



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, April 19, 2021

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
- VIII. APPROVAL OF MINUTES**
 - A. Town Council April 5, 2021
 - B. Management & Planning Session April 7, 2021
- IX. CONSENT AGENDA**
 - A. Disposition of Surplus Items
Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.
 - B. Affirming the Gumbo Limbo Tree as the official tree in the Town of Fort Myers Beach
Adopt Resolution 21-20 affirming the selection of the Gumbo Limbo as the official tree of the Town of Fort Myers Beach.
- X. PUBLIC HEARINGS**
 - A. Continued - Ordinance 21-02: Myerside CPD Rezoning (DCI 2020-0009)
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH,

CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE ("LDC"); PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. Continued Second reading and final adoption from April 5, 2021

XI. ADMINISTRATIVE AGENDA

A. Appointment to BORCAB

Appoint new member to fill the one vacancy on the Bay Oaks Recreational Campus Advisory Board

B. Appointment to MRTE

Appoint new member to fill the one vacancy on the Marine Resources Task Force

C. North Estero Phase 2 Part 2

Authorize the Town Manager to execute Change Order 1 for North Estero Phase 2 Part 2 Water Main and Storm Water Improvements, increasing the contract amount by \$5,480,740.04 to add North Estero Phase 2 Part 1 in contract ITB-20-08-UT with Mitchell & Stark Construction Company.

D. Bayview Blvd Water Main Extension

Authorize the Town Manager to execute Change Order 1 for Estero Boulevard Water Main Phase 4, increasing the contract amount by \$477,202.94 for Water Main Extension on Bayview Blvd with Mitchell & Stark Construction Company RFQ-13-02-PW.

E. North Estero Phase II, Part 1 Construction/ROW Agreement

Authorize the Town Manager to enter into a construction / ROW agreement with the Florida Department of Transportation (FDOT) in association with the Town's downtown water and stormwater improvements within the Matanzas Bridge right of way as part of North Estero Phase II, Part 1 construction, and authorize the Town Manager to execute associated construction agreements necessary for the project's construction.

F. July 4th Fireworks

Authorize July 4th fireworks, and authorize the Town Manager to execute the associated documents.

XII. FINAL PUBLIC COMMENT

XIII. TOWN MANAGER'S ITEMS

XIV. TOWN ATTORNEY'S ITEMS**XV. COUNCILMEMBERS ITEMS AND REPORTS****XVI. ADJOURNMENT**

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

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 accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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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.



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

DRAFT

Minutes

Monday, April 5, 2021

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the final agenda; second by Vice Mayor Hosafros.

Motion carried unanimously.

V. PUBLIC COMMENT

Carlos Chavez, owner of businesses in Times Square, complained about a street performer who disrupted his customers while dining. He suggested that the Town determine whether the applicant had talent before issuing a permit.

Eddie Foster noted that cigarettes were a problem on the beach. She questioned whether they could prohibit smoking on beaches like California or add educational signage concerning degradation. She proposed that the Town spend one day a week cleaning the sidewalks. She questioned changing the signage to encourage people to park in the parking lot and noted that handicapped parking was not near the ramp.

Kathy Light, Chair of the Anchorage Advisory Committee (AAC), supported their motion to revisit Bayside Park for the upland service provider. She noted they had to expand their facilities and there were not many options available.

Linda Maldonado questioned whether they could change the hours for the pool so

the children could swim after school.

Patrick Duclos discussed beach patrol heckling businesses. He suggested they allocate money and resources to clean up the Town instead of issuing citations for noise and looking for reasons to fine people. He lived behind the 7-11 and noted it was a trash hole and felt the Town needed to refocus from a ticketing agency to clean up the trash. He indicated he sent emails noting that the water flow on his road would not go into the storm drains.

Captain Tim Lalor from the Lee County Sheriff West District introduced himself. Town Clerk Baker entered emails into the record from two people. The emails were previously sent to all Council Members.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized Jennifer Rusk from the Marine Resources Task Force (MRTF) for developing the pop-up educational outreach series. He noted they had been at the Mermaid Festival and Diamond Head and more events were planned throughout the year.

Council Member Atterholt provided an update regarding the Clean Water Initiative. He referenced articles that appeared in the News-Press. He encouraged the community to write letters to legislators.

Vice Mayor Hosafros stated that the bloodmobile was at Chapel by The Sea and asked people to donate blood.

Council Member Allers thanked the Friends of Lovers Key for their recent event. He thanked the governor for expanding eligibility for vaccines.

Mayor Murphy noted that vaccines would be distributed on the beach. He stated that he added his name to the letter signed by area Mayors and Lee County Commissioners to the Army Corp of Engineers regarding managing releases from Lake Okeechobee. He recognized front-line workers for helping them get through season and wished them well.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Jennifer Rusk from MRTF described the pop-up booth events and provided pictures from Diamond Head and the Mermaid Festival. She noted she would forward questions from the Ask Me questionnaire to appropriate entities. She thanked everyone for their continued support. She discussed working with the Sheriff's Outreach Center.

Sam Lurie, AAC Member, discussed their motion to revisit Bayside Park for their upland services provider. He indicated that he was not aware of another feasible location. He described the Dockwa system. He urged Council to reconsider Bayside Park and noted there were concerns with Bay Oaks. Town Manager Hernstadt reviewed feedback from Harbor House.

A. Public Safety Committee

Chair John Goggin reviewed in-progress activities, including a survey to prioritize safety issues. He thanked Dawn Thomas for spearheading the process. He noted that a large percentage of calls to the Sheriff's Office were

categorized as area checks. He discussed meeting with the Fire Department regarding inspections, the foot of the bridge design, adding a Code Blue station to the tram and trolley stop on Bay, sidewalk markings, bike lanemarkings, bike lights and bells. He recognized Tom Gressman for championing bike lane markings.

VIII. APPROVAL OF MINUTES

A. March 15, 2021 Town Council

Council Member Allers moved to approve the minutes; second by Vice Mayor Hosafros.

Motion carried unanimously.

IX. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the Consent Agenda; second by Mayor Murphy.

Town Manager Hernstadt explained the Utilities Risk and Resilience Assessment. Motion carried unanimously.

A. Utilities Risk & Resiliency Assessment and Emergency Response Plan. **Accept the Selection Advisory Committee's ranking and authorize the Town Manager to execute Supplemental Task Authorization #2 with Axis Infrastructure in the not to exceed amount of \$49,700 for the creation of a Utilities Risk and Resilience Assessment and Emergency Response Plan in response to LOI-21-13-UT.**

Vice Mayor Hosafros moved to authorize the Town Manager; second by Mayor Murphy.

Motion carried unanimously.

B. Comp Plan / LDC Updates

Allocate and appropriate funds and approve Supplemental Task Authorization #2, in the amount of \$142,500 for completion of the Comprehensive Plan and Land Development Code updates, and authorize the Town Manager to execute the Supplemental Task Authorization with The Corradino Group.

Vice Mayor Hosafros moved to approve Authorization #2; second by Mayor Murphy.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. ORDINANCE 21-03; Sea Turtle Conservation

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Second reading and final adoption.

Mayor Murphy read the title of the Ordinance. Town Attorney Herin, Jr. stated that the hearing had been properly advertised.

Council Member Allers questioned why the definition of new construction was not changed. Environmental Project Manager Chadd Chustz replied that it was consistent with the model ordinance and was meant to be all-inclusive.

Town Manager Hernstadt offered an amendment to add a sentence regarding sea turtle lighting. Project Manager Chustz directed them to Sec. 32-105.

Discussion was held regarding allocating fines. No public comment.

Council Member Veach moved to approve the ordinance; second by Vice Mayor Hosafros.

Motion carried unanimously.

B. Ordinance 21-02: Myerside CPD Rezoning (DCI 2020-0009)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND AN EFFECTIVE DATE. Second reading and final adoption.

Mayor Murphy read the title of the ordinance. Town Attorney Herin, Jr. stated that the hearing had been properly advertised and swore in those providing testimony. Ex parte communications: Council Member Veach - exchanged messages with the applicant and staff and familiar with the site; Council Member Atterholt - conversations with the applicant and familiar with the property; Mayor Murphy - conversation with the applicant; Vice Mayor Hosafros - received emails from the community and the owners and Council Member Allers - conversation with the applicant and familiar with the property.

Community Development Director Jason Green reviewed the first public hearing and supplemental report with PowerPoint. Slides included: Public Hearing; Staff Analysis; Request/Existing Uses; Staff Analysis; Comprehensive Plan Consistency; Public Realm; Equivalency Factor; Schedule of Uses; Master Concept Plan Building Details; Deviations; Staff Summary; Staff Recommendation and LPA Recommendation.

Council Member Veach questioned whether the applicant exceeded the Boulevard Category cap. Director Green replied that it was less than 70%. Council Member Veach questioned whether the request would be consistent with the Comp Plan and LDC if the conditions were accepted. Director Green responded that it would not. Town Manager Hernstadt indicated that the conditions were to make sure everything was clear and there were no surprises. Council Member Veach questioned whether the restaurant at Sea Grape Plaza was an accurate comparison. Director Green replied that restaurants were exempt from the 500 foot rule, but other uses were not.

Vice Mayor Hosafros questioned whether deviation #6 could be narrowed. Director Green responded that there were points of building corners close to the property line and it could be narrowed to a specific point. Vice Mayor Hosafros clarified that they would need three more deviations than they requested if it was approved.

Beverly Grady from Roetzel & Andress represented the applicant. She utilized PowerPoint for her presentation and introduced Patrick Vanasse from RWA Engineering. Slides included: Request; LPA Hearing and 1st Council Hearing. Attorney Grady listed the documents provided to Council Members. The presentation continued with the Applicant's Response to 31 conditions; Staff's Response and Today's Presentation.

Town Attorney Herin, Jr. noted the LPA's recommendation did not bind Council and the CPD was a site-specific zoning proposal. It would be inappropriate for Council to consider the permitted uses in a commercial resort. He indicated the applicant could request to rezone the property to a commercial resort for those uses.

Mr. Vanasse discussed the lack of response from staff. The presentation continued with a discussion of Pages 1 and 2 of staff report; Pages 2 and 3 regarding the Equivalency Factor; Consistency with Comprehensive Plan: Boulevard FLU Category (From 1st Hearing); Consistency with Comprehensive Plan: Platted Overlay (From 1st Hearing); Comprehensive Plan - Density Equivalency (From 1st Hearing); Allowable Intensity (From 1st Hearing); Existing Units & Allowable Guest Units (From 1st Hearing); Density Analysis (From 1st Hearing); Page 3 of staff report: Public Realm; Consistency with Comprehensive Plan (From 1st Hearing); Pages 4-8 of staff report: Schedule of Uses; Planned Development District (From 1st Hearing); Pages 5 and 6 of staff report: Schedule of Uses; Page 7 of staff report: Schedule of Uses; Page 8 of staff report: Schedule of Uses - Consumption on Premises; Pages 9-11: Deviations; Page 10: Deviations; Schedule of Deviations and Deviations #1-7.

Council Member Atterholt proposed a recess to review the information sent to them regarding incident reports from the Sheriff's Office on School St.

Attorney Grady stated that she would address the reports at the end of her presentation. She noted they were concerned regarding whether the conditions would affect the ability to make the project feasible. She displayed and addressed Myerside LLC Ordinance Replacement Language to the Proposed Conditions of Approval. She discussed changes to the Schedule of Allowable Uses and noted they removed the tiki hut from COP. The next slides were COP Approval; COP Deviation and Division 6 - Planned Development Zoning Districts LDC Sec. 34-931 (b): Effect.

Vice Mayor Hosafros questioned why resort and resort accessory use were included in their application. Attorney Grady agreed that they could remove resort and resort accessory use. Mr. Vanasse stated that they wanted to keep personal services for the boutique area. Owner Beverly Milligan noted they might want to offer massage services.

Public comment:

Jan Fleming and her husband toured the property and believed that what the applicant proposed was within the Town's Comprehensive Plan scope. She stated the restaurant was farther away from the school than two other restaurants located in the shopping area. She described the parking, a small store and the current historic structures. She noted the applicants improved the site from a drug-infested vagrant area. She asked how the School protected the children before the applicants purchased the property. She addressed the improvements made to the property and encouraged Council to approve the request.

Ellen Vaughn agreed with Ms. Fleming and stated the property was magnificent. She discussed the Island vibe and the comprehensive plan. Paula Kiker spoke on behalf of the project and felt it was important to maintain the characteristic of Fort Myers Beach. She discussed the walkability aspect and stated the property used to be an eyesore. She encouraged Council to embrace change.

Charlie Whitehead opposed serving alcohol so close to the school and ball fields and questioned setting a precedent for future requests. He urged Council to deny the request. He stated that he was speaking for himself.

Tom Schultz did not think that serving alcohol at the restaurant would be detrimental to children playing at Bay Oaks and the school. He felt the applicants should be able to serve alcoholic beverages and the applicants were good neighbors. He supported their request.

Rose Marie Fostini expressed concern regarding traffic backing up. She questioned whether guests could enter from School St. and exit onto Estero Blvd.

Public comment closed.

Council Members discussed the schedule of allowable uses in the ordinance on page 79. Council Member Veach questioned whether the use of having a restaurant in a public service building available to the general public and guests was consistent with the code. Director Green explained that they asked for the restaurant as a use as part of their site development.

A discussion was held concerning the 31 conditions in the ordinance and the changes submitted by the applicant.

Town Attorney Herin, Jr. suggested that it be modified to hotel/motel use, which would accommodate the definition and make the point that cottages would be rented rather than individual rooms in the cottage. Vice Chair Hosafros agreed with the hotel/motel use and supported removing resort, resort accessory, personal services and bed and breakfast. Town Attorney Herin, Jr. suggested striking paragraph 1 of section 3 and putting it in section 4. Council Members agreed.

Council Members agreed to keep number 2 as-is and they agreed to the changes the applicant requested in numbers 3-5. Numbers 6 and 7 will remain as written by staff. Town Attorney Herin, Jr. suggested that number 8 be removed and addressed somewhere else in the document. Number 9 was modified to state the property owner shall replat the property to one parcel within one year of a Development Order. Numbers 10-12 were unchanged. Town Attorney Herin, Jr. added language to Number 13, which both parties approved. No exit signs and markings were added to Number 14 to prevent egress on Estero Blvd. Number 15 will mirror number 14. Council agreed with the applicant's language in number 16. Numbers 17 and 18 were not changed. The applicant's language in numbers 19 and 20 was approved. Number 21 was revised to state the applicant had to pay 1/3 of the cost of the sidewalk.

The applicant's number 22 was modified to add reduce ingress access. Number 23 was not changed. Number 24, as written by the applicant, was approved. Regarding number 25, the applicant conceded to start sound at 3:00 p.m. and Town Attorney Herin, Jr. noted that he would include language from the next page to number 25 as a stand-alone.

Town Attorney Herin, Jr. suggested that beer and wine be added to the applicant's number 26. Town Manager Hernstadt removed stormwater management system certification every 5 years from the language in Number 27. The applicant's number 28 was approved with the requirement of photos. Town Attorney Herin, Jr. modified number 29 and incorporated language from number 28. Numbers 30 and 31 were removed.

Discussion was held regarding the number of units allowed. Town Council approved the applicant's request for 14 units. The schedule of uses provided by the applicant was approved with the addition of identifying where personal services would be located on the MCP.

Deviations were discussed. Council agreed with Town Attorney Herin, Jr. that deviations #1 - #3 were not applicable, deviations #4 and #5 were not changed, deviation #6 was approved with language added by the Town Attorney and deviation #7 was approved with the addition of photos and dimensions in numbers 28 and 29. Regulations generally consistent with existing conditions were discussed. The applicant disagreed with the first two bullet points. Mr. Vanasse stated that they were not asking for additional height, but they asked for the difference in the way it was defined.

Town Attorney Herin, Jr. commented that that base flood elevation first floor was considered to be the first floor plus two, not base flood elevation first floor plus three. Mr. Vanasse indicated they were fine with the wording concerning height. He did not support Minimum Open Space: 50% because he was unsure how it would impact the project. He agreed to adjust the CR number of 1.2 regarding the Maximum Floor Area Ratio. Town Manager Hernstadt indicated they would take a recess and work it out.

Attorney Grady expressed concern regarding replacement trees and the covenant. She requested that they work with staff to reach an agreement that could be presented to Council at the next meeting.

Vice Mayor Hosafros moved to continue the hearing to April 19, 2021, at 9:00 a.m. or shortly thereafter; second by Council Member Veach.

Motion carried unanimously.

XI. ADMINISTRATIVE AGENDA

A. Dekeyser Street Performer Appeal

Appeal of Revocation of Street Performer Permit

Town Manager Hernstadt reviewed the appeal and complaints of lack of artistic talent. The street performer was not in attendance and Council agreed to continue the matter until the April 19 meeting.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt noted a solution had been reached concerning the bicycle rack donation at the Art Association. Council Member Atterholt commented that the Art Association preferred the silver bicycle rack over the black bicycle rack in storage. Town Manager Hernstadt replied that he would check with Public Works as to both racks' status, but either one was fine with him if they were available. He stated that U.S. Congress Members were receptive to their infrastructure letter.

He indicated that plans for Bayside Park were ready to bid out. Vice Mayor Hosafros noted that the AAC requested that they reconsider the Bayside Park decision. The matter will be discussed at the M&P Session on Wednesday.

XIV. TOWN ATTORNEY'S ITEMS

A. Resolution 21-17, STR Pre-Exemption Objection

Town Attorney Herin, Jr. read the title of the resolution.

Vice Mayor Hosafros moved to approve Resolution 21-17; second by Mayor Murphy.

Motion carried unanimously.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Hosafros stated that there was a rat problem on her street and in other areas around the island. She noted that Chapel by the Sea hired exterminators to get rid of the rat invasion. Town Manager Hernstadt responded that they would research options to treat the problem. The topic was added to an M&P Session. Council Member Atterholt verified that the lighting study consultants would complete their study in September of 2021. Town Manager Hernstadt noted the completion date was difficult to predict, but he would check with the consultant for their best guess.

Council Member Veach commented that residents complained about the noise and were not sure who to call. He provided numbers to reach the dispatcher who had access to short-term rental property managers. He discussed Senate Bill 88 regarding smoke coming from farms and adding nutrients into the water. He brought up Piney Point and questioned whether they could get involved with regulating stacks.

Mayor Murphy read a letter from a part-time resident in Nebraska who requested bells on bicycles.

XVI. ADJOURNMENT

Council Member Veach moved to adjourn; second by Vice Mayor Hosafros. Motion carried unanimously.



Fort Myers Beach Management & Planning Session

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Wednesday, April 7, 2021

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

(A discussion regarding the Anchorage Advisory Committee's request to revisit building an upland service provider facility at Bayside Park was added to the agenda.)

Council Member Allers did not think Bayside Park was appropriate and noted that Doug Speirn-Smith from Harbor House was open to working with the Town. Town Manager Hernstadt stated that he had an appointment with the owner of Moss Marine to discuss opportunities. Vice Mayor Hosafros commented that the Town wanted to take the service in-house rather than rent space in another facility.

Council Member Allers did not understand why they wanted to bring the service in-house. Mayor Murphy noted that improving services in the Mooring Field might attract a different clientele. He agreed that the Town should control the upland service provider.

Council Member Atterholt questioned why the Town insisted on adding public restrooms when there was no ordinance or state law requirement. Town Manager Hernstadt replied that offering public restrooms and parking for commercial properties was standard. He added that Harbor House did not want to put their vacation rental market in jeopardy. Council Member Atterholt felt that the Town could compromise. Vice Mayor Hosafros stated that there was a conflict between residential units and commercial businesses. She noted that the condo board eliminated parking for the existing commercial business because residents did not want commercial activities at the Harbor House. Council Member Veach reminded Council that residents in the Harbor House were among the most vocal opponents to the proposed building. He stated that the conditions they put on businesses

were not conducive to normal businesses. He suggested purchasing property or looking into the possibility of using Bay Oaks. Vice Mayor Hosafros commented that preserving the park was fine, but they would have to spend some money. She explained issues with Bay Oaks. Town Attorney Herin, Jr. stated that Harbor House would not give them parking, did not want noise issues, did not want anyone to hang out and did not want a public laundry facility or restrooms. He noted that they provided a list of items they denied; it was not just public restrooms.

Council Member Allers felt they could mitigate issues. Council Member Veach discussed the condo board making future decisions that would negatively affect the upland provider service. Council Member Atterholt did not think they should write off the concept of an outside entity if they could find the right partner; otherwise, he agreed with looking at another location. Mayor Murphy supported exploring other options and questioned using the land under the bridge. Town Manager Hernstadt remarked that staff was researching options at that location. Council Member Atterholt questioned whether Bay Oaks was still an option. Town Manager Hernstadt replied that it could be done for a cost and he would provide potential numbers and other options. Mayor Murphy remarked that using part of the Fire Department property was another option.

Council Member Allers questioned whether Bayside Park was still an option. Mayor Murphy felt that it had to remain a possibility. Vice Mayor Hosafros stated that they were applying for a grant to move forward with the existing design.

Council Member Veach did not think they could take anything off the table until options were explored. Town Manager Hernstadt indicated they had to decide within the next month or so. Council Member Allers did not see why they would wait for a month to decide about Bayside Park. Town Manager Hernstadt discussed putting out a bid and making a decision after proposals were received. Vice Mayor Hosafros explained that from a contractor's position, they needed to make a decision before putting it out for a bid. Three Council Members agreed to leave Bayside Park as a park and look elsewhere for options. Town Manager Hernstadt will move forward with putting out a bid.

A. Lee County Update - written report only

Update of Lee County projects on Fort Myers Beach

Lee County submitted a written report. Vice Mayor Hosafros questioned why they kept working on completed sections and disrupting traffic.

Town Manager Hernstadt replied that FDOT would be at the May 17th meeting for a presentation on the foot of the bridge project.

B. Discuss Bay Oaks' site plan

Consideration of the Lee County School Board changes to Bay Oaks Recreational Campus' redevelopment site plan.

Town Manager Hernstadt stated that the School Board requested that they move a fence. Public Works Director Chelsea O'Riley added that the School Board was concerned about the ball field's proximity and causing distractions during class. She indicated that they shifted the field, the fence and a building. Town Attorney Herin, Jr. revealed that a School Board attorney just

requested that the Town vacate more of its right of way. He described the property in question and noted that part of the problem was the school board hiring a new attorney. Town Manager Hernstadt suggested that Council Members reach out to members of the School Board regarding negotiating in good faith.

C. Newsrack Ordinance 17-14

Review of current Newsrack Ordinance

Town Attorney Herin, Jr. noted that Section 3-32 prohibited anyone from distributing handbills to vacant buildings. Residents complained that newspapers were distributed to uninhabited places. Mayor Murphy indicated that full-time residents and rental properties were not picking up newspapers either. Town Manager Hernstadt stated that The Observer indicated that they would not deliver a newspaper if a newspaper was still on the property. Town Attorney Herin, Jr. explained the difference between a handbill distributor and the exemption for newspapers. Council Member Atterholt opposed reopening the ordinance. Council Member Veach concurred and noted The Observer was making progress. Mayor Murphy clarified that the resident who complained was concerned with the plastic harming the environment.

Council Member Atterholt discussed first amendment issues. Town Attorney Herin, Jr. stated that the ordinance complied with the first amendment and was not based on content-based regulation. Mayor Murphy indicated that the reason for the ordinance had to do with newspaper racks being scattered all over the Island, not because of the content in any newspaper. Council Member Allers agreed to leave the ordinance alone.

D. Discussion regarding the Town permitting additional Waterway Markers

Discussion regarding consent to permit additional Waterway Markers

Environmental Project Manager Chadd Chustz reviewed the topic and indicated that he received a complaint regarding idle signs blocking a boat dock at Waterside Dock Association and Bay Beach. He noted that Bay Beach was interested in replacing the signs with slow signs. Council Member Allers questioned whether they would pay for the new signs. Project Manager Chustz replied that he did not have specific discussions yet but felt they would. He noted that two signs were illegal and Bay Beach was not allowed to apply for a permit. Town Manager stated that if Bay Beach were willing to pay for and maintain the signs, the Town would be the agency to permit them; otherwise, they could remove them. Council Members consented.

E. Bay Mar Drive Easement Discussion

Discussion regarding a neighborhood request for an observation pier at Bay Mar Drive the existing property ownership under the current easement agreement.

Town Manager Hernstadt reviewed the request and stated that the Town did not own the end of the street. One of the owners was against the neighborhood's request. Vice Mayor Hosafros hesitated to get involved. She

stated that the neighborhood had been in litigation with the owner for years because the owner kept blocking access to the bay. Council Members agreed not to get involved.

F. American Rescue Plan

Preliminary discussion and planning of American Rescue Plan funds

Mayor Murphy cautioned Members that the conversation was premature since the government had not set parameters. Council Member Atterholt referred to a recent news article and supported postponing the discussion. The rest of the Council agreed.

IV. AGENDA MANAGEMENT

A. April 7, 2021

Vice Mayor Hosafros did not think they should be receiving text messages during meetings. Mayor Murphy agreed. Council Member Atterholt felt that because of sound system issues, alerts by the public were welcome. Texts received on Monday during the public hearing were inappropriate. Town Attorney Herin, Jr. suggested that they address texts before the beginning of meetings if pertinent. Vice Mayor Hosafros suggested adding specific language to the Policy and Procedures Manual. Town Manager Hernstadt stated that viewers could alert the Town Clerk regarding sound or video issues.

Town Manager Hernstadt stated that the silver bike rack was being reconditioned for use by the Town and that the Art Association was welcome to the black bike rack. He noted that they were working with state agencies regarding sand erosion at Leonardo Arms. One solution was to register units with the state to qualify the property for beach renourishment funds. He will continue to work with the property and keep Council informed.

Council Member Veach brought up right-of-ways not being maintained. Vice Mayor Hosafros replied that Director O'Riley was working on the issue.

V. ADJOURNMENT

Mayor Murphy adjourned the meeting at 11:18 a.m.

1. **Requested Motion:**

Meeting Date: April 19, 2021

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

Why the action is necessary:

Following policy for declaring items for surplus auction.

What the action accomplishes:

Items identified for surplus auction; efforts to achieve some revenue for item.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Town surplus items to be placed for auction. Assets are considered salvage when they are no longer operable and the cost to repair is more than the item is worth. Assets are obsolete when they are no longer being used even if operable because they are outmoded in style or design and replaced by newer technology.

From time to time a department or division will identify Town owned property that is classified as salvage or obsolete. If other departments can find a use for any items in storage, the items can be reassigned. The governing body is required to declare these items surplus and authorize staff to sell them to the highest bidder. Any items that have no buyers will be destroyed.

Proceeds from the sales will be recorded as miscellaneous revenue. Town staff will be utilizing Royal Auction Group off of Alico Road, and items not sold at auction will be placed online at www.Govdeals.com.

As an alternative to selling one bike rack, Town Council may wish to donate the bike rack pursuant to a request from Vice President of the Fort Myers Beach Art Association Starlin Sherwood.

Attachments:

1. Exhibit A- Auction List

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

8. **Recommended Approval:**

Randy Paniagua, Administrative Officer
Chelsea O'Riley, Public Works Director

Created/Initiated - 4/13/2021
Approved - 4/13/2021

John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 4/13/2021
Approved - 4/14/2021
Final Approval - 4/14/2021

Exhibit A: Auction Items by Department - Electronic Items need serial number attached.

Public Works:

Bicycle rack (To be donated if approved by Town Council.)

Suspension rack

12-Volt Winch

12 fountain lights

1. Requested Motion:

Meeting Date: April 19, 2021

Adopt Resolution 21-20 affirming the selection of the Gumbo Limbo as the official tree of the Town of Fort Myers Beach.

Why the action is necessary:

The Gumbo Limbo Tree has been widely informally reported since the Town's incorporation as the "official Town tree", including in the "Shades of Fort Myers Beach" publication of 2005 that was produced in partnership with the Estero Island Garden Club. Recent research has not found any formal action by prior Town Councils that verifies this selection.

What the action accomplishes:

The Gumbo Limbo is well-suited to be the Town Tree for many reasons. It is a native tree that grows well in full sun and sandy soil and withstands high winds and drought. It reaches 40 to 50 feet. It is also commonly known as "The Tourist Tree" because its bark peels like a tourist's sunburned skin.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

5. Background:

The Gumbo Limbo Tree has been widely informally reported since the Town's incorporation as the "official Town tree", including in the "Shades of Fort Myers Beach" publication of 2005 that was produced in partnership with the Estero Island Garden Club. Recent research has not found any formal action by prior Town Councils that supports this selection.

Attachments:

1. RESOLUTION 21-20 GUMBO LIMBO TREE

Financial Impact:

None

6. Alternative Action

Do not adopt the Gumbo Limbo as the Town tree, or choose another tree.

7. Management Recommendations:

8. Recommended Approval:

Jennifer Dexter, Social Media & Communications Coordinator
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/12/2021
Approved - 4/12/2021
Approved - 4/13/2021
Final Approval - 4/13/2021

RESOLUTION NUMBER 21-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DESIGNATING THE BURSERACEAE (TORCHWOOD FAMILY), BURSERIA SIMARUBA, GUMBO LIMBO AS THE OFFICIAL TOWN TREE OF FORT MYERS BEACH

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

WHEREAS, Section 14-380 of the Town’s Land Development Code lists BURSERACEAE (TORCHWOOD FAMILY), Burseria Simaruba, Gumbo Limbo as one of the Town’s protected trees that cannot be removed without a permit; and is widely considered one of Florida’s best native trees; and

WHEREAS, the Gumbo Limbo Tree has an unusual shape, no two are alike, and the bark is red and peels off like a sunburned tourist, thus inspiring Floridians to give it the common name of “The Tourist Tree” in keeping with Florida and the Town’s number one industry; and

WHEREAS, the Gumbo Limbo Tree has a high tolerance to withstand the natural elements on the Island including drought, wind, salt, full sun, and sandy soil, and propagates through cuttings even as large as a branch; and

WHEREAS, the Gumbo Limbo Tree grows to an average of 40 to 50 feet tall and 20 to 40 feet wide and does not require much care or fertilizer, which contributes favorably to the health of the Island’s water; and

WHEREAS, the Gumbo Limbo Tree has been widely informally reported since the Town’s incorporation as the “official Town tree”, including in the “Shades of Fort Myers Beach” publication of 2005 that was produced in partnership with the Estero Island Garden Club to foster a spirit of participation among beach residents in creating a canopy of appropriate native trees and palms on our barrier island; and

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

- 1) The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.
- 2) 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 vote, the result was as follows:

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

ADOPTED this ____ day of April, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2021.

1. Requested Motion:

Meeting Date: April 19, 2021

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE ("LDC"); PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. **Continued Second reading and final adoption from April 5, 2021**

Why the action is necessary:

The applicant has requested a rezoning from RC to CPD. The Town Council held a first reading of the proposed ordinance on March 1, 2021. The second reading and public hearing are to consider approval, approval with conditions, or denial of the request.

What the action accomplishes:

Rezoning Ordinances require two readings. The first reading was March 1, 2021.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

The Town's Land Development Code requires all rezoning applications to be heard by the Town Council.

4. Submitter of Information:

5. Background:

Continued Second Reading and Final Adoption Town Council to approve the final language based on their April 5, 2021 review of the application and consensus vote on each of the recommended conditions.

(Background from last reading)

The subject site is located at multiple addresses, 2661-2668 Estero, 125 School Street, and 131-151 School Street, at the intersection with Oak Street, School Street, and Estero Boulevard. The site is a combination of 12 lots platted as part of Winkler's subdivision in 1931 (Winkler's Subdivision, Block C, Lots 23-27 (2661-2668 Estero) Lot 28 (125 School Street) and Lots 29 – 34 (131-151 School Street). Each platted lot is approximately 25 feet in width and 150 feet in depth.

Based on information found on Lee County Property Assessor Field Cards, the six platted lots for 131-151 School Street appear to have been originally developed as three separate properties, each consisting of two of the platted lots, and each property having one structure. Property deeds show that the three individual properties came under common ownership by 1962 and have remained in common ownership since that time.

Prior Lee County zoning actions include Lee County Resolution Z-72-18 dated February 1, 1972 that granted a variance for an apartment under a duplex for personal home use on Lots 33 and 34. Additionally, ZVL2013-008 verified that the subject property consists of six platted lots.

Town records indicate that a rezoning to CPD was requested and denied by Town Council in 1996 (Res 96-31). The request was to build five multifamily dwelling units with commercial below. The original request was denied in February; while a revised and scaled down request was then denied in November 1996. The meeting minutes detail how the site was developed with multiple older structures that were in poor condition; while the applicant pointed out that the request did not include hotel uses and no access from School Street. The Town Council findings included the proposed commercial uses were not appropriate in the Boulevard Future Land Use Map category due to intrusion of a commercial use into a residential neighborhood.

The current property configuration resulted from the combination of three separate parcels in 2008 (STRAP #s 19-46-24-W3-0020C.0290, 19-46-24-W3-0020C.0310 and 19-46-24-W3-0020C.0330), and the addition of the remaining parcels comprising the the subject site, 2661-2668 Estero Blvd. and 125 School Street, in 2016 after the Town Council granted a special exception to allow a Bed and Breakfast use (only on the added parcels). According to the current Lee County Property Appraiser records, the 2661-2668 Estero Boulevard consists of two single-family dwelling units; and one single-family dwelling with an apartment.

The current application requests a rezoning from the RC zoning district to CPD. All CPD rezoning applications are required to have a master concept plan, which the applicant submitted, identifying proposed development and how development is consistent with the Town's Comprehensive Plan and Land Development Code.

The applicant has provided a narrative with the original application in Supplemental PH-D documents explaining how it believes the proposed rezoning and master concept plan are consistent with the Comprehensive Plan, Land Development Code (including LDC Sec 34-85), and the Town's Design Guidelines. The original application requested 16 guest/hotel units developed over multiple phases. Since the original application, the applicant has responded to staff questions and review comments by submitting revised components of the request and the master concept plan. There have been two resubmittals containing modifications to the original application. The final submittal includes a request to allow 14 guest/hotel units over multiple phases; 600 sq. ft. of retail use, a restaurant, and rearranged building(s) to accommodate parking, stormwater, and other site modifications. The Schedule of Uses also includes Residential and Residential Accessory uses. Staff disagrees and questions why these are mixed with the requested Lodging and Retail uses.

In addition the last submitted plan includes an update to requested deviations. The current request includes seven (7) deviations to various design and development criteria. The deviations requested would allow the applicant to decrease landscape buffers, setbacks, and design criteria, among others. Some of the deviations are to accommodate existing buildings with non-conforming setbacks, access location point separation, and parking space size.

The staff report specifies why the request is inconsistent with the Town's Comprehensive Plan and Land Development Code. Staff has recommended denial based on the findings in the staff report.

The LPA reviewed the application on February 9th, 2021 and recommended approval with conditions with a 6-0 vote.

Town Council set the second reading of the Ordinance and public hearing for April 5, 2021.

The applicant has provided an amended Master Concept Plan showing edits since the LPA meeting. They have also submitted the following proposed conditions of approval:

1. On Premises Consumption of alcoholic beverages (COP) shall be limited to the future restaurant and existing Tiki hut as identified on the Master Concept Plan.
2. COP hours of service for the outdoor seating associated with the restaurant shall be limited to 10AM-10PM.
3. Amplified sound associated with the outdoor restaurant seating shall be limited to 10AM-10PM.

The applicant provided proposed conditions of approval and a draft Ordinance, which has been included with the attachments.

Attachments:

1. 119912850_2_Ordinance No. 21-02 re Myerside Hotel CPD-C3

Financial Impact:

6. Alternative Action

Recommend approval or approval with conditions

7. Management Recommendations:

Deny

8. Recommended Approval:

John R Herin Jr, Town Attorney
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/13/2021
Approved - 4/13/2021
Approved - 4/14/2021
Final Approval - 4/14/2021

ORDINANCE 21-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE ("LDC"); PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

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

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

WHEREAS, Myerside LLC, owner and applicant ("Applicant"), filed an application to rezone the property generally located at 131-151 School Street, 125 School Street, and 2661-2681 Estero Boulevard – comprising 1 +/- acre of land ("Property"), from Residential Conservation (RC) to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and deviations to certain requirements of the Land Development Code ("LDC"), in order to develop a 14 unit hotel/resort with restaurant, retail, and consumption of alcohol on premises ("Application"); and

WHEREAS, the Property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 9, 2021, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the rezoning and MCP with conditions, and

WHEREAS, on March 1, 2021 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on April 5, 2021; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council finds the proposed rezoning and MCP and requested deviations are **consistent** with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code and voted to **approve with conditions** the Application.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof that the requested rezoning **does** meet the requirements of the Town Comprehensive Plan and LDC, and approving the rezoning of the Property from Residential Conservation (RC) zoning district to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the LDC **is** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES** the requested rezoning.

Section 3. In approving the rezoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

- a. The Applicant shall complete phase 1 of the MCP in its entirety, not in sub-phases.
- b. The Applicant shall complete all phases of the MCP within five years of issuance of a Development Order for the implementation of the MCP.
- c. The Applicant shall submit a complete Development Order application for the MCP within one year of approval of this Ordinance.
- d. The Town shall not approve/issue any site or building permits until issuance of a Development Order for the implementation of the MCP.
- e. The Applicant shall submit to the Town as part of the complete Development Order application a report by a professional Arborist identifying all trees on the Property, and the measurement of all trees scheduled for removal using the individual Diameter Breast Height (DBH) method. The Applicant shall replace all trees removed from the Property that qualify as protected within the LDC, with in-kind trees.
- f. The Applicant shall submit to the Town as part of the complete Development Order application a landscape plan prepared by a Florida licensed Landscape

Architect, which shall include a statement to the viability of the selected vegetation within the approved buffers in the MCP. All landscape buffers shall comply with the LDC to the maximum extent practicable.

- g. Concurrent with the Town's approval of a Development Order, the Applicant shall re-plat the Property as one parcel.
- h. The Property, buildings, and units shall remain under unified control.
- i. All accessory structures shall be improved with required flood vents.
- j. All accessory structures shall be limited to the specific purpose, size, and location on the MCP.
- k. All new construction of replacement structures shall be limited to no more than a 10% increase of the existing footprint and square footage of the structures on the Property on the effective date of this Ordinance. The combination or consolidation of square footage is prohibited.
- l. Vehicular ingress to the Property shall be limited to one access point off Estero Boulevard, as approved by Lee County and the Applicant shall place signs and markings on the Property to that effect.
- m. Vehicular egress from the Property shall be limited to School Street, and the Applicant shall place signs and markings on the Property to that effect.
- n. No parking on Oak Street is permitted, unless subsequently approved by the Town.
- o. The MCP shall comply with all parking design standards, including stall length and width, drive aisle width, and all applicable ADA standards.
- p. The side yard is the western Property boundary and side setbacks apply for purposes of this MCP.
- q. No fill in excess of what is approved in an Environmental Resource Permit issued by the South Florida Water Management District shall be placed on the Property.
- r. All parking of stacked vehicles shall be assigned to specific units as shown on the MCP. Restaurant parking shall be identified on the MCP.
- t. The Applicant shall pay 30% of the cost of designing, permitting and construction of a Town approved sidewalk along School Street connecting Estero Boulevard to Oak Street.
- u. The Applicant shall provide a landscape entryway adjacent to School Street, consistent with the Town's Comprehensive Plan vision for the School Street corridor.
- v. The approved MCP shall designate an area on the Property to allow the Town to install a public art feature onto the frontage of Estero Boulevard, subject to the Applicant's approval as to design and size.
- w. The Applicant shall limit amplified music to 3:00 pm to 10 pm, Monday through Friday, and 11:00 am to 10:00 pm, Saturday and Sunday.
- x. The Applicant shall limit the consumption of alcohol on the Property as follows:
 - i. Inside the restaurant and the outdoor dining area as shown on the MCP.
 - ii. Sales limited to 10 am to 10 pm.
 - iii. Payment for alcohol inside the restaurant only.
 - iv. Public access to the restaurant is limited to the entrance along Estero Boulevard.

- v. The Applicant shall install a landscape buffer delineating and surrounding the outdoor dining area.
- y. The on-site stormwater management system(s) shall function and operate as designed.
- z. Concurrent with the submission of a complete Development Order application, the Applicant shall provide photographic documentation of the architectural style of the existing structures on the Property. All renovations and future replacement of the existing structures on the Property shall require consistency with the identified architectural style. The Applicant shall record a restrictive covenant running with the land in a form acceptable to the Town Attorney, stating that all renovations and future replacement of the existing structures on the Property shall require consistency with the identified architectural style.

Section 4. The following limits apply to the Property and its development or redevelopment:

Schedule of Allowable Uses:*

- Hotel/Motel use, which shall mean the rental of any cottage for a stay of one night or longer (maximum of 14 rental units as shown on the MCP).
- Caretaker unit (not an additional unit).
- Accessory pool and sand volley ball court as shown on the MCP.
- Restaurant and personnel services as shown on the MCP.
-

* All uses limited to size and location shown on the MCP.

Property Development Regulations:

- A. General – Applies to Existing Principal and Accessory Structures and Replacement Principal and Accessory Structures.
 - Minimum Lot Area: 1 acre +/- (per survey provided by Applicant).
 - Minimum Lot Width: 150 feet +/- (per survey provided by Applicant).
 - Minimum Lot Depth: 300 feet +/- (per survey provided by Applicant).
 - Building Coverage: Footprint of existing structures as shown on the MCP, plus up to a 10% increase for replacement principal structures.
 - Maximum Stories: Three (two stories above base flood elevation).
 - Maximum Height: Twenty-five feet (25') above base flood elevation.
 - Minimum Building Separation: Fifteen feet (15').
 - Minimum Open Space: 50%
 - Maximum Floor Area Ratio: .45
 - Maximum Impervious Surface Ratio: 50%
- B. Existing Principal and Accessory Structures.

- Minimum Street Setback: As shown on the MCP.
- Minimum Side Setbacks: As shown on the MCP.
- Minimum Rear Setback: As shown on the MCP.

C. New or Replacement Principal and Accessory Structures.

- Minimum Street Setback: Ten feet (10').
- Minimum Side Setbacks: Fifteen feet (15').
- Minimum Rear Setback: Twenty feet (20').

Section 5. The Applicant has requested the following deviations, which the Town Council **does** grant:

DEVIATION #1: A deviation from LDC Section 34-2015 (5), which requires that “all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...”, to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets only as depicted on MCP.

DEVIATION #2: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm 77'$ from the closest access point (driveway) to the north and $\pm 77'$ to School Street.

DEVIATION #3: A deviation from LDC Section 10-416(d) Table 10-18, which requires a 15' Type C buffer when a commercial use abuts a residential use, to allow a 6' Type C buffer only where indicated on the MCP and limited to the west property line.

DEVIATION #4: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to approve the design of existing structures subject to Section 3 Conditions “y.” and “z.” regarding the design of any new or relocated structures.

Section 6. Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV “Floodplain Regulations” of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.

Section 7. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance or statute, the most restrictive shall apply.

Section 8. 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 9. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. This ordinance shall become effective upon adoption by the Town Council.

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

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

ADOPTED this _____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:

John R. Herin, Jr., Town Attorney

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

1. **Requested Motion:**

Meeting Date: April 19, 2021

Appoint new member to fill the one vacancy on the Bay Oaks Recreational Campus Advisory Board

Why the action is necessary:

Fills a vacancy on the board

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

There is currently one vacancy on the seven member board. Island resident Bruce Butcher has requested appointment to BORCAB

Attachments:

1. 2021 Butcher, Bruce - BORCAB

Financial Impact:

6. **Alternative Action**

Do not appoint and advertise for new members

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/8/2021
Approved - 4/8/2021
Approved - 4/12/2021
Final Approval - 4/13/2021



Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date: 3-31-2021

Name: BUTCHER D. BRUCE
Last First Middle initial

Telephone Number: 419-699-4093

Email Address: DBB914@GMAIL.COM

Home Address: 8385 LAGOON RD FMB FL 33931

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

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

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

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

Why are you seeking appointment to this board or committee?

I Am very interested in the CAPITAL
Improvement Project for BAY OAKS.
I would like to see BAY OAKS reach its potential.

Community Involvement:

Former Town Council.
LPA
Safety Committee,
Ad hoc committee

Interests / Activities:

BOATING, fishing, tennis, Golf. Pickleball
Biking, WORKOUTS, yoga. Sport Car
Keeping my wife happy.

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

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

Yes ☐ No ☒

If yes and you are appointed, you will be asked to fill out Public Records Exemption Request form and return to the Town.

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

Signed



Date 3-31-2021

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

This form was
Also Emailed



Town of Fort Myers Beach

APR 5 2021

Received by: _____

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date: 3-31-2021

Name: BUTCHER D. BRUCE
Last First Middle initial

Telephone Number: 419 699 4093

Email Address: DBB914@GMAIL.COM

Home Address: 8385 LAGOON RD FMB FL 33931

Mailing Address _____

(if different from home address):

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

If yes, which committee(s)? _____

If yes, when is your term expiration? _____

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

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

Why are you seeking appointment to this board or committee?

I Am very interested in the CAPITAL
Improvement Project for BAY OAKS.
I would like to see BAY OAKS reach its potential.

Community Involvement:

Former Town Council.
LPA
Safety Committee
Ad hoc committee

Interests / Activities:

BOATING, fishing, tennis, Golf, Pickleball
Biking, WORKOUTS, YOGA. Sport Car,
Keeping my wife happy.

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

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

Yes ☐ No ☒

If yes and you are appointed, you will be asked to fill out Public Records Exemption Request form and return to the Town.

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

Signed



Date 3-31-2021

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Requested Motion:**

Meeting Date: April 19, 2021

Appoint new member to fill the one vacancy on the Marine Resources Task Force

Why the action is necessary:

Fills a vacancy on the board

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

There is currently one vacancy on the seven member board. Wendy DeGaetano, Robin Gornto and Mike Sogar, all island residents, and Robert Howell have all requested appointment to MRTF.

Attachments:

1. DeGaetano, Wendy
2. Gornto, Robin
3. Howell, Robert
4. Sogar, Mike

Financial Impact:

6. **Alternative Action**

Do not appoint and advertise for new members

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Roger Hernstadt, Town Manager

Created/Initiated - 4/12/2021

Approved - 4/12/2021

Final Approval - 4/13/2021



Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

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

Why are you seeking appointment to this board or committee?

My passion for being a part of exploring and implementing viable options to improve, preserve, and protect our fragile island environment has motivated me to seek a position on the MRTF. I have the time and the dedication to apply to serving our community. Please see attached page.

Community Involvement:

Ostego Bay II Landscape Chair 2017-present
Florida Master Naturalist Program completed 2/3 of Core Modules
Florida Native Plant workshops to learn about best practices to transform my HOA community by phasing in appropriate native plants to decrease uses of fertilizers, pesticides, and irrigation to benefit our aquifer.

Interests / Activities:

Anything beach related, kayaking, creating art, music/concerts (the Blues), *reading,*

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

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

Yes ☐ No ☒

If yes and you are appointed, you will be asked to fill out Public Records Exemption Request form and return to the Town.

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

Signed

Nancy T. DeGarcia

Date April 5, 2021

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Why I'm seeking appointment to MRTF

Wendy DeGaetano
291-1 Lenell Road
Fort Myers Beach, Florida 33931
301.996.9390

I have followed the issues and projects the Marine Resource Task Force has undertaken and what I've learned is that my varied professional and personal experiences along with my passion for Fort Myers Beach and its natural resources would make me an asset to MRTF.

These include, but not are limited to, the following:

Professionally as a certified paralegal:

Legal research, preparation of documents, and coordination with legal team.

Professionally as an elementary school Lead Teacher of my grade level team:

Coordinated curriculum lesson plans to address multiple modes and levels of learning.
Conducted team meetings.

Mentored new teachers.

Compiled data and best practices to share with other Lead Teachers and Administration.

Collected data and relevant research used for Grant Writing.

Coordinated with the Chesapeake Bay Foundation to promote and implement hands-on learning for 4th grade classes. Successfully participated in growing grasses in the classroom to be re-planted in the Chesapeake Bay.

Created and presented PowerPoint of best practices at the Conference for Educational Leadership in Orlando, FL October, 2009.

Community Involvement:

2013 became permanent resident of FMB.

Successfully completed the first 2 Core Modules of the Florida Master Naturalist Program, Coastal and Freshwater Systems. As other modules become logistically available, I plan to continue with these courses in an effort to learn more about FMB and SWFL ecosystems, the challenges facing them, and viable solutions.

Landscape Chair of Ostego Bay II HOA.

Participated in Florida Native Plant Society workshops to gain knowledge and resources regarding SWFL native plants

Actively working with landscaping contractor to replace non-native/invasive plants in OBII community and phase-in appropriate native plants to decrease use of irrigation, fertilizer, and pesticides in effort to benefit our aquifer,

Long term goal to transform community into a recognized FNPS neighborhood.



Received by: _____

APR 5 2021

Town of Fort Myers Beach

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

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

Why are you seeking appointment to this board or committee?

Because I'm concerned about the degradation of the water quality in the bay & gulf and would like to be a part of the solution.

Community Involvement:

Participation in the FGCU/Mound House "What's in the water?" testing program since 2019.

Pick up trash on the beach when I walk my dog.

Interests / Activities:

I work at Leani's (Santini Plaza).

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

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

Yes ☐ No ☒

If yes and you are appointed, you will be asked to fill out [Public Records Exemption Request](#) form and return to the Town.

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

Signed



Date 3/31/2021

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach

APR 12 2021

Received by: _____

Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

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

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

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

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

Why are you seeking appointment to this board or committee?

I am on the water and Island every day working to educate about and save our local ecosystems.

Community Involvement:

CROW wildlife rescuer and Volunteer
NOTE Marine Rescuer/Volunteer
Turtle time Volunteer
Manatee Park Volunteer/educator/speaker

Calusa Water Keeper
Ranger

Interests / Activities:

Sailing, Kayaking, exploring, teaching, learning, listening, Hiking

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

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

Signed



Date 4-3-21

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

To whom it may concern:

I first met Robert Howell out on the water while he was conducting eco-tours for Banana Bay Tour Company in San Carlos Bay. As an avid kayaker and animal advocate, I was immediately impressed with his extensive knowledge of our local ecosystem and dolphin pod, in particular. I can't think of anyone more qualified than Robert to be a member of the Marine Task Committee for Fort Myers Beach. His educational background in zoology, as well as being a master naturalist and interpretive guide make him the perfect fit for such a role. He has the knowledge, but more importantly, the integrity and passion to serve as a protector and advocate for our local waters and wildlife.

He is truly a gifted messenger when educating visitors and locals alike on how to best observe and respect our environment. He is one of the first people I go to when I have a concern for our dolphins, manatees or other local wildlife residents. I know he will investigate the problem objectively and consult with experts to find the best possible solution.

I know our community would be well served with Robert Howell on the Marine Task Force.

Sincerely,

Monica Lynn
"The Fairy Podmother"
419-494-6218

Town of Fort Myers Beach

APR 12 2021

Received by: _____



April 6, 2021

Letter of Reference for Robert Howell

I am writing to recommend Robert Howell to be a member of the Fort Myers Beach Marine Resources Task Force.

I have worked with Robert for the past three years, both in his capacity as a Naturalist in his employment and as a private citizen concerned about environmental issues on Fort Myers Beach. He has addressed topics such as the sale of freshwater turtle hatchlings on our local Beach Talk Radio News and has written essays addressing local water quality and speed-limit signage in the back bay. In anticipation of the beginning of sea turtle nesting season, Robert has recorded messages that educate visitors at the Pink Shell Resort regarding sea turtle issues, including closing the drapes, beginning April 15.

Robert has designed and created educational exhibits that address our local coastal dynamics such as dune functions and shorebirds. Visitors gain important knowledge that translates well to other coastal areas. His extensive background in Zoology, Marine Science and Environmental Education coupled with his enthusiasm, sense of responsibility and tactfulness makes him an excellent candidate for serving on the Marine Resources Task Force.

Sincerely,

Eve M. Haverfield
Director
Turtle Time, Inc

P.O. Box 2621 · Fort Myers Beach, FL 33932 · 239-481-5566
www.turtletime.org

Town of Fort Myers Beach

APR 12 2021

Received by: _____

Town Council,

I would like to recommend Ranger Rob Howell for the marine Task force. I met Rob while he was fighting to stop the sale of the Yellow bellied sliders at my store. We became partners and friends while looking into alternatives that we could both be happy with. Because of his passion and willingness to find an alternative route with this issue he is now helping me educate my customers about the turtles before they buy them. I think he will be a great addition to the council with his ability to think outside the box and willingness to hear others out and really connect with how they are feeling and thinking.

Thank you,
Mitch Krohn

Mitch Krohn

OWVER TEE-KI HUT
1028 FIFTH ST
FORT MYERS BEACH

Town of Fort Myers Beach

APR 12 2021

Received by:_____



PINK SHELL

BEACH RESORT & MARINA

April 8, 2021

To whom this may concern,

I would like to recommend Robert Howell for a position as a member of the Marine Resources Task Force. Robert started his employment with the Pink Shell Beach Resort & Marina as the Resort Naturalist in 2019. His passion is shown through his presence on Fort Myers Beach and his encounters with our resort guests through the education he provides on his Nature Walks and Kayak Tours. Robert has assisted with many rescues of local wildlife on our property and the surrounding areas.

Robert's background and experience will be beneficial to Fort Myers Beach and an asset to your task force.

Yours in hospitality,

Bill Waichulis
Senior VP of Operations
239-463-8601

Town of Fort Myers Beach

APR 14 2021

Received by: _____



Town of Fort Myers Beach

Advisory Boards and Committees Application

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

Please type or print clearly.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address:

(if different from home address):

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

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

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

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

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

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

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

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

Yes ☒ No ☐

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

Yes ☐ No ☒

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

Why are you seeking appointment to this board or committee?

I live on a canal and want to help work with the city and county to balance boating and environment needs

Community Involvement:

US Coast Guard Aux

Interests / Activities:

Former Defense Contractor developing missile systems. Retiree living at the beach: Boat

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

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

Yes ☐ No ☒

If yes and you are appointed, you will be asked to fill out [Public Records Exemption Request](#) form and return to the Town.

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

Signed

Michael L Logan

Date

4/13/21

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. Requested Motion:

Meeting Date: April 19, 2021

Authorize the Town Manager to execute Change Order 1 for North Estero Phase 2 Part 2 Water Main and Storm Water Improvements, increasing the contract amount by \$5,480,740.04 to add North Estero Phase 2 Part 1 in contract ITB-20-08-UT with Mitchell & Stark Construction Company.

Why the action is necessary:

Adds North Estero Phase 2 Part 1 Water Main and Stormwater Improvements

What the action accomplishes:

Approves Change Order.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Construction prices continue to grow at a rate faster than CPI. This Change Order will allow us to utilize unit cost pricing from North Estero PH2 PT1 versus a new bid for the exact same service. The State has concurred that this is the most cost effective method to proceed with the work.

Attachments:

1. Phase 2 Part 2 Water Main and Stormwater Change Order 1
2. Bid Letter - North Estero Phase 2 Part 1
3. 21-18, ITB-20-08-UT North Estero Phase 2 Part 2

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve

8. Recommended Approval:

Sarah Lisenko, Administrative Officer
Christy Cory, Utilities Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Final Approval - 4/13/2021

PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 1

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

CONTRACT/PROJECT NAME: North Estero Phase 2 Part 2 Water Main and Storm Improvements

CONTRACTOR: Mitchell & Stark Construction Company, Inc. PROJECT NO.: ITB-20-08-UT

CONTRACT NO.: ITB-20-08-UT BID NO.: ITB-20-08-UT

CHANGE REQUESTED BY: Utilities Department DATE OF REQUEST: 04/09/2021

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

Description: North Estero Phase 2 Part 1 Water Main and Storm Improvements

Purpose of Change Order: Add North Estero Phase 2 Part 1 Water Main and Storm Improvements

Attachments: (List documents supporting change) Change Order #1 Cost Summary, Technical Specifications, and Plan Sheets

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price <u>\$ 5,897,938.17</u>	Original Contract Time <u>235</u> Calendar Days
Previous Change Order No. <u>0</u> to No. <u>0</u> <u>\$ 0.00</u>	Net Change from previous Change Orders <u>0</u> Calendar Days
Contract Price prior to this Change Order <u>\$ 5,897,938.17</u>	Contract Time prior to this Change Order <u>235</u> Calendar Days
Net Increase (Decrease) of this Change Order <u>\$ 5,480,740.07</u>	Net Increase (Decrease) of this Change Order <u>365</u> Calendar Days
Contract Price will all approved Change Orders <u>\$ 11,378,678.24</u>	Contract Time with all approved Change Orders <u>600</u> Calendar Days

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

RECOMMENDED:
By: [Signature] 4/9/21
Consultant (if applicable) Date
By: [Signature] 4/12/21
Department Director Date

Contracts Management
APPROVED:
Town Attorney Date

ACCEPTED
By: [Signature] VP
Contractor
Date Accepted: 4/9/2021

(CORPORATE SEAL)

TOWN APPROVAL:
By: _____
Finance Director (Under \$25,000)
Date Approved: _____
By: _____
Town Manager (Under \$25,000)
Date Approved: _____
By: _____
Mayor, Town Council
(Over \$25,000)
Date Approved: _____

Town of Fort Myers Beach Contract No. ITB-20-08-UT
North Estero Phase 2 Part 2 Water Main and Storm Improvements
Change Order #1 Cost Summary

Item No.	Description	QTY	Unit	Unit Price	Total Change Order Value	As In Original Bid?	Comments (Reason for difference from original bid.)
North Estero Phase 2 Part 1 Water Main and Storm Improvements							
1	Mobilization/Demobilization	1	LS	\$ 135,000.00	\$ 135,000.00	N	Price reflects project area.
2	General Requirements, Bonds, Permits	1	LS	\$ 475,000.00	\$ 475,000.00	N	Price reflects contract amount.
3	Indemnification	1	LS	\$ 1,000.00	\$ 1,000.00	N	Price reflects contract amount.
4	Pre- and Post-Construction Video	1	LS	\$ 3,300.00	\$ 3,300.00	N	Price reflects project area.
5	Locate Utilities in Advance of Construction	1	LS	\$ 45,000.00	\$ 45,000.00	N	Price reflects project area.
6	Survey & Layout and As-Built Survey	1	LS	\$ 124,835.00	\$ 124,835.00	N	Price reflects project area.
7	Maintenance of Traffic	1	LS	\$ 78,000.00	\$ 78,000.00	N	Price reflects project area.
8	Erosion and Sediment Control	1	LS	\$ 18,000.00	\$ 18,000.00	Y	Same as in original bid.
	Full Width remove & replace asphalt pavement 6" asphalt	9301	SY	\$ 56.85	\$ 528,761.85	N	New item. Not in original bid.
9	Trench Remove and Replace Asphalt Pavement (Full Depth)	1200	SY	\$ 60.00	\$ 72,000.00	Y	Same as in original bid.
10	Mill Existing Asphalt Pavement	2839	SY	\$ 5.68	\$ 16,125.52	Y	Same as in original bid.
11	Asphalt Pavement (SP-12.5)	230	TN	\$ 109.45	\$ 25,173.50	Y	Same as in original bid.
12	Remove and Replace Concrete Driveway/Sidewalk	11651	SF	\$ 6.95	\$ 80,974.45	Y	Same as in original bid.
13	Remove and Replace Asphalt Driveway	4492	SF	\$ 11.65	\$ 52,331.80	Y	Same as in original bid.
14	Remove and Replace Unpaved Driveway	7249	SF	\$ 2.50	\$ 18,122.50	Y	Same as in original bid.
15	Remove and Reset Pavers Driveway	1920	SF	\$ 11.00	\$ 21,120.00	Y	Same as in original bid.
16	Pavement Marking/Striping	1	LS	\$ 10,570.00	\$ 10,570.00	N	New item. Not in original bid.
17	Clear and Grub	5602	SF	\$ 1.00	\$ 5,602.00	Y	Same as in original bid.
18	Restoration	4391	LF	\$ 7.35	\$ 32,273.85	Y	Same as in original bid.
19	Miscellaneous Sitework Allowance	1	LS	\$ 200,000.00	\$ 200,000.00	N	Price reflects project area.
	Asphalt Parking on Fifth	275	SY	\$ 70.00	\$ 19,250.00	N	New item. Not in original bid.
Watermain							
20	Furnish and Install 16" C905 DR-18 PVC WM	851	LF	\$ 159.45	\$ 135,691.95	N	New item. Not in original bid.
21	Furnish and Install 8" C900 DR-14 PVC WM	3540	LF	\$ 74.70	\$ 264,438.00	Y	Same as in original bid.
	Furnish and Install 20" WM on Old San Carlos	1	LS	\$ 14,295.00	\$ 14,295.00	N	New item. Not in original bid.
	Furnish and Install 12" C900 DR-18 PVC WM	40	LF	\$ 160.50	\$ 6,420.00	N	New item. Not in original bid.
	Connect to Ex 20" WM (Town to shut down)	1	EA	\$ 19,060.00	\$ 19,060.00	N	New item. Not in original bid.
	Connect to Ex 16" WM With Hot Tap	3	EA	\$ 19,030.00	\$ 57,090.00	N	New item. Not in original bid.
	Connect to Ex 12" WM Hot Tap	2	EA	\$ 12,650.00	\$ 25,300.00	N	New item. Not in original bid.
	Connect to Ex 8" WM Hot Tap	1	EA	\$ 9,790.00	\$ 9,790.00	N	New item. Not in original bid.
	Connect to Ex. 8" WM (Town to shut down)	1	EA	\$ 3,630.00	\$ 3,630.00	Y	Same as in original bid.
22	Reconnect/Install New Water Meters	64	EA	\$ 250.00	\$ 16,000.00	Y	Same as in original bid.
23	1" Water Service (Short)	31	EA	\$ 775.00	\$ 24,025.00	Y	Same as in original bid.
24	1" Water Service (Long with Road Crossing)	39	EA	\$ 1,580.00	\$ 61,620.00	Y	Same as in original bid.
25	16" Cross	1	EA	\$ 7,940.00	\$ 7,940.00	N	New item. Not in original bid.
26	16" x 16" Tee/Wye	2	EA	\$ 7,100.00	\$ 14,200.00	N	New item. Not in original bid.
27	12" x 12" Tee/Wye	2	EA	\$ 3,300.00	\$ 6,600.00	N	New item. Not in original bid.
28	16" x 20" Tee/Wye	1	EA	\$ 8,790.00	\$ 8,790.00	N	New item. Not in original bid.

Item No.	Description	QTY	Unit	Unit Price	Total Change Order Value	As In Original Bid?	Comments (Reason for difference from original bid.)
29	8" x 8" Tee/Wye	5	EA	\$ 970.00	\$ 4,850.00	Y	Same as in original bid.
30	8" x 4" Tee/Wye	1	EA	\$ 840.00	\$ 840.00	N	New item. Not in original bid.
31	16" x 12" Reducer	1	EA	\$ 2,120.00	\$ 2,120.00	N	New item. Not in original bid.
32	16" x 8" Reducer	1	EA	\$ 2,110.00	\$ 2,110.00	N	New item. Not in original bid.
33	12" x 8" Reducer	3	EA	\$ 970.00	\$ 2,910.00	N	New item. Not in original bid.
34	8" x 2" Reducer	0	EA	\$ 930.00	\$ -	N	New item. Not in original bid.
	4" x 2" Reducer	1	EA	\$ 840.00	\$ 840.00	N	New item. Not in original bid.
	20" 90°	1	EA	\$ 9,890.00	\$ 9,890.00	N	New item. Not in original bid.
	20" Reducer	1	EA	\$ 8,610.00	\$ 8,610.00	N	New item. Not in original bid.
	16" 90°	1	EA	\$ 8,770.00	\$ 8,770.00	N	New item. Not in original bid.
	20" Line Stop	1	EA	\$ 69,500.00	\$ 69,500.00	N	New item. Not in original bid.
35	16" Horizontal Deflection	3	EA	\$ 12,800.00	\$ 38,400.00	N	New item. Not in original bid.
36	8" Horizontal Deflection	5	EA	\$ 5,760.00	\$ 28,800.00	N	New item. Not in original bid.
37	16" Vertical Deflection	1	EA	\$ 17,550.00	\$ 17,550.00	N	New item. Not in original bid.
38	8" Vertical Deflection	13	EA	\$ 6,080.00	\$ 79,040.00	Y	Same as in original bid.
39	16" Gate Valve with Valve Box Assembly	3	EA	\$ 8,620.00	\$ 25,860.00	N	New item. Not in original bid.
40	20" Gate Valve with Valve Box Assembly	1	EA	\$ 15,950.00	\$ 15,950.00	N	New item. Not in original bid.
41	8" Gate Valve with Valve Box Assembly	6	EA	\$ 1,755.00	\$ 10,530.00	Y	Same as in original bid.
42	12" Gate Valve with Valve Box Assembly	5	EA	\$ 3,340.00	\$ 16,700.00	N	Amount is less than in the original bid.
43	Fire Hydrant Assemblies	7	EA	\$ 5,852.00	\$ 40,964.00	Y	Same as in original bid.
44	8" Plug	1	EA	\$ 1,340.00	\$ 1,340.00	N	New item. Not in original bid.
45	16" Plug	1	EA	\$ 3,590.00	\$ 3,590.00	N	New item. Not in original bid.
46	Grout and Abandon Existing 16" Water Main	623	LF	\$ 26.20	\$ 16,322.60	N	New item. Not in original bid.
47	Grout and Abandon Existing 2" Water Main	793	LF	\$ 2.00	\$ 1,586.00	Y	Same as in original bid.
48	Grout and Abandon Existing 6" Water Main	2038	LF	\$ 7.00	\$ 14,266.00	Y	Same as in original bid.
49	Grout and Abandon Existing 3" Water Main	257	LF	\$ 2.00	\$ 514.00	Y	Same as in original bid.
Stormwater							
50	Tie into Existing Inlet	7	EA	\$ 2,000.00	\$ 14,000.00	Y	Same as in original bid.
51	15" SD Cross Drain	216	LF	\$ 141.00	\$ 30,456.00	Y	Same as in original bid.
52	18" SD Cross Drain	206	LF	\$ 152.00	\$ 31,312.00	Y	Same as in original bid.
53	24" SD Cross Drain	284	LF	\$ 157.00	\$ 44,588.00	Y	Same as in original bid.
54	30" SD Cross Drain	469	LF	\$ 318.00	\$ 149,142.00	Y	Same as in original bid.
	36" SD Cross Drain	50	LF	\$ 376.00	\$ 18,800.00	N	New item. Not in original bid.
55	18" SD Side Drain	387	LF	\$ 112.00	\$ 43,344.00	Y	Same as in original bid.
56	24" SD Side Drain	966	LF	\$ 139.00	\$ 134,274.00	Y	Same as in original bid.
57	30" SD Side Drain	159	LF	\$ 169.00	\$ 26,871.00	Y	Same as in original bid.
	36" Side Drain	40	LF	\$ 376.00	\$ 15,040.00	N	New item. Not in original bid.
	Type "C" Drainage Inlet w/ 6606	6	EA	\$ 2,730.00	\$ 16,380.00	N	New item. Not in original bid.
	Type "C" Drainage Inlet w/ 6611 Traffic grate	2	EA	\$ 3,290.00	\$ 6,580.00	N	New item. Not in original bid.
	Type "E" Drainage Inlet w/ 6616 Traffic grate	1	EA	\$ 7,270.00	\$ 7,270.00	N	New item. Not in original bid.
59	Type "G" Drainage Inlet	1	EA	\$ 12,805.00	\$ 12,805.00	N	New item. Not in original bid.
	Type "V" Drainage Inlet	4	EA	\$ 7,805.00	\$ 31,220.00	N	New item. Not in original bid.
	Type "P3" Drainage Inlet	3	EA	\$ 10,610.00	\$ 31,830.00	N	New item. Not in original bid.
	Type "P4" Drainage Inlet	3	EA	\$ 10,935.00	\$ 32,805.00	N	New item. Not in original bid.

Item No.	Description	QTY	Unit	Unit Price	Total Change Order Value	As In Original Bid?	Comments (Reason for difference from original bid.)
60	Connect to Existing Structure	6	EA	\$ 2,250.00	\$ 13,500.00	N	New item. Not in original bid.
61	Storm Manhole	9	EA	\$ 4,070.00	\$ 36,630.00	N	New item. Not in original bid.
	DogHouse Storm Manhole	9	EA	\$ 6,870.00	\$ 61,830.00	N	New item. Not in original bid.
62	Baffle Box (Pipe Diameters 24" and 30")	2	EA	\$ 53,250.00	\$ 106,500.00	Y	Same as in original bid.
	Baffle Box (Pipe Diameters 36")	1	EA	\$ 78,380.00	\$ 78,380.00	N	New item. Not in original bid.
63	Seawall Replacement/Installation	20	LF	\$ 2,420.00	\$ 48,400.00	Y	Same as in original bid.
64	Rip Rap	24	TN	\$ 135.00	\$ 3,240.00	N	New item. Not in original bid.
65	Inline Backflow Prevention Valve	1	EA	\$ 25,000.00	\$ 25,000.00	N	New item. Not in original bid.
	Flap Gate No structural upgrade to wall	1	EA	\$ 26,130.00	\$ 26,130.00	N	New item. Not in original bid.
	Manatee Gate	1	EA	\$ 18,690.00	\$ 18,690.00	N	New item. Not in original bid.
	Flap Gate Wall Structural Upgrade	40	LF	\$ 2,420.00	\$ 96,800.00	N	New item. Not in original bid.
	29x45 ERCP Liner	127	LF	\$ 377.00	\$ 47,879.00	N	New item. Not in original bid.
	18 inch RCP Liner	133	LF	\$ 278.00	\$ 36,974.00	N	New item. Not in original bid.
66	Dewatering	1	LS	\$ 75,000.00	\$ 75,000.00	N	Price reflects project area
67	Curb Inlet Top	1	EA	\$ 1,960.00	\$ 1,960.00	N	New item. Not in original bid.
68	Remove Existing SD	429	LF	\$ 15.00	\$ 6,435.00	Y	Same as in original bid.
	Stormwater First Street						
69	15" SD Cross Drain	20	LF	\$ 141.00	\$ 2,820.00	Y	Same as in original bid.
70	24" SD Cross Drain	55	LF	\$ 139.00	\$ 7,645.00	Y	Same as in original bid.
71	24" SD Side Drain	157	LF	\$ 157.00	\$ 24,649.00	Y	Same as in original bid.
72	Type "C" Drainage Inlet w/ 6611 Traffic grate	2	EA	\$ 3,290.00	\$ 6,580.00	N	New item. Not in original bid.
72	Type "C" Drainage Inlet w/ ADA grate	1	EA	\$ 3,637.75	\$ 3,637.75	N	New item. Not in original bid.
	Type "E" Drainage Inlet w/ 6616 Traffic grate	1	EA	\$ 7,270.00	\$ 7,270.00	N	New item. Not in original bid.
74	Storm Manhole	1	EA	\$ 4,070.00	\$ 4,070.00	N	New item. Not in original bid.
75	Cut in 18" Baffle Box	1	EA	\$ 53,250.00	\$ 53,250.00	N	New item. Not in original bid.
	Baffle Box (Pipe Diameters 24" and 30")	1	EA	\$ 53,250.00	\$ 53,250.00	Y	Same as in original bid.
76	Rip Rap	11	TN	\$ 135.00	\$ 1,485.00	N	New item. Not in original bid.
78	Inline Backflow Prevention Valve	2	EA	\$ 25,000.00	\$ 50,000.00	N	New item. Not in original bid.
79	Seawall Replacement/Installation	20	LF	\$ 2,420.00	\$ 48,400.00	Y	Same as in original bid.
80	Flow Through Sidewalk	2	EA	\$ 1,050.00	\$ 2,100.00	N	New item. Not in original bid.
	Sanitary Sewer						
81	4" Sewer Service Lateral (Without Cleanout)	15	EA	\$ 1,720.00	\$ 25,800.00	Y	Same as in original bid.
82	Adjust Manhole Frame and Cover	16	EA	\$ 475.00	\$ 7,600.00	Y	Same as in original bid.
83	Cleanouts Complete	15	EA	\$ 300.00	\$ 4,500.00	Y	Same as in original bid.
84	16" Forcemain Replacement	600	LF	\$ 176.00	\$ 105,600.00	N	New item. Not in original bid.
	16" Forcemain Bypass Pumping	1	Allow	\$ 30,000.00	\$ 30,000.00	N	New item. Not in original bid.
85	16" Forcemain Deflection	3	EA	\$ 12,290.00	\$ 36,870.00	N	New item. Not in original bid.
	Pull Boxes Furnish and Install	2	EA	\$ 1,265.00	\$ 2,530.00	N	New item. Not in original bid.
	Furnish and Install 2" Conduit with pull string	600	LF	\$ 7.30	\$ 4,380.00	N	New item. Not in original bid.
	Electrical/Lighting and Sidewalk						
86	1-2" Conduit Installation-Only with pull string (FPL furnished) Directional Drill	4593	LF	\$ 24.80	\$ 113,506.40	N	New item. Not in original bid.
87	Pull Boxes Installation-Only (FPL furnished)	39	EA	\$ 300.00	\$ 11,700.00	N	New item. Not in original bid.
88	2" Conduit (Furnish and Install 12" to 18" depth)	4593	LF	\$ 9.30	\$ 42,714.90	N	New item. Not in original bid.

Item No.	Description	QTY	Unit	Unit Price	Total Change Order Value	As In Original Bid?	Comments (Reason for difference from original bid.)
	Pull Boxes for Owner Conduit	35	EA	\$ 1,265.00	\$ 44,275.00	N	New item. Not in original bid.
89	Proposed Curb and Gutter	3574	LF	\$ 25.55	\$ 91,315.70	N	New item. Not in original bid.
90	Proposed Sidewalk	33974	SF	\$ 7.95	\$ 270,093.30	N	New item. Not in original bid.
91	Detectable Warnings	23	EA	\$ 350.00	\$ 8,050.00	N	New item. Not in original bid.
92	Decorative Sidewalk	500	SF	\$ 21.00	\$ 10,500.00	N	New item. Not in original bid.
93	Flow Through Sidewalk	15	EA	\$ 1,100.00	\$ 16,500.00	N	New item. Not in original bid.
TOTAL CHANGE ORDER VALUE					\$ 5,480,740.07		



April 9, 2021

Christy Cory
Town of Ft. Myers Beach
Utilities Director
2525 Estero Boulevard
Fort Myers, FL 33931

Subject: North Estero Phase 2 Part 1 – Recommendation of Award

Tt #: 200-74765-16002

Dear Mrs. Cory:

Tetra Tech has reviewed the Mitchell and Stark Construction Company, Inc.'s Bid Submittal for the North Estero Phase 2 Part 1 Project, which will be amended to the North Estero Phase 2 Part 2 Project as a Change Order in the amount of \$5,480,740.07. Based on our review of this Bid Submittal, Mitchell and Stark have held pricing for bid items included in North Estero Phase 2 Part 2 and compared to the previous costs for the similar recent construction projects within the Town, we feel that this is a fair and just price for the project. The submitted Bid Price is within 2.9% of the Engineers Final Opinion of Probable Construction Cost for the project, with Tetra Tech's estimate being slightly lower at \$5,325,000.00.

Mitchell and Stark are currently on pace to complete the North Estero Phase 2 Part 2. They have also constructed the water main improvements on Estero Boulevard, as well as side street improvements associated with the phases of that project. These projects have consistently come in under budget. Mitchell and Stark has factored the project constraints and lessons learned in these previous Phases into their Bid so that change orders can be limited during the project. It is the Town of Fort Myers Beach's (Town's) goal to complete the work within high population areas within North Estero project limits as quickly as possible. Tetra Tech feels that Mitchell and Stark's past performance within the Town has demonstrated that work will be completed within the Contract Time.

Additionally, Tetra Tech feels that given the current relationship between the Town and Mitchell and Stark on the current water main and storm sewer work being installed on the beach, it is prudent to retain Mitchell and Stark for the North Estero Phase 2 Part 1 Project. The continuation of water and stormwater work within the Town will continue to be highly scrutinized by the public and it will go a long way continuing to work with a contractor that has dealt with those issues prior.

Should you have any questions or comments, please do not hesitate to contact me at 407-480-3948 or tim.vanderwalker@tetratech.com at your earliest convenience. Thank you for your anticipated approval.

Sincerely,

Tetra Tech

A handwritten signature in black ink, appearing to read 'Timothy A. Vanderwalker', written over a horizontal line.

Timothy A. Vanderwalker, P.E.
Project Manager

Enclosures

TAV/slm/200-74765-16003/ProjManagement/Correspondence/ Cory Bid Letter - North Estero Phase 2 Part 1.doc

C: Danny Nelson, P.E., Tetra Tech, Inc.

RESOLUTION NUMBER 2021-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO CONTRACT ITB-20-08-UT BETWEEN THE TOWN OF FORT MYERS BEACH AND MITCHELL & STARK CONSTRUCTION CO.; INCREASING THE CONTRACT AMOUNT BY \$5,480,740.07; EXTENDING THE FINAL COMPLETION DATE TO APRIL 16, 2022; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CHANGE ORDER; 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 of Fort Myers Beach, Florida ("Town") entered into Contract ITB-20-08-UT ("Contract") with Mitchell & Stark Construction Co., ("Contractor") in March 31, 2020 for construction of water and stormwater improvements; and,

WHEREAS, Change Order No. 1 of the Agreement increases the contracted amount by \$5,480,740.07 and extends the date of final completion date to April 16, 2022.

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

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

Section 2. Change Order No. 1 of the Agreement between the Town and the Contractor attached hereto as "Exhibit A" is hereby approved.

Section 3. The Town Manager is authorized to execute the Change Order and expend budgeted funds on behalf of the Town.

Section 4. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Councilmember	_____
Bill Veach, Councilmember	_____
Jim Atterholt, Councilmember	_____

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

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day April 2021.

1. Requested Motion:

Meeting Date: April 19, 2021

Authorize the Town Manager to execute Change Order 1 for Estero Boulevard Water Main Phase 4, increasing the contract amount by \$477,202.94 for Water Main Extension on Bayview Blvd with Mitchell & Stark Construction Company RFQ-13-02-PW.

Why the action is necessary:

Adds Bayview Blvd Water Main Extension.

What the action accomplishes:

Approves Change Order.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Construction prices continue to grow at a rate faster than CPI. This Change Order will allow us to utilize unit cost pricing from Estero Boulevard Water Main Phase 4 versus a new bid for the exact same service. The State has concurred that this is the most cost effective method to proceed with the work.

Attachments:

1. Estero Water Main Phase 4 Change Order 1
2. Bid Letter - Estero WM Phase 4 - Bayview
3. 21-19, RFQ-13-02-PW Bayview Blvd Water Main Extension

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve

8. Recommended Approval:

Sarah Lisenko, Administrative Officer
Christy Cory, Utilities Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Final Approval - 4/13/2021

PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 1

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

CONTRACT/PROJECT NAME: Estero Boulevard Water Main - Phase 4

CONTRACTOR: Mitchell & Stark Construction Company, Inc. PROJECT NO.: RFQ-13-02-PW

CONTRACT NO.: RFQ-13-02-PW - Amendment 10 BID NO.: RFQ-13-02-PW

CHANGE REQUESTED BY: Utilities Department DATE OF REQUEST: 04/09/2021

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

Description: Beach Water Bayview Water Main Extension

Purpose of Change Order: Add Beach Water Bayview Water Main Extension

Attachments: (List documents supporting change) Cost Summary, Technical Specifications, and Plan Sheets

CHANGE IN CONTRACT PRICE:		CHANGE IN CONTRACT TIME:	
Original Contract Price		Original Contract Time	
\$ <u>10,420,192.58</u>		<u>540</u>	Calendar Days
Previous Change Order No. <u>0</u> to No. <u>0</u>		Net Change from previous Change Orders	
\$ <u>0.00</u>		<u>0</u>	Calendar Days
Contract Price prior to this Change Order		Contract Time prior to this Change Order	
\$ <u>10,420,192.58</u>		<u>540</u>	Calendar Days
Net Increase (Decrease) of this Change Order		Net Increase (Decrease) of this Change Order	
\$ <u>477,202.94</u>		<u>0</u>	Calendar Days
Contract Price will all approved Change Orders		Contract Time with all approved Change Orders	
\$ <u>10,897,395.52</u>		<u>540</u>	Calendar Days

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

RECOMMENDED:
By: [Signature] 4/9/21
Consultant (if applicable) Date
By: [Signature] 4/12/21
Department Director Date

Contracts Management
APPROVED:
Town Attorney Date

ACCEPTED
By: [Signature] VP
Contractor
Date Accepted: 4/9/2021

(CORPORATE SEAL)

TOWN APPROVAL:
By: _____
Finance Director (Under \$25,000)
Date Approved: _____
By: _____
Town Manager (Under \$25,000)
Date Approved: _____
By: _____
Mayor, Town Council
(Over \$25,000)
Date Approved: _____

Town of Fort Myers Beach Design Build RFQ -13-02-PW
Estero Boulevard Water Main Phase 4
Change Order #1 Cost Summary

Beach Water Bayview Water Main Extension	Quantity	Unit	Unit Price	Total
Mobilization/Demobilization	0.04	LS	\$ 64,000.00	\$ 2,500.00
Pre-Construction Video	0.12	LS	\$ 10,000.00	\$ 1,200.00
Locate Utilities in Advance of Construction	0.05	LS	\$ 40,000.00	\$ 2,000.00
Density Testing Full Time	1.00	MTH	\$ 15,000.00	\$ 15,000.00
Maintenance of Traffic (Temporary striping and signage only)	0.01	LS	\$ 200,000.00	\$ 2,500.00
Survey & As Built Data (Point Plan Format)	0.09	LS	\$ 87,692.00	\$ 7,500.00
Dewatering	1220.00	LF	\$ 26.00	\$ 31,720.00
Relocate Sanitary Sewer Lateral	22.00	EA	\$ 2,575.50	\$ 56,661.00
8" DR 14 PVC Water Main	1220.00	LF	\$ 115.95	\$ 141,459.00
8"X 4" Hot Tap	1.00	EA	\$ 9,303.00	\$ 9,303.00
Install new Water Meter & Reconnect (Meter by Others)	28.00	EA	\$ 202.88	\$ 5,680.64
1" Water Service Short (No price for long services)	30.00	EA	\$ 2,231.68	\$ 66,950.40
8" Line Stop and Cap	1.00	EA	\$ 13,009.50	\$ 13,009.50
8" Bend	15.00	EA	\$ 1,064.15	\$ 15,962.25
8x8 Tee	1.00	EA	\$ 1,064.15	\$ 1,064.15
8" Gate Valve	3.00	EA	\$ 2,176.53	\$ 6,529.59
Remove Fire Hydrant	3.00	EA	\$ 600.00	\$ 1,800.00
Fire Hydrant	3.00	EA	\$ 8,721.97	\$ 26,165.91
Temp Paving Local Roads (6" BCBC on rolled sub-grade)	375.00	TONS	\$ 179.50	\$ 67,312.50
Poly Wrap Fittings (LDOT Stip)	13.00	EA	\$ 125.00	\$ 1,625.00
Inlet Protection	4.00	EA	\$ 315.00	\$ 1,260.00
CHANGE ORDER TOTAL				\$ 477,202.94



April 9, 2021

Christy Cory
Town of Ft. Myers Beach
Utilities Director
2525 Estero Boulevard
Fort Myers, FL 33931

**Subject: Estero Boulevard Water Main – Phase 4 – Change Order No. 1 Bayview
Boulevard Water Main
Recommendation of Award**

Tt #: 200-74765-16002

Dear Mrs. Cory:

Tetra Tech has reviewed the Mitchell and Stark Construction Company, Inc.'s Bid Submittal for the addition of work on Bayview Boulevard, which will be amended to the Estero Boulevard Water Main - Phase 4 Project as a Change Order in the amount of \$477,202.94. Based on our review of this Bid Submittal, Mitchell and Stark have held pricing for bid items included in Estero Boulevard Water Main - Phase 4 and compared to the previous costs for the similar recent construction projects within the Town, we feel that this is a fair and just price for the project. The submitted Bid Price is within 11% of the Engineers Opinion of Probable Construction Cost for the project, with Tetra Tech's estimate being lower at \$430,000.00.

Mitchell and Stark have constructed the water main improvements on Estero Boulevard, as well as side street improvements associated with the phases of that project. These projects have consistently come in under budget. Mitchell and Stark is currently finishing the Estero Boulevard Water Main – Phase 4 work and is underway on the North Estero Phase 2 Project. Tetra Tech feels that Mitchell and Stark's past performance within the Town has demonstrated that work will be completed to meet the Town's expectations. Additionally, Tetra Tech feels that given the current relationship between the Town and Mitchell and Stark on the current water main and storm sewer work being installed on the beach, it is prudent to retain Mitchell and Stark for the Bayview Boulevard work.

Should you have any questions or comments, please do not hesitate to contact me at 407-480-3948 or tim.vanderwalker@tetrattech.com at your earliest convenience. Thank you for your anticipated approval.

Sincerely,

Tetra Tech

A handwritten signature in black ink, appearing to read 'Timothy A. Vanderwalker', written over a horizontal line.

Timothy A. Vanderwalker, P.E.
Project Manager

Enclosures

TAV/slm/200-74765-16003/ProjManagement/Correspondence/ Cory Bid Letter - Estero WM Phase 4 - Bayview.doc

C: Danny Nelson, P.E., Tetra Tech, Inc.

RESOLUTION NUMBER 2021-19

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO AMENDMENT 10 OF THE DESIGN-BUILD AGREEMENT RFQ-13-02-PW BETWEEN THE TOWN OF FORT MYERS BEACH AND MITCHELL & STARK CONSTRUCTION CO.; INCREASING THE CONTRACT AMOUNT BY \$477,202.94; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CHANGE ORDER; 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 entered into a Design Build Agreement RFQ-13-02-PW ("Agreement") with Mitchell & Stark Construction Co., ("Contractor") in September of 2013; and,

WHEREAS, the Town and Contractor subsequently amended said Agreement in October of 2019 with Amendment 10 in the amount of \$10,420,192.58 to include construction of water mains along Estero Boulevard from Albatross Street to the southern end of the island; and,

WHEREAS, Change Order No. 1 to Amendment 10 of the of the Agreement increases the contracted amount by \$477,202.94.

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

Section 1. The above recitals are true and correct and are hereby incorporated by this reference.

Section 2. Change Order No. 1 to Amendment 10 of the Agreement between the Town and the Contractor attached hereto as "Exhibit A" is hereby approved.

Section 3. The Town Manager is authorized to execute the Change Order and expend budgeted funds on behalf of the Town.

Section 4. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Councilmember	_____
Bill Veach, Councilmember	_____
Jim Atterholt, Councilmember	_____

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

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day April 2021.

1. Requested Motion:

Meeting Date: April 19, 2021

Authorize the Town Manager to enter into a construction / ROW agreement with the Florida Department of Transportation (FDOT) in association with the Town's downtown water and stormwater improvements within the Matanzas Bridge right of way as part of North Estero Phase II, Part 1 construction, and authorize the Town Manager to execute associated construction agreements necessary for the project's construction.

Why the action is necessary:

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

The proposed stormwater and water improvements within the downtown area (North Estero Phase 2 Part 1) require the installation of infrastructure within the right-of-way of the Matanzas Pass Bridge. This right-of-way is under the jurisdiction of the Florida Department of Transportation (FDOT), therefore a permit is required to perform any construction in this area.

Due to the nature of the work being performed and the location beneath the bridge, after prolonged discussions, FDOT determined that a Construction Agreement would be required and the appropriate vehicle for authorizing performance of the work. The construction agreement as developed by FDOT requires the signature of the Town Manager and an authorized FDOT representative. To confirm authorization of the Town Manager to execute the agreement, FDOT requests a Resolution be passed by Town Council and this be attached to the Agreement. Once the agreement has been executed by the Town and FDOT, construction within the right-of-way may commence.

Attachments:

1. 21-22, FDOT ROW Construction Signatory Authorization

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Town Clerk
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/15/2021
Approved - 4/15/2021
Final Approval - 4/15/2021

RESOLUTION NUMBER 21-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A CONSTRUCTION AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF FORT MYERS BEACH FOR THE INSTALLATION OF STORMWATER IMPROVEMENTS WITHIN FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Constitution of the State of Florida, and 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 purpose, 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 has the authority to enter into a Construction Agreement with the State of Florida Department of Transportation for the installation of Town stormwater improvements within right-of-way owned by the Florida Department of Transportation as further described in Contract Number: 2019-C-192-0006 (“Agreement”); and

WHEREAS, it is in the best interest of health, safety and welfare of the Town’s residents, business owners and visitors that the Town enters into the Agreement with FDOT in the form attached to this Resolution.

NOW THEREFORE BE RESOLVED by the Town of Fort Myers Beach as follows:

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

Section 2. The Town Council hereby approves the Agreement attached hereto as Exhibit “A”, between FDOT and the Town for the installation of Town stormwater improvements within FDOT right-of-way. The Town Manager is authorized to execute the Agreement and to expend budgeted funds on behalf of the Town.

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

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

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

ADOPTED this _____ day of April, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2021.

CONSTRUCTION AGREEMENTConstruction Agreement No.: 2019-C-192-00006

THIS CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into by and between the State of Florida, Department of Transportation, (Address) 2981 NE Pine Island Road, Cape Coral, Florida 33909 (hereinafter referred to as the "DEPARTMENT") and Brian DeBoy (Address) 2981 NE Pine Island Road, Cape Coral, Florida 33909 (hereinafter referred to as the "Construction Coordinator").

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

WHEREAS, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

WHEREAS, the Construction Coordinator proposes to construct certain improvements to SR SR 865 Section 004 Subsection 000 from Begin MP 0.000 to End MP 0.020 Local Name _____ located in Lee County (hereinafter referred to as the "Project"); and

WHEREAS, the parties desire to enter into this Agreement for the Construction Coordinator to make improvements within the DEPARTMENT'S right of way to construct the Project, which will become the property of the Department upon acceptance of the work.

NOW, THEREFORE, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The Construction Coordinator is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right of way to perform all activities necessary for the construction of See attached exhibit A scope of services/special provisions.

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the DEPARTMENT Plans Preparation Manual ("PPM") Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Construction Coordinator shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The Construction Coordinator shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the project.

3. The Construction Coordinator shall notify the DEPARTMENT a minimum of 48 hours before beginning construction within DEPARTMENT right of way. The Construction Coordinator shall notify the DEPARTMENT should construction be suspended for more than 5 working days.

4. Pursuant to Section 7-13 of the DEPARTMENT Standard Specifications, the Construction Coordinator is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the Construction Coordinator against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the Construction Coordinator accessing DEPARTMENT right of way and the Construction Coordinator's performance of the Project. Such amount shall be carried in a minimum amount of not less than _____ and 00/100 Dollars (\$ _____) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than _____ and 00/100 Dollars (\$ _____) for property damage, or a combined coverage of not less than _____ and 00/100 Dollars (\$ _____). Additionally, the Construction Coordinator shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the Construction Coordinator shall provide the DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. If the Construction Coordinator is a governmental entity they will be exempt from these requirements.

5. The Construction Coordinator shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the project in accordance with the latest edition of the DEPARTMENT Standard Specifications, section 102. The Construction Coordinator is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the DEPARTMENT Design Standards, Index 600 series. Any MOT plan developed by the Construction Coordinator that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation.

6. The Construction Coordinator shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

7. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

8. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT right of way nor the placing of facilities upon the DEPARTMENT property shall operate to create or vest any property right to or in the Construction Coordinator, except as may otherwise be provided in separate agreements. The Construction Coordinator shall not acquire any right, title, interest or estate in DEPARTMENT right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Construction Coordinator's use, occupancy or possession of DEPARTMENT right of way. The parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to chapter 163, Florida Statutes.

9. The Construction Coordinator shall perform all required testing associated with the design and construction of the project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.

10. The Construction Coordinator shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

11. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right of way at the sole cost, expense, and effort of the Construction Coordinator. The Construction Coordinator shall bear all construction delay costs incurred by the DEPARTMENT.

12. All work and construction shall be completed within 730 days of the date of the last signature affixed to this agreement. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this Agreement at any time, with or without cause and without DEPARTMENT liability to the Construction Coordinator, by providing sixty (60) days prior written notice of termination to the Construction Coordinator.

13. The Construction Coordinator shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.

14. The Construction Coordinator will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

15. Upon completion of construction, the Construction Coordinator will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance to the plans. Prior to the termination of this Agreement, the Construction Coordinator shall remove its presence, including, but not limited to, all of the Construction Coordinator's property, machinery, and equipment from DEPARTMENT right of way and shall restore those portions of DEPARTMENT right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

16. If the DEPARTMENT determines that the Project is not completed in accordance with the provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the Construction Coordinator. The Construction Coordinator shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the Construction Coordinator and the DEPARTMENT mutually agree to in writing, to complete the Project and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the Construction Coordinator fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the Construction Coordinator with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Construction Coordinator's sole cost and expense, without DEPARTMENT liability to the Construction Coordinator for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the Construction Coordinator with an invoice for the costs incurred by the DEPARTMENT and the Construction Coordinator shall pay the invoice within thirty (30) days of the date of the invoice.

17. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.

18. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States mail, postage prepaid, to the parties at the contact information listed below.

19. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.

20. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

21. The Construction Coordinator may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Construction Coordinator from delegating its duties hereunder, but such delegation shall not release the Construction Coordinator from its obligation to perform this Agreement.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

23. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

26. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

27. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

28. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

29. The Construction Coordinator agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Construction Coordinator, including, without limitation, performance of the Project within the DEPARTMENT'S right of way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the Construction Coordinator, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the Construction Coordinator nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The Construction Coordinator shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The Construction Coordinator's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the Construction Coordinator shall survive termination of this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the DEPARTMENT and such insurance coverage shall not be deemed a limitation on the Construction Coordinator's liability under the indemnities granted to the DEPARTMENT in this Agreement.

30. Construction Coordinator:

- (1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Construction Coordinator during the term of the contract; and
- (2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

31. COMPLIANCE WITH LAWS

The Construction Coordinator shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Coordinator in conjunction with this Agreement. Specifically, if the Construction Coordinator is acting on behalf of a public agency the Construction Coordinator shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Construction Coordinator.
- (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and 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.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Construction Coordinator upon termination of the contract 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 Department in a format that is compatible with the information technology systems of the Department. Failure by the Construction Coordinator to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Construction Coordinator shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Construction Coordinator and shall promptly provide the Department a copy of the Construction Coordinator's response to each such request.

CONSTRUCTION COORDINATOR CONTACT INFORMATION

Name Roger T. Hernstadt Title Town Manager
Office No. (239) 765-0202 ext. _____ Cell _____ Email roger@fmbgov.com

Name TIMOTHY VANDERWALKER Title _____
Office No. (407) 480-3948 ext. _____ Cell _____ Email tim.vanderwalker@tetrattech.com

Mail Address 201 E Pine Street, Suite 1000 Orlando, Florida 32801

IN WITNESS WHEREOF, Construction Coordinator and the DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

CONSTRUCTION COORDINATOR

By: _____ (Signature)

_____ (Print Name)

_____ (Title)

_____ (Date)

DEPARTMENT OF TRANSPORTATION

By: _____ (Signature)

_____ (Print Name)

_____ (Title)

_____ (Date)

Legal Review:

1. **Requested Motion:**

Meeting Date: April 19, 2021

Authorize July 4th fireworks, and authorize the Town Manager to execute the associated documents.

Why the action is necessary:

Special Events are required to have Town Council approval.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Decision is needed today on July 4th Fireworks for all necessary permits and documents to be submitted for approval to meet deadlines. Due to the unknown status of the COVID-19 pandemic for the month of July, the July 4th parade is not being planned. All associated costs of the fireworks are already allocated in this years budget and needed funds are available for this event.

Attachments:

1. GSF - Ft Myers July 4th - Contract - COVID-19 - Signed
2. Fort Myers Beach Postponement Addendum 1 - 07.04.2021
3. FMB - 04.13.21 Statement

Financial Impact:

All costs associated with this event are currently allocated in this years budget and funds are available for this event.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Alison Giesen, Director of Cultural, Parks & Recreation
Alison Giesen, Director of Cultural, Parks & Recreation
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Approved - 4/12/2021
Final Approval - 4/13/2021

THIS AGREEMENT is made on this **24th** day of **April**, between **GARDEN STATE FIREWORKS, INC.**, hereinafter known and designated as The Party of the First Part; and **Town of Fort Myers Beach** hereinafter known as the designated Party of the Second Part.

WITNESSETH: For and in consideration of all mutual covenants and agreements hereinafter entered into, the Party and Parties hereinafter agree as follow:

1. The Party of the First Part agrees to furnish to the Party of the Second Part, on **July 4th, 2020** on the **Lee Countny Pier** in a location to be designated by the Party of the Second Party and approved by the Party of the First Part, an exhibition of fireworks.
2. The Party of the First Part agrees to pay all expenses for the freight and cartage for the said display, all necessary labor and equipment, and experienced Pyrotechnic Operators to discharge the said display.
3. The Party of the First Part and The Party of the Second Part agree to an initial postponement date of **July 5th, 2020** in the event of rain. The postponement terms of the event are as follows:
 - (A) In the event of rain or severe weather, the show may be rescheduled to the agreed postponement date for an additional fee of FIFTEEN PERCENT of the total contract amount. If the display is additionally postponed beyond the scheduled rain date, it must be re-scheduled within the period terminating NINETY (90) days after the original scheduled date of the display otherwise the display will be considered to be canceled. In the event of cancellation, the Party of the Second Part agrees to additional payment of FIFTY PERCENT, to bring the total of payments to ONE HUNDRED PERCENT of the total contract amount.
 - (B) If the contract is postponed as a result of governmental order or restriction on gatherings related to COVID-19, then there will be no postponement fee provided the display is postponed to a date not later than January 1, 2021. The notification of said postponement must occur not later than (30) days prior to the display. If the display is not used by January 1, 2021, the event will be considered cancelled unless otherwise agreed to by the parties in writing. In that event if no deposit has been paid, then FIFTY (50%) PERCENT of the contract shall be due and payable immediately. If the FIFTY (50%) PERCENT deposit was already paid, then the deposit will have been deemed fully earned without further credit or refund and no further payments shall be due for the display.
4. The Party of the First Part agrees to supply to the Party of the Second Part, insurance coverage in the amount of **FIVE MILLION DOLLARS** for public liability and/or property damage. The Party of the First Part agrees to hold harmless the Party of the Second Part from all claims, legal fees incurred from the operations of the Party of the First Part. The Party of the Second Part agrees to hold harmless the Party of the First Part of all and any claims, legal fees incurred outside the operations or the control of the Party of the First Part.
5. The Party of the Second Part agrees to furnish ample security or police protection and barricades to prevent any persons from coming into the safety zone area designated for discharging said fireworks display. With the exception of conditions stated in paragraph 4 above, the Party of the Second Part also agrees to assume sole responsibility for spectator safety, including seating, lighting, and ground surfaces, and agrees to conduct an inspection of the site approximately 24 hours in advance of the display to ensure a safe spectator environment.

6. The Party of the Second Part agrees to produce any and all permits which may be required by municipal authorities for the discharging of the said fireworks display at their own expense.
7. The Party of the Second Part agrees that any and all publicity, media coverage, announcements, and advertising shall name GARDEN STATE FIREWORKS, INC., as the primary contractor for the said display.
8. Upon signing of this document, a deposit of FIFTY PERCENT of the total contract price shall be paid to the Party of the First Part.
9. Upon delivery of the said display, the full balance for the contract amount shall be paid to the Pyrotechnic Operator in a sealed envelope either before or immediately following the discharging of the display.
10. Total contract amount **\$ 27,000 (excluding fire permit fees)** United States Dollars.

WITNESS:



GARDEN STATE FIREWORKS, INC.

BY



WITNESS:

Buttany M. Kircher

Alk Town of Fort Myers Beach

BY





To:

Alison Giesen

Director of Culture, Parks & Recreation

Town of Fort Myers Beach

Postponement Addendum #1

Garden State Fireworks, Inc and The Town of Fort Myers Beach, agree to extend the terms of the in-place contract originally scheduled for July 4th, 2020 to a new date of July 4th, 2021. In addition, a fee of 15% (\$4,050.00) of total cost of contract will be applied for the continued storage of pre-existing display product.

By: _____

Witness: _____

By: _____

Witness: _____



Main Office/Plant: P.O. Box 403, Millington, NJ 07946 1-908-647-1086 1-800-999-0912 Fax: 1-908-647-6258
Regional Offices: PO Box 137821, Clermont, FL 34713 1-352-536-1558
7055 Speedway Blvd., Suite E-103, Las Vegas, NV 89115 1-702-453-0808
41152 Mayberry Avenue, Hemet, CA 92544 1-909-223-0454
Visit our website at: www.gardenstatefireworks.com

Statement

Garden State Fireworks

P.O. Box 137821

Clermont, FL 34713

Date _____

4/13/2021

To:

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

					Amount Due	Amount Enc.
					\$13,500.00	
Date	Transaction				Amount	Balance
05/31/2020	Balance forward					0.00
06/12/2020	PMT #8793.				-13,500.00	-13,500.00
07/01/2020	INV #1058. Due 07/01/2020.				13,500.00	0.00
12/31/2020	INV #1077. Due 12/31/2020.				13,500.00	13,500.00
01/03/2021	INV #1081. Due 01/03/2021.				4,050.00	17,550.00
02/15/2021	PMT #10243.				-4,050.00	13,500.00