and responsible bidder for completion of the Estero Island Dune Repair and Scour Fill Truck Haul Project with a bid in the amount of \$575.00 per tree and a total cost of the Project not to exceed \$50,000 and

WHEREAS, Tidewater Landscape of Florida, LLC’s bid satisfies the requirements set forth in the invitation to bid ITB-26-10-EN; and

WHEREAS, the cost of the Estero Island Dune Repair and Scour Fill Truck Haul Project is eligible for the funding provided by the Florida Department of Agriculture and Consumer Services Grant Agreement #32104; and

WHEREAS, pursuant to a competitive procurement process in compliance with Florida law and Town Code – ITB-26-10-EN “Estero Island Canopy Restoration Project,” the Town awards the bid to Tidewater Landscape of Florida, LLC; and

WHEREAS, Tidewater Landscape of Florida, LLC has agreed to execute an agreement for the Estero Island Canopy Restoration Project containing substantially similar terms as included in the bid (“Agreement”). A copy of the Agreement is attached as Exhibit “A”; and

WHEREAS, it is in the best interest of the Town to contract with Tidewater Landscape of Florida, LLC as provided in the Agreement.

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

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

Section 2. The Town Council hereby approves the agreement between the Town and Tidewater Landscape of Florida, LLC for tree installation and maintenance work. A copy of the agreement is attached hereto as Exhibit "A".

Section 3. The Town Manager is hereby authorized to execute the Agreement and expend budgeted funds on behalf of the Town to satisfy the Town's financial obligations under the Agreement.

Section 4. This resolution shall take effect immediately upon adoption.

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

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of _____ 2026 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

INDEPENDENT CONTRACTOR'S AGREEMENT

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is made and entered into this ____ day of _____ 2026, by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation (hereinafter the "TOWN") and TideWater Landscaping of Florida, LLC, a Florida Limited Liability Company (hereinafter "CONTRACTOR").

WITNESSETH

WHEREAS, the TOWN is a Florida municipal corporation, 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 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.

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. Agreement Overview.

a. Project Title and Description: Estero Island Canopy Restoration

b. Procurement Method: Invitation to Bid #26-10-EN

c. External Funding Source(s):

☒ State funding (specify): Agreement #32104, including Amendment 1

☒ Federal funding (specify): 23-DG-11083112-430

☐ Other (specify): _____

☐ Not Applicable

d. Agreement Type:

- ☒ Defined Scope Agreement (specified recurrent services, subscriptions, single projects, and specific deliverables)
- ☐ ~~Agreement Utilizing Supplemental Task Authorizations (e.g. Continuing Services Agreement)~~

e. Term, Time, and Delivery:

- ☒ This Agreement has a Term of one (1) year(s) beginning on April 22, 2026 and ending on April 21, 2026, and may be renewed for up to two (2) additional Term(s) of one (1) year(s) each, upon agreement of the parties in writing.
- ☒ CONTRACTOR shall commence work under this Agreement immediately upon receipt by CONTRACTOR of the Notice to Proceed and must complete the work according to the schedule set forth in Exhibit "C". Liquidated damages, if any, will be assessed against CONTRACTOR for late completion as set forth in Exhibit "C".

f. Project Management:

TOWN's Project Manager	CONTRACTOR's Project Manager
Name: <u>Chadd Chutz</u>	Name: <u>Jeffery S. Balyeat</u>
Title: <u>Project Manager</u>	Title: <u>Owner</u>
Phone: <u>(239) 462-8127</u>	Phone: <u>(239) 770-5970</u>
Email: <u>chadd@fmbgov.com</u>	Email: <u>jeff@tidewaterlandscapefl.com</u>

g. Notice Addresses:

TOWN: Fort Myers Beach Town Council, Attn: Town Manager, 6231 Estero Blvd, Fort Myers Beach, Florida 33931

CONTRACTOR: TideWater Landscaping of Florida, LLC, Attn: Jeffery S. Balyeat,
1326 Kingswood Ct Fort Myers, FL 33919

h. Exhibits: The Parties shall comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated herein by reference:

☒	Exhibit "A"	Scope of Work
☒	Exhibit "B"	Compensation and Pricing
☒	Exhibit "C"	Work Schedule
☐	Exhibit "D"	Supplemental Task Authorization Form

☒	Exhibit "E"	Florida Statutory Requirements
☐	Exhibit "F"	Attachment 8: Federal Regulations and Terms (Federal)
☐	Exhibit "G"	Additional Terms for State-Funded Agreements (_____)
☐	Exhibit "H"	Plans/Specifications/Shop Drawings
☒	Exhibit "I"	Affidavit Regarding Labor and Services
☐	Exhibit "J"	Other (Specify): _____
☐	Exhibit "K"	Other (Specify): _____
☐	Exhibit "L"	Other (Specify): _____

i. ~~Additional Provisions:~~

3. Description of Work.

- a. The TOWN hereby retains CONTRACTOR to furnish goods and/or services as described in the Scope of Work, 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.
- b. CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Work, unless specifically excluded.
- c. CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB), 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, if applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.

4. Supplemental Task Authorizations. The provisions of this paragraph only apply if "Agreement Utilizing Supplemental Task Authorizations" is checked in paragraph 2(d) ("Agreement Type") above.

- a. This Agreement anticipates a variety of projects being requested by the TOWN to be provided by the CONTRACTOR as determined necessary by the TOWN.
- b. All work to be performed by CONTRACTOR under this Agreement shall be authorized in writing by the TOWN. Such authorization will be referred to as a "Supplemental Task Authorization" and shall reference this Agreement as the "Master Agreement".

Supplemental Task Authorizations shall be in a form substantially similar to the form attached hereto as Exhibit “D” (if selected above in paragraph 2(k)).

- c. Supplemental Task Authorizations shall contain a description of the work to be undertaken, a budget amount of the fee to be paid, and a time schedule.
- d. Supplemental Task Authorizations may contain additional provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instruction or provision shall not be construed as a modification to this Agreement.
- e. When CONTRACTOR and the TOWN enter into a Supplemental Task Authorization wherein the term of the Supplemental Task Authorization expires on a date that is later than the date that this Agreement expires, the CONTRACTOR and the TOWN agree that the terms of this Agreement are automatically extended until the expiration or full completion of the requirements of the Supplemental Task Authorization has been performed. Cancellations by the TOWN of any remaining work prior to the full completion of the requirements of the Supplemental Task Authorization shall cause the terms of this Agreement to terminate at the same time. This provision shall only apply when the expiration of the Supplemental Task Authorization extends beyond the expiration of this Agreement. It does not apply when a Supplemental Task Authorization expires or is canceled prior to the expiration of this Agreement.

5. Payment.

- a. The TOWN agrees to compensate CONTRACTOR, for work actually authorized and 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 Work, but in no event will CONTRACTOR be paid more than the negotiated amount(s) set forth in Exhibit "B".
- b. Payments shall be made in accordance with the Florida Local Government Prompt Payment Act in accordance with the payment schedule provided in Exhibit “B”.
- c. Progress payments, if any, will be made as set forth in Exhibit "B".
- d. The TOWN reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR’s obligations. 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.

- 6. Project management.** The Project Managers for this project are set forth above in paragraph 2 (“Agreement Overview”). Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 7 (“Notices”) below and does not require an amendment to this Agreement.

7. Notices. All notices to the parties under this Agreement must be in writing and sent certified mail to the addresses set forth above in paragraph 2 (“Agreement Overview”).

8. 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.

9. General Provisions. CONTRACTOR must comply with the following general provisions:

- a. **Warranty.** 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 may make an equitable deduction from the contract price, or, in the alternative, the TOWN may seek damages. 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 guarantees to amend, revise, or correct to the satisfaction of the TOWN any error appearing in the work as a result of CONTRACTOR’s failure to comply with the warranties and representations contained herein.
- b. **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.

c. Insurance.

- i. 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.
- ii. 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:

1. ☒ **Commercial General Liability:** Coverage shall have minimum limits of \$ 1,000,000 Per Occurrence, \$ 2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. The General Aggregate Limit shall be endorsed to apply per project. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
2. ☒ **Business Auto Liability:** Coverage shall have minimum limits of \$ 1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.
3. ☒ **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The coverage must include Employers' Liability with a minimum limit of \$ 1,000,000 for each accident.
4. ☐ ~~**Professional Liability:** Shall be maintained by the Contractor to ensure its legal liability for claims arising out of the performance of professional services under this Agreement. Contractor waives its right of recovery against the Town as to any claims under this insurance. Such insurance shall have limits of not less than \$ _____ each claim and aggregate.~~
5. ☐ ~~**Cyber Liability:** Coverage shall have minimum limits of \$ _____ per claim.~~

6. ☐ _____:
~~Coverage shall have minimum limits of \$ _____ per
claim/Occurrence~~
7. ☐ _____:
~~Coverage shall have minimum limits of \$ _____ per
claim/Occurrence.~~
8. ☐ _____:
~~Coverage shall have minimum limits of \$ _____ per
claim/Occurrence.~~

iii. 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.

iv. 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.

d. Compliance with Federal, State, and Local Laws. CONTRACTOR and CONTRACTOR's agents shall comply with all federal, state and local regulations, including those now in effect and hereafter adopted, and including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements.

e. Personal nature of Agreement; Assignment.

1. 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.
2. 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.

f. Independent contractor.

1. 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.
2. 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.
3. 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.

g. Indemnification.

1. 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. 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.

2. 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.
 3. The indemnification provisions of this paragraph will survive the termination of this Agreement.
- h. 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.

10. 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. **Non-appropriation.** TOWN's performance and obligation to pay under this Agreement is contingent upon an appropriation during the TOWN's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the TOWN Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the TOWN subject to the TOWN paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- e. **Taxes.** The TOWN shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the TOWN is exempt from same by Florida law, including but not limited to any sales or use tax.
- f. **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.
- g. **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.
- h. **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.
- i. **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.

- j. **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, out break 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 Work" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
- k. **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.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

ATTEST:

TOWN OF FORT MYERS BEACH, FLORIDA

By: _____

By: _____

William McKannay, Town Manager

Dated: _____

(SEAL)

Contractor's Witnesses:

TideWater Landscaping of Florida, LLC

Contractor



Contractor's First Witness

By: 

Signature
Jeffrey S. Balgob owner
↑Type/print signature and title↑

Arcane Martinez

↑Type/print witness name↑



Contractor's Second Witness

Erica D. Brown

↑Type/print witness name↑

Approved as to Form and Legality:

Town Attorney

Print Name

EXHIBIT “A”

SCOPE OF WORK

- ☒ following this page (pages 1 through 2)
- ☐ this exhibit is not applicable

EXHIBIT A – SCOPE OF WORK

#26-10-EN Estero Island Canopy Restoration

1. Project Description

The Contractor shall furnish all labor, supervision, equipment, materials, transportation, and incidentals necessary to deliver and install trees on Estero Island as directed by the Town of Fort Myers Beach. All work shall be performed in accordance with the requirements of Federal Financial Assistance Funding Opportunity Number 23-DG-11083112-430 and the agreement with the Florida Department of Agriculture and Consumer Services (FDACS Agreement #32104, including Amendment 1). All work associated with FDACS Agreement #32104 shall be completed no later than July 31, 2026.

Approved tree species are identified in Exhibit B “Compensation and Pricing” attached hereto and incorporated herein by reference. Bidders shall provide unit pricing and available sizing for each species listed. Quantities and planting locations will be determined by the Town and communicated to the Contractor via written Notice to Proceed.

2. Work Included

The Contractor shall perform the following tasks:

- Coordinate with the Town of Fort Myers Beach regarding approved planting locations and project schedule.
- Transport and deliver approved tree species to designated locations on Estero Island.
- Install trees in accordance with applicable industry standards and project specifications.
- Provide all necessary equipment, materials, and labor required for proper installation.
- Ensure planting methods promote the long-term health and survivability of installed trees.
- Maintain compliance with all applicable federal, state, and local regulations related to the project and associated grant funding.

3. Standards and Compliance

All work shall comply with the requirements and conditions outlined in:

- Federal Financial Assistance Funding Opportunity Number 23-DG-11083112-430
- Florida Department of Agriculture and Consumer Services Agreement #32104, including Amendment 1
- Any applicable guidance or direction issued by the Town of Fort Myers Beach

4. Deliverables

The Contractor shall provide:

- Delivery of approved trees to designated planting locations on Estero Island.
- Installation of trees at locations identified by the Town of Fort Myers Beach.
- Completion of work in accordance with all applicable project requirements and standards.

5. Exclusions

The following items are specifically excluded from this scope of work:

- Installation of placards described in FDACS Agreement Scope of Work, Task #2 (page 17).

6. Tree Warranty

The Contractor shall guarantee all trees installed under this contract for a period of sixty (60) days from the date of final acceptance by the Town of Fort Myers Beach.

Any tree that dies, becomes severely damaged, or fails to thrive during the warranty period, as determined by the Town in its reasonable discretion, shall be removed and replaced by the Contractor at no additional cost to the Town. Replacement trees shall meet the same species, size, and installation specifications required under this contract.

All replacement trees shall be installed in accordance with the requirements of this contract and shall be subject to the same standards and installation practices as the original planting.

7. Coordination

The Contractor shall coordinate all scheduling, site access, and planting activities with the Town of Fort Myers Beach to ensure compliance with project requirements and minimize disruption to public areas.

EXHIBIT “B”

COMPENSATION AND PRICING

☒ following this page (pages 1 through 1)

☐ this exhibit is not applicable

EXHIBIT B – PRICING AND COMPANSATION

#26-10-EN Estero Island Canopy Restoration

Common Name	Latin Name	Native to Florida?	Notes (Habitat / Use / Comments)	Size	Price per Tree
Florida Fishpoison Tree	<i>Piscidia piscipula</i>	Yes	Native small/medium tree.	25 gal	\$575
Florida Thatch Palm	<i>Thrinax radiata</i>	Yes	Small coastal palm native to southern FL.	25 gal	\$575
Green Buttonwood	<i>Conocarpus erectus</i>	Yes	Salt/wind tolerant coastal tree.	25 gal	\$575
Gumbo Limbo	<i>Bursera simaruba</i>	Yes	Fast-growing shade tree with peeling bark.	25 gal	\$575
Hong Kong Orchid Tree	<i>Bauhinia × blakeana</i>	No	Semi-evergreen flowering tree with large purple orchid-like blooms; does not produce viable seeds; best in full sun and well-drained soil.	25 gal	\$575
Orange Geiger	<i>Cordia sebestena</i>	Yes	Flowering native small tree.	25 gal	\$575
Paradise Tree	<i>Simarouba glauca</i>	Yes	Medium shade tree.	25 gal	\$575
Peregrina / Firecracker Jatropa	<i>Jatropha integerrima</i>	No	Evergreen shrub/small tree with red flowers.	25 gal	\$575
Royal Palm (Florida Royal Palm)	<i>Roystonea regia</i>	Yes (South FL)	Tall, smooth-trunk palm native to South Florida and the Keys; prefers moist, well-drained soils.	25 gal	\$575
Sabal Palm	<i>Sabal palmetto</i>	Yes	Iconic native palm; salt, drought, and wind tolerant.	25 gal	\$575
Sea Grape	<i>Coccoloba uvifera</i>	Yes	Coastal tree; great for windbreaks.	25 gal	\$575
Silver Buttonwood	<i>Conocarpus erectus</i> var. <i>sericeus</i>	Yes (Native variety)	Silvery foliage form; highly salt and drought tolerant.	25 gal	\$575

*pricing is all inclusive of labor, delivery and installation.

EXHIBIT “C”

WORK SCHEDULE

- ☒ following this page (pages 1 through 3)
- ☐ this exhibit is not applicable

EXHIBIT C – WORK SCHEDULE
#26-10-EN Estero Island Canopy Restoration

1. Purpose and Applicability

This Exhibit C establishes the Work Schedule governing all work performed under the Contract resulting from Solicitation No. 26-10-EN, Estero Island Canopy Restoration, and sets forth the Liquidated Damages applicable to specific delay and performance failures as identified herein.

All work performed under this Contract is funded in whole or in part through Federal Financial Assistance Funding Opportunity Number 23-DG-11083112-430, administered by the Florida Department of Agriculture and Consumer Services (FDACS) under Agreement #32104, including Amendment 1. The Contractor shall complete all work associated with FDACS Agreement #32104, including Amendment 1, no later than July 31, 2026, regardless of contract term or renewal status.

2. Project Work Schedule

The following schedule establishes key milestones and deadlines for all work performed under this Contract. All dates are firm unless modified by written amendment executed by both parties. The Contractor is responsible for managing its schedule to ensure on-time completion of all milestones.

Item	Milestone / Deliverable	Target Completion Date	Responsible Party
1	Contract Execution	Within 10 days of Notice of Award	Town & Contractor
2	Pre-Construction Meeting / Project Kickoff	Within 5 business days of Contract Execution	Town & Contractor
3	Contractor Submits Preliminary Project Schedule (species sourcing, delivery phasing, and planting site sequencing)	Within 5 business days of Kickoff Meeting	Contractor
4	Town Issues Initial Notice(s) to Proceed (NTP)	As determined by Town	Town
5	Commencement of Tree Delivery and Installation (per each issued NTP)	As specified in each NTP	Contractor
6	Substantial Completion of All NTP-Authorized Work (all trees delivered and installed at designated locations)	No later than July 15, 2026	Contractor
7	Final Inspection and Town Acceptance	On or before July 22, 2026	Town
8	FDACS Agreement #32104 (incl. Amendment 1) Completion Deadline – ALL WORK COMPLETE	July 31, 2026 (HARD DEADLINE)	Contractor
9	60-Day Tree Warranty Period Commences (following Town's written Final Acceptance)	Date of Final Acceptance	Contractor
10	60-Day Tree Warranty Period Expires	60 calendar days after Final Acceptance	Contractor

Notes:

- The July 31, 2026, deadline is a hard federal grant deadline tied to FDACS Agreement #32104, including Amendment 1, and is not subject to extension without prior written approval from FDACS.
- The Town may issue multiple Notices to Proceed (NTP) in phases based on site readiness, species availability, and operational priorities. Each NTP will specify applicable work scope, quantities, locations, and required completion date.
- The Contractor shall maintain sufficient labor, equipment, and material resources to meet all NTP-driven timelines without delay.

3. Liquidated Damages

The parties acknowledge that the exact amount of damages resulting from the delay or performance failures identified herein would be difficult or impossible to ascertain with certainty. Accordingly, the Contractor shall pay the Town the following amounts as liquidated damages, and not as penalties, for each applicable occurrence. The Town shall have the right to retain from any payment due the Contractor an amount sufficient to satisfy any liquidated damages due and owing.

LD No.	Triggering Event	Rate	Notes
LD-1	Failure to complete all work under an issued Notice to Proceed by the FDACS Agreement #32104 completion deadline of July 31, 2026, unless delay is caused by circumstances beyond the Contractor's control and approved in writing by the Town.	\$500 per calendar day	Accrues beginning August 1, 2026, for each calendar day any NTP-authorized work remains incomplete. Does not apply where the Town has issued written approval of a delay caused by circumstances beyond the Contractor's control.
LD-2	Failure to remove and replace a tree that has died, become severely damaged, or failed to thrive within the 60-day warranty period, following written notice from the Town.	\$500 per calendar day	Accrues beginning on the sixth (6th) calendar day after the Town's written notice. Applies per tree, per occurrence. Replacement trees must meet original species, size, and installation specifications.
LD-3	Damage to public or private property caused by the Contractor or its subcontractors, where the Contractor fails to initiate repairs within five (5) calendar days of written notice from the Town.	\$1,000 per incident	Applied per incident. Assessment of liquidated damages does not release the Contractor from full responsibility for resolving or repairing all damages caused.

The application of liquidated damages under this Exhibit shall not be construed as the Town's sole or exclusive remedy and shall not be construed as a waiver of the Town's right to pursue additional remedies for breaches not covered above.

The Contractor shall not be assessed liquidated damages for delays directly attributable to: (i) acts of God or natural disasters not reasonably foreseeable; (ii) acts of government in its sovereign capacity; (iii) labor disputes not caused by the Contractor; or (iv) any other cause beyond the reasonable control of the

Contractor, provided the Contractor has provided written notice to the Town within five (5) calendar days of the onset of such cause and has taken all reasonable steps to mitigate the delay.

4. Contractor Schedule Obligations

The Contractor shall comply with the following schedule management requirements throughout the duration of this Contract:

- Submit a preliminary project schedule within five (5) business days of the Kickoff Meeting, identifying species sourcing status, anticipated delivery phasing, and proposed planting site sequencing.
- Provide updated schedule submittals upon request by the Town within three (3) business days of the Town's written request.
- Immediately notify the Town in writing of any condition, event, or circumstance that may cause a delay to any scheduled milestone, within five (5) calendar days of the onset of such condition.
- Coordinate all site access, scheduling, and planting activities with the Town's designated Project Manager to minimize disruption to public areas.

EXHIBIT “D”

SUPPLEMENTAL TASK AUTHORIZATION FORM

☐ following this page (pages ____ through ____)

☒ this exhibit is not applicable

EXHIBIT “E”

FLORIDA STATUTORY REQUIREMENTS

- ☒ following this page (pages 1 through 5)
- ☐ this exhibit is not applicable

FLORIDA STATUTORY REQUIREMENTS

1. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

2. Public records.

- a. 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.
- b. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
- c. 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.
- d. 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.

- e. 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.
- f. **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, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
6231 ESTERO BLVD
FORT MYERS BEACH, FL 33931
239-765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the TOWN harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.0701(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with 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.

5. 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."

6. 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.

7. 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.

8. 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.

9. 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:

“Coercion” means:

- i. Using or threatening to use physical force against any person;
- ii. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- iii. 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;
- iv. 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;
- v. Causing or threatening to cause financial harm to any person;
- vi. Enticing or luring any person by fraud or deceit; or
- vii. 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.

10. Conflicts. By entering into this agreement, the Contractor represents that it currently is not providing professional services to any third party person or entity on any project or development for which project or development approval is currently pending or proposed or for which an application is being prepared for submittal to the TOWN of Fort Myers Beach for review or approval and further agrees that during the term of this agreement, the Contractor will not provide professional services to any third party person or entity as to any project or development for which development or project approval is pending or proposed or for which an application is being prepared for submittal to the TOWN of Fort Myers Beach for review or approval.

11. Breach of Agreement for Goods or Services Related to Emergency Response for Natural Disaster Pursuant to Section 252.505, Florida Statutes. Pursuant to Sec. 252.505, Fla. Stat., if Contractor breaches this agreement during an emergency recovery period (1-year period beginning upon Governor's initial declaration of a natural emergency) Contractor shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages in addition to any other consequential damages or liquidated damages that may otherwise be due under the terms of the agreement.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., CONTRACTOR declares that CONTRACTOR has read the foregoing Paragraph 9 above and that the facts stated in it are true.

CONTRACTOR:

By: [Signature]
Signature
Jeffrey S. Balyeat Owner
↑Type/print signature and title↑

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of April, 2026, by Jeffrey S. Balyeat as Owner of Tidelwater Landscaping of Florida LLC, a Limited Liability Company on behalf of FMB, and he/she is personally known to me or has produced FL Driver's License as identification.

[Signature]
Signature of Notary Public - State of Florida

Erica D. Brown
Printed/Typed/Stamped Name of Notary
My commission expires: June 29, 2029

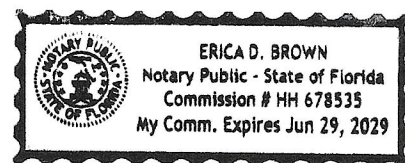


EXHIBIT “I”

AFFIDAVIT REGARDING LABOR AND SERVICES

☒ following this page

☐ this exhibit is not applicable

AFFIDAVIT REGARDING LABOR AND SERVICES

AND CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED

Effective July 1, 2024, pursuant to § 787.06(13), Florida Statutes, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services.

Effective January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the government with an affidavit signed by an officer or representative under penalty of perjury attesting that the entity does not meet any of the following criteria: (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Effective July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c), § 287.138, Florida Statutes.

Nongovernmental Entity's Name:	Tidewater Landscape of FL
Address:	1326 Kingswood Ct
Phone Number:	239-770-5970
Authorized Representative's Name:	Jeffrey Balyeat
Authorized Representative's Title:	President
Email Address:	Jeff@tidewaterlandscap pefl.com

I, _____ (Name of Authorized Representative), as authorized representative attest under penalty of perjury that Tidewater Landscape of FL _____ (Name of Nongovernmental Entity) does not: (1) use coercion for labor or services as defined in § 787.06, Florida Statutes, and (2) the nongovernmental entity is not (a) owned by a government of a foreign country of concern, (b) that a foreign country of concern does not have a controlling interest in the entity, and (c) that the entity is not organized under the laws of or has its principal place of business in a foreign country of concern, all as prohibited under § 287.138, Florida Statutes.

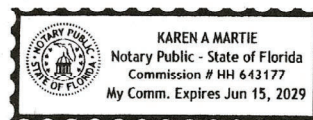
Under penalty of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(Signature of authorized representative) 3-21-26
Date

STATE OF Florida
COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me, by means of ☒ physical presence or ☐ online notarization this 16th day of April, 2026, by Jeffrey Balyeat (Name of Affiant), who produced his Florida Driver's License as identification.

Karen A. Martie
Notary Public
Commission Expires 06/15/2029



Personally Known ☐ OR Produced Identification ☒
Type of Identification Produced: FL DL

EXHIBIT “J”

OTHER EXHIBITS/ ATTACHMENTS

Description: _____

☐ following this page (pages ____ through ____)

☒ this exhibit is not applicable

EXHIBIT B – PRICING AND COMPANSATION

#26-10-EN Estero Island Canopy Restoration

Common Name	Latin Name	Native to Florida?	Notes (Habitat / Use / Comments)	Size	Price per Tree
Florida Fishpoison Tree	<i>Piscidia piscipula</i>	Yes	Native small/medium tree.	25 gal	\$575
Florida Thatch Palm	<i>Thrinax radiata</i>	Yes	Small coastal palm native to southern FL.	25 gal	\$575
Green Buttonwood	<i>Conocarpus erectus</i>	Yes	Salt/wind tolerant coastal tree.	25 gal	\$575
Gumbo Limbo	<i>Bursera simaruba</i>	Yes	Fast-growing shade tree with peeling bark.	25 gal	\$575
Hong Kong Orchid Tree	<i>Bauhinia × blakeana</i>	No	Semi-evergreen flowering tree with large purple orchid-like blooms; does not produce viable seeds; best in full sun and well-drained soil.	25 gal	\$575
Orange Geiger	<i>Cordia sebestena</i>	Yes	Flowering native small tree.	25 gal	\$575
Paradise Tree	<i>Simarouba glauca</i>	Yes	Medium shade tree.	25 gal	\$575
Peregrina / Firecracker Jatropa	<i>Jatropha integerrima</i>	No	Evergreen shrub/small tree with red flowers.	25 gal	\$575
Royal Palm (Florida Royal Palm)	<i>Roystonea regia</i>	Yes (South FL)	Tall, smooth-trunk palm native to South Florida and the Keys; prefers moist, well-drained soils.	25 gal	\$575
Sabal Palm	<i>Sabal palmetto</i>	Yes	Iconic native palm; salt, drought, and wind tolerant.	25 gal	\$575
Sea Grape	<i>Coccoloba uvifera</i>	Yes	Coastal tree; great for windbreaks.	25 gal	\$575
Silver Buttonwood	<i>Conocarpus erectus</i> var. <i>sericeus</i>	Yes (Native variety)	Silvery foliage form; highly salt and drought tolerant.	25 gal	\$575

***pricing is all inclusive of labor, delivery and installation.**



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
TIDEWATER LANDSCAPE OF FLORIDA, LLC

Filing Information

Document Number	L20000173495
FEI/EIN Number	85-1531117
Date Filed	06/22/2020
Effective Date	06/22/2020
State	FL
Status	ACTIVE

Principal Address

1326 KINGSWOOD CT.
FORT MYERS, FL 33919

Mailing Address

1326 KINGSWOOD CT.
FORT MYERS, FL 33919

Registered Agent Name & Address

BALYEAT, JEFFREY S

1326 KINGSWOOD CT.
FORT MYERS, FL 33919

Authorized Person(s) Detail

Name & Address

Title MGR

BALYEAT, JEFFREY S
1326 KINGSWOOD CT
FORT MYERS, FL 33919

Annual Reports

Report Year	Filed Date
--------------------	-------------------

2023	02/02/2023
2024	01/30/2024
2025	04/24/2025

Document Images

04/24/2025 -- ANNUAL REPORT	View image in PDF format
01/30/2024 -- ANNUAL REPORT	View image in PDF format
02/02/2023 -- ANNUAL REPORT	View image in PDF format
03/04/2022 -- ANNUAL REPORT	View image in PDF format
04/30/2021 -- ANNUAL REPORT	View image in PDF format
06/22/2020 -- Florida Limited Liability	View image in PDF format



WILTON SIMPSON
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Administration

**FEDERAL FINANCIAL ASSISTANCE
SUBRECIPIENT AGREEMENT**

This Federal Financial Assistance Subrecipient Agreement (Agreement) made and entered into on 25 March 2025, by and between the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, the Recipient, and the Town of Ft. Myers Beach, the Subrecipient. The Subrecipient's Application package for federal financial assistance, dated July 19, 2024, (Application) is incorporated by reference. The Subrecipient shall perform the Scope of Work contained in the Subrecipient's Application.

The Department of Management Services' designated United Nations Standard Products and Services Code (UNSPSC) is 70151500.

A. SUBAWARD AMOUNT

1. The total award amount for satisfactorily completing the Scope of Work is \$23,449.00. In no event shall the Recipient be liable for payment of any amount, which exceeds the total award amount.
 - a. The Subrecipient may expend funds only for allowable costs resulting from obligations incurred during the agreement period.
 - b. The balance of unobligated funds which have been advanced or paid must be refunded to the Recipient.
 - c. Funds paid in excess of the amount to which the Subrecipient is entitled under the terms and conditions of the agreement must be refunded to the Recipient.

B. TERM

1. The agreement period of this Subrecipient agreement shall commence upon execution and, unless sooner terminated or canceled, shall end on the 31st day of January, 2026 (Term).
2. No-cost extensions require the prior written approval of the Recipient and must be submitted not less than sixty (60) days prior to the end of the Term. Extension requests, which exceed the federal agency award period, will not be granted.

C. UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT

1. The Subrecipient shall comply with 2 CFR, Part 25, "Financial Assistance Use of Universal Identifier and System of Award Management" (SAM). The Subrecipient must register and maintain a registration in SAM until submittal of the final financial report. A unique entity identifier is a 12-character alphanumeric ID assigned to an entity by SAM.gov.
2. Compliance with 2 CFR, Part 25 is not required for individuals.

D. FINANCIAL AND PROGRAM MANAGEMENT

1. Statutory and National Policy Requirements
 - a. All expenditures of federal financial assistance under the Agreement shall be in compliance with all applicable laws, rules, and regulations applicable to expenditures of federal funds.

- b. The Subrecipient shall implement applicable National Policy Requirements.

2. Deliverables

- a. The Subrecipient must provide quantifiable, measurable, and verifiable units of Deliverables which must be received and accepted in writing by the Recipient before payment. Deliverables must be directly related to the Scope of Work; specify minimum levels of service to be performed; and contain criteria for evaluating the successful completion of each Deliverable. The Deliverables are set forth in the Scope of Work contained in the Subrecipient Application.
- b. The Subrecipient shall perform all deliverables within the time frame established in this Agreement. Unless otherwise set forth in the Scope of Work, failure to meet the Deliverables of this Agreement shall result in a financial consequence up to 100% of the final payment request unless the failure to perform the deliverable is corrected or prohibited by the federal agency awarding the grant.

3. Financial Management

- a. The Subrecipient shall maintain an accounting system and a set of accounting records, which allow for the identification of revenues and expenditures related to this Agreement.
- b. The Subrecipient shall comply with 2 CFR, Part 200, as currently in effect and as may be amended from time to time and adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

4. Reimbursement Requests

- a. The allowability of costs shall be in accordance with the federal financial assistance cost principles applicable to the Subrecipient and terms of this Agreement.
- b. The Subrecipient shall submit the payment request packet to the Recipient's Grant Manager not more often than monthly, but not less often than quarterly. To be eligible for reimbursement, costs shall be allowable, necessary, and reasonable, and must be submitted by budget category consistent with the budget plan submitted with the Subrecipient's Application.
- c. All reimbursement requests must be submitted using the Recipient's standard payment request packet and provide supporting documentation for each cost. An authorized Subrecipient representative shall sign the certifications on the payment request packet submitted.
- d. The payment request packet is downloadable from <https://forms.fdacs.gov/02019.pdf>.
- e. A Subrecipient whose federal financial assistance grant provides an online reimbursement system for reporting reimbursement details shall use the online reimbursement system instead of the payment request packet.
- f. Travel Expenses. Justified and reasonable travel expenses which are directly and exclusively related to the services rendered under this Agreement will be reimbursed in

accordance with Section 112.061, F.S. Authorization for travel expenses must be specified in this Agreement.

- g. \$23,449.00 for one year based on invoices submitted for expenses incurred during the quarterly periods ending March 31, June 30, September 30 and December 31 of each year. Each quarter, The SUBRECIPIENT shall submit detailed quarterly reports using the format and content shown on the RECIPIENT'S performance progress report. Invoices must be received within 30 calendar days of the conclusion of each quarter. Bills will be in the form of an invoice by major categories and will include local funding information detailing staff salaries, benefits, indirect costs (at 10% of Total Direct Costs) and other approved expenses, if accrued.
- h. Travel and per diem costs are not allowable under this contract.

5. Payment of Reimbursement Requests

- a. Payment for allowable, necessary, and reasonable costs shall be made within thirty (30) days after acceptance by the Recipient. Payment request packets returned to the Subrecipient due to omissions or preparation errors will result in a payment delay.
- b. Payment requests for a percentage of work completed on each task deliverable are allowed.
- c. Payment is contingent upon the availability of funding from the federal agency and the Subrecipient's compliance with the terms and conditions of this Agreement.
- d. The final payment under this Agreement shall be made upon completion of the Scope of Work including all Deliverables and the receipt and approval of all reports required hereunder.
 - (1) Reimbursement Request Form with required backup documentation.
 - (2) Final Report - brief paragraph on letterhead summarizing what was accomplished with the grant funding.
 - (3) Copy of a news release that will be submitted to a local publication crediting the U.S. Forest Service for providing funding.
 - (4) Copy of Congressional thank you letter - Thank you letter addressed to your federal congressional representatives for the grant funding. Include a brief description of what you were able to accomplish with the funding.
 - (5) Certification of Acceptance executed by a Florida Forest Service official.
- e. Disallowance or adjustments due to audit findings may require the Subrecipient to return funds to the Recipient. The Subrecipient is solely responsible for reimbursing the Recipient for amounts incorrectly paid to the Subrecipient.

6. Program Income

- a. "Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds". 2 CFR 200.80
- b. The Subrecipient must report to the Recipient any program income received or anticipated from the activities performed under this Agreement.

7. Revision of Budget Plan

- a. The Budget Plan contained in the Subrecipient Application lists costs and budget categories to fund the Subrecipient's performance of the Scope of Work, including the completion of Deliverables.
- b. The Subrecipient is required to report any transfers from one approved budget category to another approved budget category. If the cumulative budget transfers meet or exceed ten percent (10%), prior approval, evidenced by contract amendment, is required.
- c. Prior approval, evidenced by contract amendment, is required for:
 - (1) Any transfers from an approved budget category to an unapproved budget category. An unapproved budget category is defined as having no funds allocated in the original Budget Plan.
 - (2) Any equipment purchases not noted in the original Budget Plan and/or Scope of Work.
 - (3) Any subawarding or contracting out of any work not noted in the original Budget Plan and/or Scope of Work.

8. Revision of Scope of Work

- a. The Subrecipient shall report any changes to the Scope of Work including but not limited to changes in the objectives, changes in key personnel, reduction of work effort by key personnel, and delays in completion of the work.

9. Acknowledgements

- a. The Subrecipient shall have an acknowledgement of the U.S.D.A. Forest Service support placed on any publication written or published or audiovisual produced with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity, or audiovisuals produced with grant support. This requirement does not apply to audiovisuals produced as research instruments or for documenting experimentations or findings and not intended for presentation or distribution to the public.

Minimum verbiage requirement is as follows: "This publication made possible through a grant from the USDA Forest Service in cooperation with the Florida Forest Service."

- b. Publication means a published book, periodical, pamphlet, brochure, flier, or similar item.
- c. Audiovisual means a product containing visual imagery or sound or both.
- d. The Subrecipient acknowledgement must contain a disclaimer which states: "Any opinions, findings, conclusions, or recommendations expressed in this publication or audiovisual are those of the author(s) and do not necessarily reflect the view of the U.S.D.A. Forest Service".
- e. Language shall read:

The work upon which this (insert publication or audiovisual or both) is based was funded, in whole or in part through a subrecipient grant awarded by the U.S.D.A. Forest Service through the Florida Department of Agriculture and Consumer Services. The contents do not necessarily reflect the views or policies of the U.S.D.A. Forest Service nor does mention of trade names, commercial productions, services, or organizations imply endorsement by the U.S. Government.

E. PROPERTY STANDARDS

1. Equipment and Real Property

- a. Equipment must be used in the project for which the federal funds are derived.
- b. The federal agency has a vested interest in equipment and/or real property which, when purchased, exceeds \$5,000 in value. If a title is issued for the equipment and/or real property, the federal agency must be listed on the title.
- c. The Subrecipient must maintain property records, which include, but are not limited to, the description, serial number or other identification number, acquisition date, cost, location, percentage of federal participation in the cost of the property, use and condition of the property. When the property is disposed of, the property records must be updated with the date of disposal and sale price of the property.
- d. A physical inventory is required at least once every two years.
- e. If the equipment and/or real property are to be sold or used as a trade-in, approval of the Recipient is required.
- f. At the end of the award period, the Subrecipient is required to request from the Recipient disposal instructions and is required to notify the Recipient of the fair market value of the equipment and/or real property.

2. Insurance Coverage

- a. The Subrecipient will carry sufficient insurance coverage to protect all assets required under the Agreement from loss due to theft, fraud, and/or undue physical damage. The Subrecipient shall carry insurance on its own assets in commercially reasonable amounts and all statutorily required insurance, including without limitation Workers' Compensation insurance.

3. Intellectual Property

- a. Anything by whatsoever designation it may be known, that is produced by, or developed in connection with this Agreement shall become the exclusive property of the Recipient and may be copyrighted, patented, or otherwise restricted as provided by Florida or federal law. Neither the Subrecipient nor any individual employed under this Agreement shall have any proprietary interest in such property.
- b. With respect to each Deliverable that constitutes a work of authorship within the subject matter and scope of U.S. Copyright Law, 17 U.S.C. Sections 102-105, such work shall be a "work for hire" as defined in 17 U.S.C. Section 101 and all copyrights subsisting in such work for hire shall be owned exclusively by the Recipient.

- c. In the event it is determined as a matter of law that any such work is not a "work for hire," the Subrecipient shall immediately assign to the Recipient all copyrights subsisting therein for the consideration set forth in the Agreement and with no additional compensation.
- d. The foregoing shall not apply to any preexisting software, or other work of authorship used by the Subrecipient to create a Deliverable but which exists as work independent of the Deliverable, unless the preexisting software or work was developed by the Subrecipient pursuant to a previous Agreement with the Recipient or by a purchase by the Recipient under a state term contract.

F. MATCHING OR COST SHARE (IF APPLICABLE)

1. The matching or cost share portion must be tracked using a unique identifier in the Subrecipient accounting system.
2. If the matching or cost share portion is not met, the Recipient may disallow costs paid with federal funds in proportion to the reduction in the matching or cost share amount.
3. The matching or cost share portion must be incurred in direct proportion to the amount of federal funds used.
4. The matching or cost share portion must be reported based upon the Budget Plan submitted with the Application.
5. Records for in-kind contributions, which are based upon volunteer hours, must have timesheets or a sign-in/sign-out logs and must explicitly state the method for valuation of the hours. The value must be reasonable.
6. Records for in-kind contributions, which are based upon goods or services provided, must have an invoice, if available, or must explicitly state the method for the valuation. The value must be reasonable.
7. In-kind contributions must be provided by a third party during the period for which they are being claimed.
8. The matching or cost share portion must not be counted towards other cost sharing requirements. Neither costs nor values of third-party in-kind contributions may count if they have been used towards other cost sharing requirements.

G. GENERAL PROCUREMENT STANDARDS

1. The Subrecipient will follow the same policies and procedures it uses for procurements from other funding sources.
2. The Subrecipient must have documented procurement procedures.
3. The Subrecipient must have written policies on standards of conduct covering conflicts of interest. No employee, officer, or agency may participate in the selection, award or administration of a contract supported by federal funds if he or she has a real or apparent conflict of interest.

H. PERFORMANCE MONITORING AND REPORTING

1. The Subrecipient shall submit detailed quarterly reports using the format and content shown on the Recipient's performance progress report. The performance progress report is downloadable from <https://forms.fdacs.gov/02018.pdf>.
2. In the event the Agreement is terminated, the Subrecipient shall furnish a report detailing progress made under this Agreement through the date of termination within twenty (20) days of termination.
3. The Subrecipient shall cooperate in all on-site reviews from the Recipient, its authorized representatives, or federal government personnel.
4. The review personnel will be given full and complete access during normal business hours to all information related to the performance of this Agreement to ensure compliance with project activities and statutes, regulations, and rules.
5. The Recipient will give 48 hours' notice of any on site review.
6. The Subrecipient shall make available all personnel involved in the performance of work on this Agreement.
7. Failure to correct substandard performance within thirty (30) days after written notice from the Recipient shall result in suspension and/or termination of the Agreement.

I. RECORD RETENTION AND ACCESS

1. Retention Requirements for Records

- a. Upon reasonable notice, the Recipient shall have access to the Subrecipient's records during normal business hours.
- b. The Subrecipient shall maintain all records pertinent to the activities to be funded under this Agreement for a period of five (5) years after final payment is received and for such additional period as may be required until all claims, litigation and appeals pertaining or related to the Agreement have been completely resolved.

2. Access to Public Records

- a. The Subrecipient shall comply with all applicable requirements of Chapter 119, F.S.
- b. To the extent that Subrecipient meets the definition of "Contractor" under Section 119.0701, F.S., all documents, including papers, letters, or any other record or materials prepared pursuant to this Agreement are subject to Florida's Public Records Law. Subrecipient must:

- (1) Keep and maintain public records required by the Recipient to perform the service.
- (2) Upon request from the Recipient's custodian of public records, provide the Recipient with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at no cost to the Recipient.
- (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 the contract period and following completion or termination of the contract if the Subrecipient does not transfer the records to the Recipient.

- (4) Upon completion or termination of the contract, transfer, at no cost, to the Recipient all public records in possession of the Subrecipient or keep and maintain public records required by the Recipient to perform the service. If the Subrecipient transfers all public records to the Recipient upon completion or termination of the contract, the Subrecipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Subrecipient keeps and maintains public records upon completion or termination of the contract, the Subrecipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Recipient, upon request from the Recipient's custodian of public records, in a format that is compatible with the information technology systems of the Recipient.
- c. The Recipient shall have the right of unilateral cancellation for refusal by the Subrecipient to allow public access to all documents, papers, letters, or other material made or received by the Recipient in conjunction with the contract, unless the records are exempt from s. 24(a) of Article I of the State Constitution and Section 119.07(1), F.S.
- d. Nothing in this article shall be considered a waiver of the provisions of Section 119.0701, F.S.

IF THE SUBRECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

**OFFICE OF GENERAL COUNSEL
407 SOUTH CALHOUN STREET, SUITE 520
TALLAHASSEE, FL 32399
PHONE: (850) 245-1000
EMAIL: PRCUSTODIAN@FDACS.GOV**

J. REMEDIES FOR NONCOMPLIANCE

1. Prior to the exercise of any remedy provided for herein, the Recipient shall provide thirty (30) calendar days written notice of default and shall provide the Subrecipient the opportunity to cure such failure or default within said thirty (30) day period. Upon the failure or inability to cure, the Recipient shall have all rights and remedies provided at law or in equity, including without limitation the following:
- a. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient.
- b. Disallow all or part of the cost of the services not in compliance.
- c. Wholly or partly suspend or terminate this Agreement.

2. Termination

- a. This Agreement may be terminated for convenience by either party upon giving not less than thirty (30) days advance written notice to the other party. The Subrecipient shall be paid for all work satisfactorily performed prior to the date of termination provided the Subrecipient has otherwise complied with the terms of this Agreement, including the submission of all reports.
- b. The Recipient may suspend or terminate this Agreement if the Subrecipient:
 - (1) Fails to comply with any applicable rules, regulations or provisions referred to herein, or any other applicable state or federal statutes, rules, regulations, executive orders, federal guidelines, policies or directives;
 - (2) Fails to timely fulfill its obligations under the Agreement;
 - (3) Improperly or illegally uses funds provided under this Agreement; or
 - (4) Submits reports that are incorrect in any material respect.

K. CLOSE OUT

- 1. Notwithstanding the termination of this Agreement, the Subrecipient's obligations to the Recipient shall survive until all close out requirements are completed. Close out activities shall include but are not limited to completing and submitting final reports, properly disposing of property, accounting for unspent cash advances and program income and transferring custodianship of records to Recipient or its designee.
- 2. Post-close Out Adjustments
 - a. Any funds paid in excess of the amount to which the Subrecipient is entitled under the Agreement must be refunded to the Recipient within thirty (30) days after demand therefore by Recipient.

L. AUDIT REQUIREMENTS

- 1. Audit Provisions
 - a. If the Subrecipient is a state or local government or a nonprofit organization, the audit provisions as defined in 2 CFR, Part 200 Subpart F are applicable.
 - b. If the Subrecipient is a commercial organization (for-profit), the organization will provide the Recipient with its annual audited financial statement or the annual tax return provided to the Internal Revenue Service.
 - c. Audit provisions are not required for a Subrecipient who is an individual.
 - d. In the event that the Subrecipient expends \$1,000,000 or more in federal awards in its fiscal year, the Subrecipient must have a single or program-specific audit conducted in accordance with the 2 CFR, Part 200 Subpart F.

- e. If the Subrecipient expends less than \$1,000,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR, Part 200 Subpart F is not required. Records must be available for audit or review if necessary.
- f. If the Subrecipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted, the cost of the audit must be paid from non-federal resources.

2. Basis for Determining Federal Awards Expended

- a. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from the Recipient.
- b. The determination of amounts of federal awards expended should be in accordance with the guidelines established by 2 CFR, Part 200 Subpart F.

3. Relation to Other Audit Requirements

- a. If the Subrecipient has an audit conducted in relationship to any other federal regulation or statute, the Recipient may determine upon review if the audit reports meet the needs of the Recipient. If so, an additional audit will not be required.
- b. An audit of the Subrecipient conducted by the Auditor General in accordance with provisions of 2 CFR, Part 200 Subpart F will meet these requirements.
- c. These provisions do not limit the authority of the federal agency, Inspector General, General Accounting Office (GAO), or Recipient to conduct or arrange for the conduct of audits or evaluations of federal financial assistance awards.

4. Frequency of Audits

- a. Audits shall be performed annually to meet this requirement.

5. Sanctions

- a. If the Subrecipient is unwilling or has a continued inability to have an audit conducted, the provisions for noncompliance will be enforced.

6. Subrecipient Responsibilities

- a. The Subrecipient shall arrange for the audit to be conducted in a timely manner and submitted as required in 2 CFR 200.512.
- b. The Subrecipient shall prepare the financial statements in accordance with 2 CFR 200.510.
- c. The Subrecipient shall promptly follow up and take corrective action on audit findings.
- d. The Subrecipient will provide the auditor with access to records, personnel, documentation, and other information as needed by the auditor.

7. Audit Findings Follow-up

- a. At the completion of the audit, the Subrecipient must prepare, in a document separate from the auditor's findings a corrective action plan to address each audit finding included in the current year auditor's reports.
- b. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned and the anticipated completion date.
- c. If the Subrecipient does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.
- d. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient.
- e. Failure of the Subrecipient to comply with the above requirement will constitute a violation of this Agreement and may result in the withholding of future payments.

8. Report Submission

- a. The audit must be completed and the data collection form and reporting package must be submitted within the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.
- b. The Subrecipient must submit required data elements described in Appendix X to 2 CFR, Part 200 – Data Collection Form (SF-SAC), which states whether the audit was completed in accordance with this part and provide information about the Subrecipient, its federal programs and the results of the audit.
- c. A senior representative of the Subrecipient must sign a statement to be included as part of the data collection that the Subrecipient has complied with the audit requirements, the data was prepared in accordance with 2 CFR 200.512, the reporting package does not include protected personally identifiable information, the information is accurate and complete, and the reporting package and form will be publicly available on the web.
- d. The Subrecipient shall also submit to the Recipient's Grant Manager one copy of the audit report, reporting package, any management letter issued by the auditor, and the data collection form described in Appendix X to 2 CFR, Part 200.
- e. The Subrecipient is required to use the internet submission form on the Federal Audit Clearinghouse (FAC) website. The FAC website is located at <https://www.fac.gov/>.
- f. The Subrecipient shall ensure that audit working papers are made available to the Recipient's Chief Financial Officer or Auditor General, or its designee, upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Recipient.

M. GENERAL CONDITIONS

1. Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating or establishing the relationship of principal and agent or employer and employee

between the parties. The Subrecipient will at all times remain an independent contractor with respect to the services to be performed under this Agreement.

2. Indemnification. The Subrecipient shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Recipient, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Subrecipient, its agent, employees, partners, or subcontractors, provided, however that the Subrecipient shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Recipient. Nothing herein contained shall be construed or operate as a waiver of sovereign immunity to the extent sovereign immunity, as set forth in Section 786.28, F.S., may otherwise apply.
3. Liability. The Recipient shall not assume any liability for the acts, omissions to act or negligence of the Subrecipient, its agents, servants, and employees, nor shall the Subrecipient disclaim its own negligence to the Recipient or any third party.
4. The Subrecipient shall not discriminate on the basis of race, sex, religion, color, national origin, age, or disability and shall comply with all applicable state and federal laws and regulations related thereto, including without limitation, the Americans with Disabilities Act (42 USC 12101 et. Seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC 795); and the Age Discrimination Act of 1975 (42 USC 6101-6107).
5. The Subrecipient acknowledges and agrees that the employment of unauthorized aliens by any person or entity is considered a violation of 8 U.S.C. § 1324a. If the Subrecipient knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Subrecipient avers that it is registered in the E-Verify system and further agrees to comply with the provisions of Section 448.095(2), F.S., during the term of the contract, including receiving and maintaining required affidavits from subcontractors.
6. This Agreement is contingent upon the availability of funding from the federal agency. This Agreement may be terminated by Recipient if funding from the federal agency is reduced or terminated.
7. The Subrecipient represents and warrants 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; and, that the Subrecipient shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction. Any lower tier contract provider who receives funds as a result of this Agreement shall be verified by Subrecipient through the General Services Administration (GSA) Federal Excluded Parties List: <https://sam.gov/SAM/>.
8. The Subrecipient shall comply with the Federal Acquisition Regulation 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, as currently in effect and as may be amended from time to time. Failure to comply or if the Subrecipient knowingly provides funds to any entity prohibited from receiving a contract or award pursuant to the Federal Acquisition Regulation 52.204-25 shall be cause for unilateral cancellation of this Agreement.
9. The Subrecipient acknowledges it has completed the certification regarding lobbying.

10. If prior written authorization for subcontracting is granted by the Recipient, any work or services subcontracted by the Subrecipient shall be specifically by written contract or Agreement, and such subcontracts shall be subject to each provision of this Agreement and applicable Federal, State or County guidelines and regulations as currently in effect and as may be amended from time to time. Prior to execution by the Subrecipient of any subcontract hereunder, the Subrecipient must submit such subcontracts to the Recipient for its review and approval.
11. The Subrecipient will comply with section 20.055, F.S.
12. This Agreement may not be modified except by a written instrument executed by a duly authorized representative of each party hereto.
13. In the event that two or more documents combine to form this Agreement, and in the event that there is any contradictory or conflicting clause or requirement in these documents, the provisions of the document(s) prepared by the Recipient shall be controlling.
14. This Agreement shall be controlled by Florida law, without regard to any conflict of law provisions thereof with venue in Leon County, Florida.
15. Severability. In the event that any clause or requirement of this Agreement is contradictory to, or conflicts with the requirements of Florida or federal law, including, but not limited to requirements regarding contracts with Florida's governmental agencies, the offending clause or requirement shall be without force and effect and the requirements of the applicable Florida or federal law shall substitute for that clause or requirement and be binding on all parties hereto.
16. Paragraph Headings. Paragraph headings contained in this Agreement are for convenience or reference only. They shall not be deemed to modify, limit, define or describe in any respect the provisions of this Agreement.
17. Compliance. The Subrecipient shall, at its sole cost and expense, comply with all requirements of all Municipal, County, State and Federal rules and regulations, statutes and/or ordinances now in effect and as may be amended from time to time pertaining to the duties and obligations arising from this Agreement.
18. Survival. The termination of this Agreement (whether by expiry, completion, the exercise of a termination right hereunder, or otherwise) will not relieve either party of any obligation, nor impair the exercise of rights, accrued hereunder prior to such termination. Without limiting the foregoing, the terms of Article D (entitled "FINANCIAL AND PROGRAM MANAGEMENT"), Article I (entitled "RECORD RETENTION AND ACCESS"), Article K (entitled "CLOSE OUT"), and Article L (entitled "AUDIT REQUIREMENTS") hereof will survive the termination of this Agreement.
19. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.
20. The delay or failure by the Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

21. Administration of Agreement.

The Grant Manager for the Recipient is Todd Little and is located at 3125 Conner Boulevard, Tallahassee, FL 32399.

The Grant Manager for the Subrecipient is Chadd Chustz and is located at 2731 Oak Street, Fort Myers Beach, FL 33931.

Substitution of a Grant Manager by any party after execution of this Agreement shall not require a formal amendment of this Agreement; however, the other Grant Manager shall be informed in writing within seven (7) business days of the substitution.

22. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sent via email to the contract manager and sent by a nationally recognized courier service which provides written proof of delivery (e.g., UPS, Federal Express) or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed, in either event, to the contract manager set forth above.

23. Entire Agreement. The instrument, including any attachments or exhibits, embodies the Entire Agreement of the parties for the use of the funds received under this Agreement. This Agreement supersedes all previous oral or written communications, representations, or Agreements on this subject.

N. STATE FUNDS; REPORTING

1. Inspection and Reporting Requirements. Upon request, the Subrecipient shall comply with Section 216.1366(3), F.S., inspection requirements. Any records, papers, and documents requested by the Department must be provided for inspection within ten (10) business days after the request is made. If the Subrecipient is a non-profit organization as defined in Section 215.97(2), F.S., then the Subrecipient must provide documentation that indicates the amount of state funds (1) allocated to be used during the full term of the contract for remuneration of any member of the board of directors or an officer of the Subrecipient, and (2) allocated under each payment by the Recipient to be used for remuneration of any member of the board of directors or an officer of the Subrecipient. The documentation must indicate the amounts and receipts of remuneration.
2. The Subrecipient is not classified as a non-profit organization as defined in Section 215.97(2)(m), F.S.; therefore the Subrecipient is not required complete and return the Total Compensation Paid to Non-Profit Personnel Using State Funds form (FDACS-01324) located at <https://forms.fdacs.gov/01324.pdf> in accordance with Section 216.1366, F.S., no later than ten (10) business days from execution of this Agreement and with each invoice or reimbursement submission in accordance with Section D. If the non-profit Subrecipient maintains a website, the Subrecipient must post the information required by Section 216.1366(3), F.S., on its website.
3. Failure to comply with any of the requirements of Section 216.1336, F.S., may result in termination of the Agreement as prescribed in Section J.

NOTE: Articles O and P do not apply to Individuals or Private Citizens.

O. EXECUTIVE COMPENSATION

1. The Subrecipient shall complete and return the Executive Compensation Attestation for Agreements Involving State Funds form (FDACS-01317) located at <https://forms.fdacs.gov/01317.pdf> no later than ten (10) business days from execution of this Agreement. Executive Compensation Attestation is required pursuant to Executive Order 20-44. Governmental entities as defined in Section 287.012(14), F.S., are excluded from the executive compensation reporting.
2. In the event that the Subrecipient receives fifty (50) percent or more of its budget from funding provided by the State of Florida, or a combination of funding from the State of Florida and the United States Government, or this Agreement results from the Subrecipient being named in statute as the required Subrecipient of a sole-source, public-private Agreement, then the Subrecipient shall provide an annual report to the Recipient due on or before June 30th. An annual report shall be required for each year that this Agreement remains in existence. The report shall detail the total compensation of the Subrecipient's executive leadership team, to include salary, bonuses, cash-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real property gifts, and any other payout. The annual report must also indicate what percent of compensation comes directly from State or Federal allocations, and the report shall contain the Subrecipient's IRS Form 990.
3. The Subrecipient understands and agrees that it must provide Recipient of written notice detail any change in executive compensation in the intervening period between annual reports.
4. The Subrecipient understands and agrees that failure to comply with any provision of this section constitutes a material breach for which Recipient may seek termination of this Agreement pursuant to Article 7 of this Agreement.
5. The final annual report shall be delivered to the Recipient as part of the close out process detailed in Article 8.

P. AFFIDAVIT FOR NONGOVERNMENTAL ENTITY

Pursuant to Section 787.06(13), F.S., when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, as defined in Section 287.138(1), F.S., an officer or representative of the nongovernmental entity must attest under penalty of perjury that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06, F.S. The Non-Coercion for Labor or Services Affidavit (FDACS-01364) located at <https://forms.fdacs.gov/01364.pdf> or a substantially similar affidavit must be completed and returned to the Recipient no later than ten (10) business days from the contract being executed, renewed, or extended. Email the completed affidavit to the Recipient's Grant Manager and reference the contract number in the subject line.

Federal resources awarded to the Subrecipient pursuant to this agreement are from U.S.D.A. Forest Service, federal financial assistance funding opportunity under FAIN 23-DG-11083112-001, and Assistance Listing Number (ALN) (formerly known as Catalog of Federal Domestic Assistance Number) 10.664, Cooperative Forestry Assistance.

***** Remainder of Page Left Intentionally Blank *****

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and, in the attachments and exhibits hereto, the parties have caused to be executed this Agreement by the undersigned officials duly authorized:

FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

SUBRECIPIENT

Joey B. Hicks

Signature

Director of Administration

Title

3/12/2025

Date

[Signature]

Signature

Town Manager

Title

3/25/25

Date

Florida Department of Agriculture and Consumer Services
Division of Administration

SCOPE OF WORK

2 CFR 200

1. Federal Financial Assistance Funding Opportunity Number: 23-DG-11083112-430	2. Subrecipient FEIN: 65-0632342
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3. Subrecipient Legal Name:
Town of Fort Myers Beach

Please note section XII Public Records in the Notice of Federal Financial Assistance Funding Opportunity before including any proprietary or confidential information.

Performance Measures

Deliverable #	Tasks	Task Description	Indicator	Costs per Unit	Outcome Measures
1	Tree Planting	Procurement, Installation, Irrigation, Assessment	Tree health	600 + 60 + 15	Healthy tree assessment at 60 days, 6 months and 1 year after installation
2	FMB Elementary Placards	Design and Production of placards to be installed next to each tree planted on FMB elementary	Placard installation	100	Inventory placard

Describe in detail the activity or work to be conducted.

#1 Procure and install 74 native canopy trees and palms in Town beach accesses, right of ways, Newton Park, Bay Oaks Recreational Park, and FMB Elementary School Campus. The object is to restore canopy and beautify Fort Myers Beach after the devastation caused by Hurricane Ian. All trees will be planted with organic fertilizer (e.g. black cow) irrigated with tree watering bags to provide regular irrigation throughout the grow in period of 60 days. Tree health will be assessed at 60 days, 6 months, and 1 year for foliage, growth and signs of disease. A report will be compiled with geolocated photos of each tree and notes on growth and health of each tree.

#2 Procure and install permanent placards on 5 canopy trees installed at FMB Elementary to educate school children about native tree species, their biological characteristics, and cultural significance. Informational placards will be installed on the ground for school children to read to educate children on the importance of native tree species. Placards will be designed and procured within 3 months of grant award. Geolocated photos of each educational placard will be included in the tree assessment report.

Florida Department of Agriculture and Consumer Services
Division of Administration

BUDGET PLAN
2 CFR 200

1. Federal Financial Assistance Funding Opportunity Number: 23-DG-11083112-430			2. Subrecipient FEIN: 65-0632342	
3. Subrecipient Legal Name: Town of Fort Myers Beach				
Category/Description	Cost per Unit	Number of Units	Grant Amount	Match Amount
Personnel -	N/A	N/A	N/A	N/A
Fringe Benefits -	N/A	N/A	N/A	N/A
Travel (not authorized)	N/A	N/A	N/A	N/A
Equipment (not authorized)	N/A	N/A	N/A	N/A
Supplies -	\$27	74	\$999	\$999
Contractual (if authorized) - #1	\$200	74	\$7400	\$7400
Trees - #1	\$400	74	\$14800	\$14800
Other Expenses – Placards - #3	\$100	5	\$250	\$250
Total Direct Charges	\$627 + \$100	74 + 5	\$23,449	\$23,449
Indirect Charges -	N/A	N/A	N/A	N/A
Total Amount	\$627 + \$100	74 + 5	\$23,449	\$23,449

The budget plan must not exceed two pages (insert #) 8 ½" by 11" single sided pages. Additional pages beyond the page limitation will not be considered.



WILTON SIMPSON
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Administration

**CERTIFICATION REGARDING LOBBYING;
DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS
FOR EXPENDITURE OF FEDERAL FUNDS**

LOBBYING

As required by 2 CFR 200, for persons entering into a contract, grant or cooperative agreement over **\$100,000** involving the expenditure of Federal funds, the undersigned certifies for itself and its principals that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress, in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CHADD

CHUSTZ

PRINTED NAME/TITLE OF REPRESENTATIVE

FDACS# 32104

CONTRACT / PURCHASE ORDER NUMBER

SIGNATURE OF REPRESENTATIVE / DATE

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by 2 CFR 200, for persons entering into a contract, grant or cooperative agreement over **\$25,000** involving the expenditure of Federal funds, the undersigned certifies for itself and its principals that:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a 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;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State, or local) with commission of any offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

CHADD

CHUSTZ

PRINTED NAME/TITLE OF REPRESENTATIVE

FDACS# 32104

CONTRACT / PURCHASE ORDER NUMBER

SIGNATURE OF REPRESENTATIVE / DATE



WILTON SIMPSON
COMMISSIONER

CONTRACT AMENDMENT

Please Respond To: Florida Forest Service
Forest Management
3125 Conner Boulevard
Tallahassee, FL 32399

December 1, 2025

Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

RE: Amendment of Contract # 32104 dated 04/22/25.

This letter, upon execution by both parties and attachment to the original contract shall serve to amend said contract. The contract shall be amended as follows:

Amendment 1

Pursuant to ARTICLE B. TERM 2., this agreement is extended until the 31st day of July, 2026, effective the date of execution of this amendment.

NO OTHER PROVISIONS OF THIS CONTRACT ARE AMENDED OR OTHERWISE ALTERED BY THIS AMENDMENT.

Joey B. Hicks

Joey B. Hicks
Director of Administration
Department of Agriculture
and Consumer Services

12/8/2025

(Date)

[Handwritten Signature]

(Signature)

Town Manager

(Title)

Fort Myers Beach

(Company)

12/19/25

(Date)